

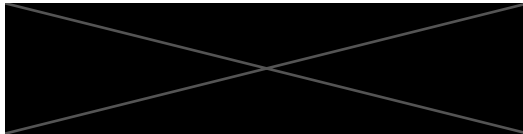
**IN THE COURT OF MS. ANJU BAJAJ CHANDNA
PRINCIPAL DISTRICT & SESSIONS JUDGE-CUM-SPECIAL
JUDGE (PC ACT) CBI, ROUSE AVENUE DISTRICT
COURTS, NEW DELHI**

**State vs Sunita & Ors.
CNR No. DLCT11-000128-2021
CC No. 18/2021 (Old No. P. C. 1/2018)
FIR No. 194 dated 19.09.2017
Police Station: Sector-3, Chandigarh
U/s. 120-B IPC r/w Sections 409, 420, 201 IPC
& Sections 8, 9, 13(1) (d) r/w Section 13 (2)
Prevention of Corruption Act, 1988.**

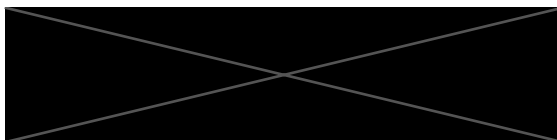
State

vs

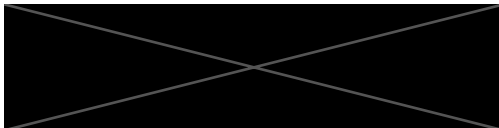
A-1 Sunita



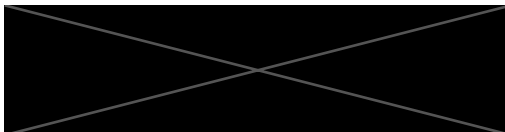
A-2 Dr. Balwinder Kumar Sharma



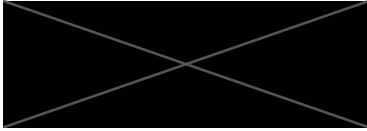
A-3 Sushila



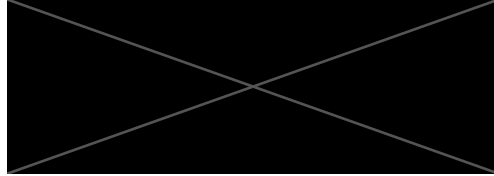
A-4 Ayushi



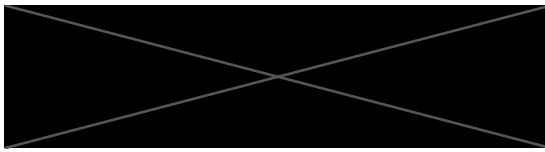
A-5 Sunil Kumar Chopra @ Titu



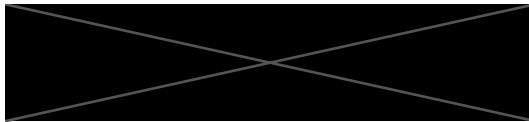
A-6 Kuldee Sin h



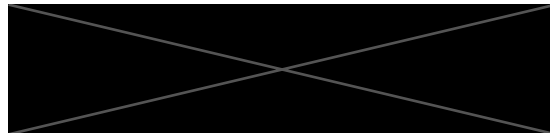
A-7 Subhash Chander Godara



A-8 Sushil Bhadu



A-9 Tajinder Bishnoi



Date of FIR	:	19.09.2017
Date of filing of charge-sheet	:	06.01.2018
Charge framed on	:	31.01.2020
Trial transferred by orders of Supreme Court of India	:	05.02.2021
Evidence concluded on	:	28.03.2024
Arguments concluded on	:	25.07.2024
Date of Judgement	:	22.08.2024

APPEARANCES

- For prosecution : Sh.Charanjit Singh Bakhshi, Senior Public Prosecutor (Govt of Union Territory of Chandigarh)
- Sh.Manoj Garg, Ld. Special Public Prosecutor for State
- For accused : Sh.Ramesh Kumar Bamal, Ld. Counsel for accused Sunita (A-1)
- Sh.Syed Hasan Isfahani, Ld. Counsel for accused Balwinder Kumar Sharma (A-2)
- Sh. Naveen Kumar, Legal Aid Counsel for accused Sushila (A-3)
- Sh. Uday Singh, Ld. Counsel for accused Ayushi (A-4)
- Sh. Anil Kumar Gupta, Ld. Counsel for accused Sunil Kumar Chopra @ Titu (A-5)
- Sh. Sameer Chandra, Ld. Counsel for accused Kuldeep Singh (A-6)
- Sh.Arun Khatri, Ld. Counsel for accused Subhash Chander Godara (A-7), Sushil Bhadu (A-8) and Tajinder Bishnoi (A-9)

JUDGMENT

1. Success is a journey that involves hardwork, continuous learning and courage to keep going despite challenges. This case reminds us of a famous quote **“there are no short-cuts to success”**. This case is classic example of the fact that short-cut usually leads to disappointment. The option of

short-cut generally brings you to a place where you never want to reach.

2. The process of examination is designed to select the best of talent by way of fair assessment. Equality, sanctity and integrity are the hallmark of system of competitive exams. The present case relates to judiciary exam held by Haryana Public Service Commission in collaboration with High Court of Punjab and Haryana. Few days after the preliminary exam, there were allegations of paper leak and the High Court of Punjab and Haryana on due consideration of the facts, events and evidence formed an opinion that a regular case should be registered and matter be investigated in depth.

ON FACTS:-

3. The facts of the case are that Haryana Public Service Commission, Panchkula, invited online applications for 109 posts of Civil Judge (Junior Division) in Haryana Civil Service (Judicial Branch) Examination 2017 vide Advertisement no.6 of 2016 dated 20.03.2017. The HCS (JB) Examination was to be conducted in three stages namely (i) Preliminary Examination (ii) Main Examination (iii) Viva-voce. As per advertisement, the HCS (Judicial Branch) Examination was to be conducted in accordance with the provisions contained in Punjab Civil Services (Judicial Branch) Rules 1951 as applicable to the State of Haryana and amended from time to time (amendment made vide notification no. GSR 1/Const./Art 234 & 309/2017 dated

09.01.2017). Vide said notification, the Selection Committee to consist of the following members:-

- (i) three judges of the High Court of Punjab and Haryana nominated by the Chief Justice, of whom the senior-most shall be the Chairman;
- (ii) the Chief Secretary to Government, Haryana;
- (iii) the Chairman of the Haryana Public Service Commission; and
- (iv) the Advocate General, Haryana.

4. Vide Announcement dated 30.06.2017 of Haryana Public Service Commission, the preliminary examination for the post of HCS (JB) was to be conducted on 16.07.2017.

5. The recruitment and Promotion / Court Creation Committee (subordinate Judicial Services) was formed consisting of Mr. Justice A. K. Mittal, Mr. Justice Augustine George Masih and Mr. Justice T. S. Dhindsa. Vide order dated 20.04.2017 Mr. Justice Tiwari J was substituted with Justice A. G. Masih.

6. Vide order dated 25.03.2014, Sh. Balwinder Kumar Sharma, who was then a member of Punjab Superior Judicial Service was appointed as Officer on Special Duty and vide order dated 01.04.2014, Balwinder Kumar Sharma (accused no.2) was appointed as Registrar (Recruitment). As per office order dated 06.04.2011, Registrar (Recruitment) was the over-all incharge of the Recruitment Cell including the staff posted therein, maintenance of the confidential records pertaining to

examination keys, resource persons (to set question papers and for checking of the answer sheets) and the process of preparation of the result, updating of data regarding actual and anticipated vacancies in the subordinate and superior judicial services, High Court Establishment etc.

7. The Preliminary examination of HCS (JB) 2017 was conducted on 16.07.2017 at different examination centres.

8. On 19.07.2017 a complaint addressed to DGP, Haryana Police was preferred by Manoj (husband of Suman, who was one of the candidate of the HCS (JB) Examination). Similar complaint was also presented before High Court of Punjab and Haryana on 20.07.2017 alleging about leakage of question paper through candidates namely Sunita and Sushila. The complaint was marked to Recruitment Committee. On 08.08.2017, Suman also filed a petition bearing CRM-M No. 28947 of 17 titled 'Suman vs State of Haryana & Ors.' before Punjab & Haryana High Court wherein she reported that the HCS (JB) Examination paper was leaked. Petitioner (Suman) specifically named Sushila and Sunita for having the question paper of HCS (JB) Examination and for having offered to sell the same for Rs.1.5 crores and also after negotiations settled for Rs.10 Lacs for preliminary examination question paper.

9. The matter was taken up by Recruitment/Promotion/Court Creation Committee (Subordinate Judicial Services) and in its meeting held on 16.8.2017, resolved as under:-

“The Committee, therefore recommends that the matter be probed by the Registrar (Vigilance) of this court and report be submitted within one week after obtaining order from Hon'ble Chief Justice”.

10. Same was approved by the Hon'ble Chief Justice. The Registrar (Vigilance) conducted an enquiry and on consideration of the material, recorded following conclusions:-

i. That Dr. Balwinder Kumar Sharma, Registrar (Recruitment) handled and was having custody of the question papers from the time the question paper was set till the question papers were distributed for the examination;

ii. That Ms. Sunita and Ms.Sushila were having the copies of the question paper for HCS (JB) Preliminary Examination 2017 before the above-said examination;

iii. That Ms. Sunita was previously known to and having acquaintance with Dr.Balwinder Kumar Sharma, Registrar (Recruitment) and that Ms.Sushila was known to and having acquaintance with Ms.Sunita and Ms.Suman was known to and having acquaintance with Ms.Sushila before HCS (JB) Preliminary Examination 2017.

iv. That Ms.Sunita procured copy of question paper for HCS (JB) Preliminary Examination 2017 from Dr. Balwinder Kumar Sharma, Registrar

(Recruitment) and thereafter she supplied copy thereof to Ms.Sushila and negotiated with Ms.Suman for supplying copy of the question paper to her for consideration.

11. The Registrar (Vigilance) opined that the matter requires further deeper probe. The report was put up before the Recruitment / Promotion/ Court Creation Committee (Subordinate Judicial Service). The committee in its meeting held on 29.08.2017 after considering the report submitted by Registrar (Vigilance) made the following recommendations:-

(a) In view of the prima facie finding that at least two candidates namely Ms.Sunita and Ms.Sushila had the question papers and therefore the possibility that other candidates may have also had access to the question paper cannot be ruled out; in such circumstances, purity of the examination having been lost, the committee recommends that the HCS (JB) Preliminary Examination 2017 held on 16.07.2017 be scrapped.

(b) Keeping in view the finding that Dr.Balwinder Sharma, Registrar (Recruitment) unequivocally stated that he had no prior acquaintance with Ms.Sunita (the topper in general category), while the call details given by the service provider reveal that there was a total of 760 call and SMSs exchanged between Dr.Balwinder Sharma and Ms.Sunita during the last one year, indicate that the

matter requires a deeper probe. Therefore, the committee recommends that regular enquiry be initiated against Dr.Balwinder Sharma, Registrar (Recruitment) on the basis of preliminary enquiry.

(c) Dr. Balwinder Sharma, Registrar (Recruitment) be transferred forthwith from this post pending further action.

(d) A FIR be lodged against Ms.Sunita, Ms.Sushila and Dr.Balwinder Sharma, Registrar (Recruitment) to further probe the act of leakage of question paper of HCS (JB) Preliminary Examination 2017.

12. The matter was put up before the Chief Justice Punjab and Haryana High Court, who vide noting dated 10.09.2017 agreed to recommendations made by the committee. Vide order dated 15.09.2017 in CRM-M. No. 28947 of 2017, it was ordered that FIR deserves to be registered at Chandigarh, initially in terms of the recommendations made in para 'd' of the report of the Committee and for further investigation by constituting a SIT. Case was registered under Section 8, 9, 13 (1) (d) r/w Section 13 (2) of PC Act 1988 and under Section 409, 420, 120 B IPC against Dr.Balwinder Sharma, Sunita and Sushila.

13. During investigation, on 29.09.2017 mobile phone, pen drive and one laptop which were used by Balwinder Kumar Sharma during the recruitment process were taken into possession and sent to CFSL. On 30.09.2017 mobile phone make

Samsung with memory card in which complainant Suman recorded the conversations of Sushila, Sunita and herself was taken into possession and sent to CFSL. On 06.10.2017 the key log register of printing press of High Court, Chandigarh was taken into police possession. On 07.10.2017, a computer make Acer and its printer make Panasonic and one pen drive color black make Transcend from the office of Registrar (Recruitment) of High Court and one computer along with printer from the cabin of steno were taken into police possession and sent to CFSL. On 24.10.2017 a pen drive containing record of online applications of candidates for the examination of HCS (JB) Examination was taken into possession.

14. On verification of CDRs of mobile phones of Sunita, Sushila and petitioner Suman, it was confirmed that they held the meeting at Sindhi Sweets, Sector-17, Chandigarh on 15.07.2017, a day prior to the exam. As per the record provided by High court, Sunita was the topper in the general category and Sushila was the topper in the reserve category. Both had taken coaching from Jurist Academy, Sector-24, Chandigarh and as per statement of Surinder Bhardwaj, owner of Academy, as per periodic tests conducted by the Academy and on the basis of their performance in the class, they were average students. Sunita was preparing for different competitive exams since last 20 years but she never qualified any exam for govt. job neither her topper friend Sushila qualified for any competitive exam for govt. job.

15. As per the investigation, the question paper remained in the custody of Dr. Balwinder Kumar Sharma, Registrar (Recruitment) from the time question paper was finalized till dispatch to the Examination Centre. Since Ms. Sunita was in close intimate relationship and in constant contact with Dr. Balwinder Kumar Sharma, then Registrar Recruitment, it was revealed that Dr. Balwinder Kumar Sharma, Registrar (Recruitment) had given the copy of the question paper to Sunita and Sunita had further given the copy of question paper to Sushila and carried out negotiations with Suman for supplying copy of question paper to her for consideration of money.

16. To establish the connection between Dr. Balwinder Kumar Sharma and Ms. Sunita, the call details record of mobile number 8396861786 (of Sunita) from Vodafone (PB), Mobile Number 8054012444 (Idea) and 9780008235 (Airtel) both belonging to Dr. Balwinder Kumar Sharma, Registrar (Recruitment) have been procured from 20.09.2016 till 20.09.2017 from cellular company and found that they remained in touch with each other since September 2016. They have stopped talking with each other on their above said known mobile numbers in the month of February 2017 and procured other mobile numbers 7973415192 and 8360753268 for secret conversations. As per the tower locations of the mobile numbers 8054012444 (Idea) and 9780008235 of B. K. Sharma and 8360753268 (secret number), all three mobile phone number show the same location since February 2017 to 7th August 2017 confirming being together all the time.

17. It has been revealed during the investigation that mobile number 8360753268 was procured from Ashish Kumar and was handed over to Balwinder Kumar Sharma for secret conversations. The mobile number 7973415192 (Jio) was procured from Naresh Kumar and same was being used by Sunita during the period 12.01.2017 to 07.08.2017 while location of both the numbers (8396861786 and 7973415192) remained same. Sunita was staying in room No.5 of Radha Krishan Mandir, Sector-18C, Chandigarh and also came in contact with accused Ayushi who was also staying at the same place. It has further been revealed through the data of taxi booking (Ola and Uber) that accused Balwinder Kumar Sharma used to hire taxi services from the secret mobile phone for visiting Sunita. The certified copies of room entry register and online booking receipts of Neelkanth Krishna Dham Tourist Resort, Kurukshetra and copy of Aadhar card of Balwinder Kumar Sharma submitted during booking of room on 23.06.2017 were taken into possession from the resort, showing booking of room by Balwinder Kumar Sharma while his wife Deepa Sharma who was serving as a teacher was in her school (DAV School, Sector-7, Chandigarh) during the alleged period. Also during the investigation, Mobile of Ishwar Singh (official of recruitment branch) was taken into possession from where it was revealed that Sunita sent messages to him.

18. The charge-sheet no.2 has been filed against accused no.3 Sushila for offences punishable under Section 409, 420, 120-B, 201 IPC and u/s. 8, 9, 13 (1) d, r/w Section 13 (2) of PC Act. It has been found that she was actively involved in the

leakage and sale of question paper of HCS (JB) Preliminary Examination 2017. The issue of leakage of question paper got highlighted when Suman made a complaint in the High Court and produced the transcripts of conversations among Suman, Sushila and Sunita as a proof in High Court. Sushila had sold her plot measuring 3 Bishwa 10 Biswa to Surjit Kaur. The said plot has been sold by accused Sushila four days prior to the HCS (JB) Preliminary Examination to ensure that she is able to pay advance money to Sunita for leaked question paper. Sushila is the topper in the reserve category with exceptionally high marks. Accused Sunita remained in contact with Sushila on mobile nos. 9467680053, 7986293481 (Sushila's husband Ram Bhagat), 0172-2584397 (Landline) and 9467525553 (second number of Ram Bhagat) to sell the leaked question paper. Accused Sushila was arrested on 14.01.2018. During custody, Sushila got recovered the mobile phone from the rack lying at backside courtyard of her house and the same was sent to CFSL for analysis. Certified copy of CAFs and CDRs of mobile phone used by accused Sushila no. 9467680053, 9467525553, 0172-2584397, 7986293481 and Suman's mobile No. 9468073929 for the period from 01.09.2016 to 20.09.2017 have been procured from the concerned Telecom Nodal officer and same were analysed.

19. Charge-sheet no.3 has been filed against Ayushi (accused no.4), Sunil Kumar Chopra @ Titu (accused no.5) and Kuldeep Singh (accused no.6) for offences under Section 409, 420, 120-B, 201 IPC and u/s. 8, 9, 13 (1) d, r/w Section 13 (2) of P C Act.

20. It has been established that all the above three accused persons were actively involved in the leakage of question paper of HCS (JB) examination and disposed off the devices, mobile phones used in the scam and material of leaked question paper. A SIM number (8360753268) in the name of Ashish Kumar and two SIMs number (8054087306 and 8054096576) in the name of Virender Kumar were procured by accused Ayushi and handed over to accused Sunita. Accused Subhash Chander Godara and Sushil Bhadu connected to accused Tajinder Bishnoi (who was also the candidate of HCS (JB) Examination 2017). As per the allegations against accused Sunil Kumar Chopra @ Titu, he arranged rooms for candidates and made bogus entries in the visitor register record of Mandir. He also helped to remove paper material from the room of Sunita. Accused Kuldeep (step-brother of accused Sunita) connected to two candidates and had taken Rs.15 Lacs. Accused Kuldeep removed question paper material from the room of accused Sunita in Delhi and burnt the same. The burnt material was recovered at his instance from the vacant plot at the back side of house of Anita.

21. Vide charge-sheet no.4 accused Subhash Chander Godara (accused no.7), Sushil Bhadu (accused no.8) and Tajinder Bishnoi (accused no.9) have been charge-sheeted for offences punishable under Section 409, 420, 120-B, 201 IPC and u/s. 8, 9, 13 (1) d, r/w Section 13 (2) of P C Act.

22. As per the investigation, Tajinder Bishnoi was in touch with Sushil Kumar Bhadu and he also came into contact

with main accused Sunita through Subhash Chander Godara for availing the leaked paper. Accused Tajinder met accused Sushil Kumar Bhadu at ISBT, Sector-17 and Sushil Kumar Bhadu had taken him to Mandir, Sector-18 for availing HCS (JB) leaked paper. Rs.5 Lacs were transferred in the account of Om Prakash Bhadu from the joint accounts of Tajinder Bishnoi and his father on 20.07.2017. Rs.2 Lacs were transferred through RTGS in the account of accused Sushil Kumar Bhadu from the joint accounts of Tajinder Bishnoi and his father Chander Prakash on 21.07.2017 of HCS (JB) Examination. Accused Tajinder Bishnoi had scored rank-2 as per the merit list.

23. Supplementary Charge-sheet no.5 was filed in respect of CFSL results of all deposited items i.e. mobile phone, laptop, pen drive, CPU and voice sample of accused Sunita, Sushila, petitioner Suman and accused Ayushi.

24. Supplementary Charge-sheet no.6 was filed in respect of CFSL result of call recording of Ram Bhagat (husband of accused Sushila) and accused Kuldeep. During the course of investigation, one mobile phone make Samsung Duos recovered at the instance of accused Kuldeep from his house C-169, Bengali Colony, Najafgarh, Delhi and same was sent to CFSL. The result of same was received on 04.01.2019. The CAF of mobile number 9915123081 were obtained (which was being used by Ram Bhagat). On 13.08.2020 the result of above said call recordings and voice sample of Ram Bhagat and accused Kuldeep were received from CFSL.

25. Supplementary Charge-sheet no.7 was filed in respect of CFSL result of call recording of accused Sunil Kumar @ Teetu.

ON CHARGE

26. Vide order on charge dated 31.01.2020, all the accused persons were charged for having committed the offence of criminal conspiracy u/s 120 B IPC qua offences punishable under Section 409 IPC, 420 IPC, Section 8, 9, 13 (1) (d) read with Section 13 (2) of Prevention of Corruption Act.

The charge for the substantive offences have been framed against accused Balwinder Kumar Sharma, (being a public servant), punishable under Section 409 IPC, 420 IPC and u/s. 13 (1) (d), r/w Section 13 (2) of Prevention of Corruption Act 1988.

The charge for the substantive offences punishable under Section 8 and 9 of Prevention of Corruption Act 1988 has been framed against accused Sunita for having influenced Balwinder Kumar Sharma.

The charge for the substantive offences punishable under Section 201 IPC has been framed against accused Sunil Kumar Chopra @ Titu, accused Kuldeep Singh, accused Sunita, accused Sushila and accused Ayushi.

PROSECUTION EVIDENCE:-

27. During the trial, prosecution examined 75 witnesses in all. The sum and substance of prosecution evidence is as follows:-

MATERIAL WITNESSES:-

PW-15 Ishwar Singh, Superintendent of Recruitment Cell, Punjab and Haryana High Court stated that after the examination of Haryana Judiciary conducted on 16.07.2017, the preparation of result started on 31.07.2017 by scanning OMR sheets and was completed on 01.08.2017 by 6.00 p.m. After the preparation of complete result, it was found that topper candidate was more than prescribed age of 42 years. The name of the candidate was Ms.Sunita from category “general”. He along with Sunil Thakur, Superintendent, Grade-II, opened the site of Haryana Public Service Commission and found through the admit card of the candidate that she belonged to general category. Sh.Balwinder Kumar Sharma, Registrar (Recruitment) was apprised that topper candidate Sunita was over age at which Balwinder Kumar Sharma informed that woman who are deserted / divorced/ having proceedings under Section 125 Cr.P.C have the benefit of age relaxation. The result was kept in a sealed cover and was not approved by the Recruitment Committee.

According to Ishwar Singh, on 03.08.2017 he received a call on his mobile phone number

9417184363 from number 9877339926 and the caller informed that she was Sunita and she got his mobile number from the branch. Sunita expressed her willingness to meet him, at which he informed that he could not meet any candidate. Sunita insisted to meet him at his residence but Ishwar Singh informed her that he was not in a position to meet her. The information about phone call from Sunita was shared with Sunil Thakur. Next day, Sunita again called Ishwar Singh and informed that she had reached the High Court at 7.54 a.m. He however had not reached the High Court. Again at 8.50 a.m Sunita called him to know about his movement. On entering the High Court from Gate No.1, again a call was received from Sunita and she asked him (Ishwar Singh) to look back. He (accompanied by his daughter) on turning back, found Sunita standing near the railing. Sunita revealed that she appeared in Haryana Superior Judicial Service Examination but despite performing well, her roll number is not appearing in the result. Ishwar Singh informed her that she could have access to her marks and could obtain the same under RTI Act. Sunita also informed that she has performed well in HCS (JB) Examination dated 16.07.2017 at which Ishwar Singh informed her that result has not been declared. Sunita also informed that she filed proceedings under Section 125 Cr.P.C

and insisted that Ishwar Singh should speak to her exclusively. Meanwhile another official Sohan Singh, Sr. Assistant, Recruitment Cell also came there and was informed about Sunita.

It is further testified by Ishwar Singh (PW-15) that he went to the office of Registrar Balwinder Kumar Sharma and informed him that topper candidate was standing near gate no.1 and wanted to speak to him alone. Balwinder Kumar Sharma responded by saying atleast listen to her. Sunita again called Ishwar Singh and told him that she was ready to do anything to which he declined. He, however, expressed and shared his apprehension with Mr. Sunil Thakur who advised to meet Chairman of the Recruitment Committee of Haryana Superior Judicial Service. In the evening, he (Ishwar Singh) reached home and did not pick any call or read any message from Sunita. At about 6.25 p.m, Sunita came to his residence and again insisted to listen to her. Meanwhile, Sunita opened her bag and took out a black polythene stating that she had brought something and can bring more. He (Ishwar Singh) then told her that she should not take out anything from the bag otherwise police would be called. He and his family members requested Sunita to leave and accordingly she left. Ishwar Singh then went to the house of Narender Sura, then OSD (Building) and informed him about the incident. At around 8.00

p.m, he went to the camp office of Chairman and informed his Lordship regarding the calls and messages received from Sunita. He was instructed not to move out from the house alone and not to pick up unidentified phone calls.

PW-15 further deposed that on 05.08.2017 Amrish Kumar Sharma who was also working in recruitment cell informed that Balwinder Sharma had asked him that he would be calling him one day (either on 06.08.2017 or 07.08.2017) despite being court holidays for confidential work. Ishwar Singh (PW-15) called Assistant Registrar Vijender Singh and asked him to put a seal under his signatures on the lock of the room where all material relating to recruitment was kept and also made a request to depute ITBP official to guard the room. It was later known that Registrar (Recruitment) Balwinder Kumar Sharma had come to the branch and snubbed Assistant Registrar for having sealed the lock and for deputing the guard outside the room. Also by the evening, there were rumors about lodging of complaint / FIR for leakage of question paper of HCS (JB) dated 16.07.2017.

PW-15 Ishwar Singh further deposed that on 12.08.2017, he was called at the camp office where Hon'ble Judges were present and they enquired about paper leakage. He narrated the incident to the

Hon'ble judges. Again on 15.08.2017, PW-15 narrated the entire incident to Hon'ble Judges in the presence of Balwinder Kumar Sharma. During this narration, Balwinder Kumar Sharma accused him (PW-15) for having leaked the paper and for creating the scene.

On 17.11.2017 mobile phone of PW-15 was seized by SIT vide seizure memo Ex.PW15/A. SIT also seized original register maintained by ITBP regarding deputing of guard vide seizure memo Ex.PW15/B. A vigilance enquiry was conducted by Registrar Vigilance where statement of PW-15 was recorded vide Ex.PW15/C. His statement was also recorded under Section 164 Cr.P.C vide Ex.PW15/D. The mobile phone was produced and same has been identified as Ex.P-1. The mobile was also operated and found that details are matching with the report Ex.PW15/E and Ex.PW15/F.

During cross examination, Ishwar Singh (PW-15) stated that his statement was also recorded during the departmental enquiry apart from recording of statements by Registrar (Vigilance), SIT and Ld. Magistrate. The result of HCS (JB) Preliminary Examination was never approved or declared. The details / admit card of Sunita was downloaded by Sh.Sunil Thakur. The data was provided by Haryana Public Service Commission of all the candidates to

the High Court which was available in the branch. No written complaint was filed by him with his superiors about the conduct of Sunita and Balwinder Kumar Sharma till the registration of FIR in the present case. It is admitted that scrutiny about eligibility conditions of candidates was to be conducted by Public Service Commission and not by Recruitment cell. The OMR sheets of the candidates were scanned by the agency hired for the purpose. He has identified the copy of the minutes dated 03.08.2017 Ex.PW15/DA, although these minutes were never marked to him. PW-15 did not delete data including SMS etc. from the phone till it was seized. During the vigilance enquiry, he had shown his mobile phone to the Registrar and this was the only mobile number used by him in the year 2016 and 2017. He did not verify about the registered user of the mobile number 9877339926. The suggestion has been denied that Sunita never called him or sent any message or that mobile number 9877339926 does not belong to her. The suggestion has also been denied that Sunita never topped the examination in the draft result nor she met PW-15 at any point of time nor disclosed about proceedings under Section 125 Cr.P.C. On 04.08.2017 when Sunita came to his (PW-15) house, she remained there for 10 minutes. PW-15 denied the suggestion that Sunita never visited his house,

therefore no complaint was preferred by him. He also denied the suggestion that handset handed over by him was containing tampered or manipulated data or that he is deposing falsely.

During cross examination on behalf of A-2 Balwinder Kumar Sharma, Ishwar Singh (PW-15) denied the suggestion that he did not inform Balwinder Kumar about Sunita approaching him through phone calls, SMS and personal meetings. The fact of paper leak came to his knowledge on 09.08.2017 through newspaper, although he was informed by some official in the High Court on 08.08.2017 that one criminal petition has been filed against the Recruitment cell. Ishwar Singh (PW-15) voluntarily stated that recruitment committee called Balwinder Kumar Sharma, Sunil Thakur and him and put various queries wherein it was revealed that complaint was already pending with Balwinder Kumar Sharma on which he did not take any steps. When the matter was taken up by the court on 08.08.2017, Balwinder Kumar Sharma informed that complaint was pending for administrative enquiry. On 08.08.2017 itself, Balwinder Sharma placed the complaint before the committee and got it filed. However, minutes were not approved by the Chief Justice. The suggestion has been denied by PW-15 that he is deposing falsely as he was having grudge against Balwinder Kumar Sharma for not helping

him for the selection of Bajrang Lal, (the relative of PW-15). It is denied that false story has been concocted by him (PW-15) in connivance with Vijender Singh, Amrish, Sunil Thakur and then Registrar (Vigilance) Sh.Arun Tyagi.

PW-16 Sunil Thakur posted as Superintendent with Recruitment Branch of Punjab and Haryana High Court supported the version of PW-15 Ishwar Singh on the aspects of Ishwar Singh having informed him about the candidature of Sunita as well as attempt made by candidate Sunita to meet him (Ishwar Singh). The statement of this witness was also recorded during vigilance enquiry on 28.08.2017 vide Ex.PW16/A. During cross examination, PW-16 stated that enquiries were made from him by the police in connection with the case. His statement was also recorded during the disciplinary enquiry. He did not come across any document with respect to matrimonial dispute of candidate Sunita. The suggestion has been denied that Balwinder Kumar Sharma did not tell Ishwar Singh about matrimonial dispute of candidate Sunita. The witness has denied the suggestion that relations between Balwinder Kumar Sharma and Ishwar Singh were not cordial or that he is not stating the truth being friend of Ishwar Singh.

PW-17 Vijender Singh was posted as Assistant Registrar, Recruitment Branch. On 05.08.2017 Ishwar Singh (PW-15) came to him and asked to seal the conference room where confidential material was stored. He (PW-17) ordered the clerk immediately to send a note to concerned section to provide security and seal the conference room, which has complied within next 20 minutes. On 08.08.2017 Balwinder Kumar Sharma, Registrar, (Recruitment) came to the office and asked as to who has sealed the conference room and deployed the security there. On being told that security has been deployed at his (PW-17) request, Balwinder Kumar Sharma questioned his authority. On being told that same was done at the instance of Ishwar Singh, Balwinder Kumar Sharma questioned the authority of Ishwar Singh. Balwinder Sharma snubbed this witness in the presence of staff members. According to PW-17, Balwinder Sharma behaved in an unusual manner. The statement of PW-17 was also recorded before the Registrar (Vigilance) and before the police. Witness has identified his statement Ex.PW17/A dated 29.07.2017. The witness has also admitted having handed over the photocopies of some documents to the investigating agency by duly attesting the same Ex.PW17/B (colly). His statement was also recorded before the Magistrate vide Ex.PW17/C.

During cross examination, PW-17 denied the suggestion that Ex.PW17/A was recorded under the influence of Ishwar Singh and under the influence of Registrar (Vigilance). The suggestion has been given to the witness that he did not provide the mobile phone of his wife during the vigilance enquiry as there was conversation with the candidate from the said mobile. PW-17 was not involved in the printing process of question paper and denied the suggestion that he was aware of the questions of HCS (JB) Preliminary Examination. The suggestion has been denied that key log register was maintained from the beginning. According to the witness, key log register about recording of time of sealing and de-sealing of the room was maintained with effect from 05.08.2017 only. He is not aware of any complaint against him made by any candidate. The suggestion has been denied that he is giving false and concocted version.

PW-18 Amrish Kumar was posted with recruitment branch in the year 2011 as Sr. Assistant. He was assigned the duty to get question paper of HCS (JB) printed in the adjoining room along with 6-7 other staff members. On 12.07.2017 during lunch hours Dr. Balwinder Sharma, Registrar (Recruitment) came to the room where the printing was being done and ordered that two staff members shall continue with the printing during the lunch hours and

remaining may have lunch at that time. On request to the Registrar, all the staff members engaged in the printing left for lunch. On 05.08.2017, Balwinder Kumar Sharma called PW-18 in his room and said that on 06.08.17 and 07.08.17 (although holidays) he should come to the office for some confidential work. He felt uncomfortable, since was called alone for the confidential work. He informed this fact to superintendent Ishwar Singh who warned him in the words *“Apne Dimag Se Kaam Lena, Aur Marna Ho Toh Aa Jana”*. On hearing this, he (PW-18) felt frightened and kept his phone switched off on 06.08.2017 and 07.08.2017. PW-18 has further stated that on 08.08.2017, heated arguments were exchanged between Assistant Registrar Vijender Singh and Registrar, (Recruitment) regarding the locking of the room and providing security. The statement of PW-18 was recorded before the Magistrate vide Ex.PW18/A. During cross examination, witness deposed that he was involved in preparing the result of examination of judicial officers on the oral directions of Registrar Balwinder Kumar Sharma. The result used to be prepared from OMR sheets by the outside agency under the supervision of Registrar. For the process of printing of question paper, staff was deputed by the Registrar, (Recruitment) which include both the Superintendents, dealing assistants and 2-3 senior

judicial assistants. PW-18 was not called during the vigilance enquiry nor did he approach the registrar on his own. There was no frisking of any staff member deputed for printing of question papers. However, mobile phone inside the room was not permitted. PW-18 denied the suggestion that he is deposing against Balwinder Kumar Sharma at the instance of Ishwar Singh. The suggestion has also been denied that no heated arguments took place between Vijender Singh and Balwinder Kumar Sharma. The suggestion has been denied that he was having a grudge against Balwinder Kumar Sharma as he objected to him (PW-18) attending court proceedings in his personal litigation without permission.

PW-27 Dr. Nirmaljeet Singh Kalsi was posted as Additional Chief Secretary, Home Affairs and Justice, Government of Punjab, Chandigarh. The witness has proved the sanction order issued by him for prosecution of Dr. Balwinder Kumar Sharma (A-2) vide sanction order Ex.PW27/A. The proposal for grant of sanction was submitted by Registrar (General), High Court of Punjab and Haryana, Chandigarh and the same was forwarded to the competent authority. The sanction order was conveyed to the Registrar (General). During cross examination, PW-27 stated that proposal was submitted to Hon'ble Chief Minister, State of

Punjab. The proposal was examined by competent authority and the witness only conveyed the order. It is denied that sanction was granted by the competent authority without application of mind or that sanction order is illegal and invalid.

PW-29 Surender Singh Bhardwaj was running Jurist Academy at Chandigarh since 2008 for providing coaching for judicial service examination and law entrance, IAS (law subject). Witness confirmed that Ms.Sunita, Ms.Suman and Ms.Sushila were students and preparing for HCS (JB) examination. Witness also came to know about the filing of writ petition by Suman in the High Court of Punjab and Haryana. He also came to know about Ms.Sunita and Ms.Sushila having topped their respective categories (General and Reserve). According to PW-29, both were average students and it came as a surprise to him that both of them secured first positions in their respective categories. The statement of this witness was recorded before Magistrate vide Ex.PW29/A.

During cross examination, PW-29 deposed that he was teaching in the academy and was also working as a Director. His educational qualification is B.A, LLB. He admitted that he was arrested in two cases registered against him and was also charge-sheeted and convicted under Section 224 IPC and Section 7

and 13 Prevention of Corruption Act. The appeals against the conviction are pending. In the examination of 2017 around 100 students were enrolled. The internal tests used to be conducted in the Academy. Witness denied that academy had issued question paper (Ex.PW29/DA) to its students. The witness identified his statement dated 23.07.2017 Ex.PW29/DB recorded before Registrar, High Court. The witness handed over the list during enquiry Ex.PW29/DC. It is denied that statement was made under pressure. Witness denied the suggestion that Sunita and Sushila were never the students of the academy or that he is deposing falsely.

PW-37 Naresh Sharma deposed that he was running a tea stall from his house situated near Radha Krishan Mandir, Sector18-C, Chandigarh during the year 2017 (January to March). He got issued one Jio SIM at the request of accused Sunita who introduced herself as judge and she was residing in the Mandir. The witness identified his photograph on the CAF marked PW35/A. The statement of this witness was also recorded before Magistrate vide Ex.PW37/A. During cross examination, PW-37 deposed that SIM was purchased by him from a shop in Sector-18, Chandigarh. It was free of cost. The suggestion has been denied that no SIM was handed over to

accused Sunita or that he is deposing falsely at the instance of SIT.

PW-38 Virender Kumar was running Auto-rickshaw, CH01-TA-9628 and used to provide service through App “Jugnu”. He visited Radha Krishan Mandir, Sector-18, Chandigarh but could not recollect that he had picked one lady customer from Mandir in the year 2017. He did not confirm that he got issued two SIM cards in the year 2017. He accepted that his statement was recorded before Ld. Judge vide Ex.PW38/A and that he narrated all the facts, but claimed that he (PW-38) was not in proper mental state having been pressurised by the police. PW-38 has not identified any of the accused to whom he used to drop from Mandir to Jurist Coaching Centre in his auto rickshaw. PW-38 was cross examined on behalf of prosecution wherein attention of the witness was drawn towards accused Sunitta but the witness did not identify her. The statement Ex.PW38/A was read over to the witness and he stated that he named Sunita Ahlawat in his statement as the name was appearing through Jugnu App. He denied that accused Sushila used to accompany Sunita at times. Witness admitted that he applied for the post of Peon before Punjab and Haryana High Court and might have stated that Sunita Ahlawat filled his form. He could not recollect that SIM was got issued in the name of Subal Mandal. Witness

denied having taken fruits to House no.1024, Sector-24, Chandigarh at the instance of Sunita. Witness was also confronted with his statement Ex.PW38/A. PW-38 denied that he had given two mobile SIM bearing numbers 8054087306 and 8054096576 to Ayushi and also failed to identify accused Ayushi. He also denied that SIM Mobile Number 8054087306 (in a small mobile handset including sim and charger) was handed over to a person at house No.1024, Sector-24, Chandigarh at the instance of Sunita. Witness denied having been won over by accused persons.

PW-39 Suresh Kumar, practising advocate at District Hisar, is known to accused Subhash Chander Godara. He did not have any conversation with accused regarding HCS (JB) examination 2017. The statement of witness was recorded by Ld.Magistrate Ex.PW39/A. According to PW-39, he stated before Magistrate at the instance of police. No complaint was lodged by this witness before any authority to complaint about the pressure exerted on him. PW-39 was cross examined on behalf of prosecution, during which he denied about statement under Section 161 Cr.P.C Ex.PW39/B.

PW-40 Mandeep Kumar practicing advocate at District Court, Hisar was known to accused Sushil Kumar Bhadu being distant relative. Witness stated

that he had no conversation with accused about judicial service examination. Witness identified his statement recorded before Magistrate Ex.PW40/A but stated that he deposed under the pressure of the police. PW-40 admitted during court question that he never took any step to withdraw his statement so recorded by the Magistrate. During cross examination on behalf of prosecution, witness denied having given statement to the police Ex.PW40/B and was confronted with Ex.PW40/B. He denied that he has been won over by accused persons and therefore deposing falsely.

PW-41 Suman wife of Manoj Kumar has been practicing advocate and had applied for HCS (JB) Examination 2017. She was taking coaching from Jurist Academy, Sector-24, Chandigarh and was known to accused Sushila who was also taking coaching from the same academy. She (PW-41) deposed that lectures delivered at the academy used to be recorded and she had taken recordings of the lectures from Sushila on 30.06.2017 through the App 'Share it' on her mobile (9468073929). While hearing the recordings shared by Sushila, she came across some recordings whereby Sushila was conversing with Sunita and Sunita assured to arrange question paper one week prior to the exam on payment of Rs.1 – 1.5 crores. PW-41 further deposed that she enquired from Sushila about the

said recording and next day on 01.07.2017, when she met Sushila, the shared recordings were deleted by Sushila from the mobile. Sushila, however, informed that Sunita would arrange question paper on payment of money and that only the candidates who are purchasing the question paper would clear the exam. Sushila also offered her (Suman) to contribute towards purchasing the question paper. According to PW-41, she did not believe that question paper of such a big exam would be leaked. After 03.07.2017, Suman (PW-41) stopped attending the classes but remained in touch with Sushila. On 12.07.2017, Sushila met Suman at the market (Pinjore) and informed that Sunita had shown her the question paper. Sushila also gave 10-12 questions to Suman and requested for purchasing the question paper by contribution. Suman then asked Sushila for arranging the phone call or meeting with Sunita. Meanwhile, Suman narrated about all this to her husband Manoj. On 15.07.2017, Sushila informed Suman that she was going to meet Sunita and thereafter would connect to her. On the same day, Sushila got Suman connected to Sunita on phone wherein Sunita called for a meeting at Sector-17, Sindhi Sweets, Chandigarh. Suman further deposed that she along with her husband went to meet Sunita at Sector-17, Chandigarh where Sunita confirmed that she was having the question paper

and that she would give the same on payment of Rs.1 crore. Sunita then settled to give the question paper of preliminary exam on payment of Rs.10 Lakhs and Suman and her husband returned home. Thereafter on the same day, Sushila called Suman and informed that Sunita has refused to give the question paper as she was doubting the credibility of Suman.

PW-41 further deposed that she appeared for the preliminary exam on 16.07.2017 and found that 10-12 questions disclosed to her by Sushila were there in the question paper. Her husband Manoj lodged the complaint at Police Station, Sector-5, Panchkula and also at Vigilance Branch, Punjab and Haryana High Court but no action was taken. She thereafter filed writ petition in the High Court. She was also recording conversations between her and Sushila on phone and recordings in the form of CD were submitted before the High Court. The record of Writ Petition has been proved as Ex.PW41/A (colly) along with CD lying in the record Ex.PX. The FIR was ordered by the High Court and enquiry was also initiated by vigilance department. Her (PW-41) statement was recorded in the vigilance enquiry vide Ex.PW41/B. Her statement was also recorded by SIT and original mobile containing the conversations and the SIM card and CD were given to the SIT by her husband. Her specimen voice was

also recorded. The mobile phone has been identified as Ex.PX1. The CD Ex.PX could not be played as system did not support the same. However, CD seized on 28.10.2018 containing 08 Audio files were played and voices have been identified by PW-41 (Suman). The conversations found in the CD tallied with the transcripts and CD has been exhibited as Ex.PX2. The CD containing voice samples have been proved as Ex.P3.

During cross examination, PW-41 deposed that she used to meet Sushila at the academy and at times they used to travel together. The suggestion has been denied that Sushila did not share any audio recordings or did not delete the same. The suggestion has been denied that no such incident had taken place. According to PW-41, she did not reduce 10-12 questions disclosed by Sushila into writing and denied the suggestion that no such questions were disclosed to her by Sushila. The CD of audio recordings was got prepared by her husband. After the preparation of CD, mobile phone was returned to her by her husband while the data also remained in her phone. The suggestion has been denied that no recording was done by her on her mobile or that she did not meet Sushila and Sunita at Sindhi Sweets, Sector-17, Chandigarh. The suggestion has been denied that Sushila never informed about question paper having been available with Sunita on payment

of money. PW-41 has specifically denied the suggestion that accused persons have been falsely implicated by her in collusion with her husband and officials of Jurist Academy to get the exam cancelled. The suggestion has also been denied that phone call was not arranged by Sushila with Sunita or that CD is false and fabricated and does not contain the voice of Sushila.

During cross examination on behalf of Sunita (A-1), PW-41 stated that she appeared in judicial services examination on two occasions and second time in the year 2017. She had joined coaching with Krishna Study Academy in the year 2013-2014 but denied the suggestion that she shifted to jurist academy at the instance of Mr. Urvijay Singh Barar who was teaching there. PW-41 did not meet Sunita during the coaching with Jurist Academy. The copy of divorce decree dated 02.11.2015 has been admitted by PW-41 vide Ex.PW41/DA, but stated that she re-married Manoj in the year 2016. PW-41 has no knowledge that Manoj is also known by other names Vinod and Lakhmi. She has identified the question paper (first page) and OMR Sheet Ex.PW41/DB. Her husband is an agriculturist and also working as property dealer. The suggestion has been denied that she never had any telephonic conversation with Sunita or that she created false story to implicate Sunita and Sushila. The

suggestion has also been denied that she never met Sunita at any point of time or that she is deposing falsely.

PW-42 Manoj Kumar is the husband of Suman (PW-41). He confirmed that his wife appeared for HCS (JB) Preliminary Examination 2017. He supported the facts stated by PW-41 in her testimony and confirmed filing of complaints about paper leak. The complaints have been proved as Ex.PW42/A, Mark 42/B, Mark 42/C. Witness also handed over the mobile phone containing memory card wherein the conversations were recorded to SIT vide seizure memo Ex.PW42/D. He further confirmed that he prepared the CD of audio conversations and handed over the same to SIT on 28.10.2018 vide seizure memo Ex.PW42/E along with certificate under Section 65 B Evidence Act Ex.PW42/F. The mobile phone has been identified as Ex.PX1. CD has been exhibited as Ex.PX2.

During cross examination on behalf of accused Sushila, PW-42 stated that recording of calls were done by his wife and was not done in his presence. The suggestion has been denied that CD has been fabricated by him. He also denied the suggestion that he did not meet Sushila or Sunita at Sector-17, Chandigarh or that no discussion about question paper of judiciary exam had taken place. He got the

CD prepared through a shop at Sector-22, Chandigarh and denied the suggestion that contents of the CD have been manipulated or that he was not competent to furnish certificate u/s. 65-B Indian Evidence Act. The computer used for transferring the data into CD was in the possession of shop-keeper.

During cross examination on behalf of accused Sunita, PW-42 deposed that he has no other name except Manoj but admitted that he was involved in criminal cases including case under Section 302 IPC and voluntarily stated that he has been acquitted in all the cases. PW-42 could not recollect that he was involved in FIR No. 237/04 PS Sampla and FIR No.112/2001 PS Sampla. He admitted that he was sentenced to life imprisonment vide judgment dated 25.01.2008 (Sessions Trial No.88/2001). PW-42 underwent the sentence and was released in the year 2014. It is admitted that in the FIR his name was written as Vinod and stated that it was wrongly written. PW-42 admitted that in the FIR of 2004 his name Vinod @ Lakhmi was written. In the jail record, his name was mentioned as Vinod @ Lakhmi. The suggestion has been denied that his real name is Vinod @ Lakhmi or that Manoj has never been his name. It is admitted that no criminal case is pending against him. PW-42 got married to Suman on 22.02.2010. The suggestion has been

denied that he never met Sunita or that he never handed over any CD to SIT on 28.10.2018 or that he is deposing falsely or that he filed the complaint to extort money from the accused persons.

PW-49 Gurvinder Singh is a school friend of accused Tejinder Bishnoi. According to PW-49, Tejinder Bishnoi came to him in the year 2017 and said that his cousin brother Subhash needs money. He (PW-49) transferred the money into the account of Tejinder Bishnoi, trusting Tejinder Bishnoi and making him responsible for return of the money. He deposited Rs.5 Lakhs through NEFT into the joint of account of Tejinder and his father. Money was returned by Tejinder within 15 days. Witness was cross examined on behalf of prosecution, during which he admitted that his statement was recorded by Inspector Punam Dilawari on 05.10.2018 and he might have transferred the money on 20.07.2017. Witness denied having improved upon his statement at the instance of accused. According to PW-49, accused Tejinder Bishnoi disclosed to him that Subhash needed money in connection with the marriage of his son.

PW-50 Arun Kumar Tyagi was posted as Registrar (Vigilance) from 26.04.2017 to 30.04.2018 and as Registrar (General) from 28.06.2017 to 15.11.2018. The Written complaints dated 19.07.2017 and

20.07.2017 preferred by Manoj, husband of Suman were put up before Recruitment / Promotion / Court Creation (Subordinate Judicial Services) Committee and under its orders dated 16.08.2017, PW-50 conducted enquiry into the above said complaints and examined the witnesses and documentary evidence and submitted his report Ex.PW50/PX1 dated 29.08.2017. The report was submitted before the recruitment committee which made the recommendations (a) that Haryana Civil Service Judicial Branch Preliminary Examination 2017 be cancelled (b) Departmental proceedings be initiated against Mr. Balwinder Kumar Sharma, the then Registrar (Recruitment) (c) that Mr. Balwinder Kumar Sharma be transferred and (d) that FIR be got registered against him and others. The statement of Sunita was recorded partly on 31.08.2017 and subsequently on 07.09.2017 recorded by Sh. Rajesh Garg, OSD (Vigilance). The FIR was registered in compliance of the orders dated 15.09.2017.

PW-50 further deposed that in the course of investigation, applications were submitted for supply of documents and under the orders of Recruitment Committee and Hon'ble Chief Justice, documents were supplied to the investigating officer. The said record of the applications has been proved as Ex.PW50/A, Ex.PW50/B and Ex.PW50/B1. The information / documents sought through

applications were supplied vide letter dated 29.08.2017 Ex.PW50/C and documents / information are Ex.PW50/PX colly.

The witness has further deposed about recommendation of grant of sanction for prosecution against Balwinder Kumar Sharma, the then Registrar (Recruitment) and the same was granted and conveyed vide letter dated 01.03.2018. The relevant letters have also been proved as Ex.PW50/D (annexure Ex.PW50/PY) and Ex.PW50/E and Ex.PW50/E1.

During cross examination, PW-50 denied that enquiry has not been conducted by him in a fair and proper manner or that he has created false evidence to frame Sunita. The original notice served upon Sunita is Ex.PW50/DB. The suggestion has been denied that he was not authorised to obtain the CDR of private members or that he was not empowered to issue notice to the witnesses. At the time of examination of Amit Dabra, Nodal Officer, Vodafone Services Ltd, CD containing the call detail record was proved along with scanned copy of customer application form with election card of Sunita and certificate under Section 65 B of Indian Evidence Act. It is denied that CD furnished by Amit Dabra was false and fabricated. The

suggestion has been denied that no proper chance was given to accused Sunita to represent her case.

During cross examination on behalf of accused Balwinder Kumar Sharma, PW-50 deposed that Balwinder Kumar Sharma was Registrar (Recruitment) and head of Recruitment branch at the relevant time. The complaint regarding Narender Sura, posted in the Registry and Mr. Vijender, Assistant Registrar are mentioned in the enquiry report. Witness has denied the suggestion that he created false evidence to frame Balwinder Kumar Sharma in order to protect members of Recruitment Committee and staff of recruitment branch namely Ishwar Singh, Vijender Singh and Sunil Thakur. It is denied that complaints against these persons were willfully suppressed. PW-50 admitted having received affidavit dated 31.08.2017 of Balwinder Kumar Sharma, however, the enquiry report had already been concluded on 29.08.2017. The affidavit has been proved as Ex.PW50/DA. The affidavit was put up before Hon'ble Chief Justice which was sent to litigation branch as the matter was pending on judicial side.

PW-62 Pratap Sharma, Manager, HTC, Neelkanthi Yatri Niwas, Kurukshetra, Haryana, deposed about documents provided during the investigation by Anil Dutt Sharma then posted as Tourist Officer at Yatri

Niwas to SIT. The original record was also brought by the witness. Same has been proved as Ex.PW62/A (colly). Witness also identified the signatures of Anil Dutt Sharma (who expired on 18.03.2023). The seizure memo is Ex.PW62/B and documents are Ex.PW62/C. Witness also brought online (booking of rooms) receipts pertaining to aforesaid visit and stay of Balwinder Kumar Sharma Ex.PW62/D (collectively) along with certificate under Section 65B Evidence Act Ex.PW62/E. The manual booking receipt dated 23.06.2017 and attested copy thereof has been proved as Ex.PW62/F.

During cross examination, witness could not tell about the period during which Anil Dutt Sharma worked at Yatri Niwas, Kurukshetra. Witness was working with Anil Dutt Sharma while he was posted as Manager at Parakeet Tourist Resort, Pipli, Haryana and therefore, he is in a position to identify his signatures. PW-62 denied to be deposing falsely. He further stated that he has no personal knowledge about the stay of Balwinder Kumar Sharma at the relevant period nor the documents were taken in his presence. The suggestion has been denied that receipts Ex.PW62/D (collectively) are false and fabricated or that he is deposing falsely.

PW-68 Ashish Kumar, Sales person and market research executive, Reliance Jio Infocom Ltd deposed that in the month of January 2017, one girl namely Ayushi came to his office and told that she was preparing for Civil Judge Exam and she needs a JIO SIM for use of internet. She stated that she did not have local ID proof. On her repeated request, he got issued one SIM card bearing no.8360753268 in his own name and handed over to Ayushi. He had applied for SIM card in his own name. His statement was recorded by one judge sahab at Chandigarh Court on 11.11.2017. Witness has identified accused Ayushi in the court.

During cross examination, witness deposed that he had worked in the Reliance Jio for about 3-4 months. Police had recorded his statement but he did not remember the exact time period, however, it was after 2-3 months of issuance of SIM. Witness was also confronted with his statement under Section 161 Cr.P.C Ex.PW68/DA. He issued more than 10 SIMs daily to the customers during the relevant period. He did not remember the names of the customers to which he issued the SIMs. Witness did not take the number of Ayushi but after the issuing of SIM, Ayushi had called him after 2-3 days but he did not remember her mobile number. Witness denied the suggestion that he never worked in Reliance at Sector-34, Chandigarh or that never got

issued and sold the SIM to Ayushi. Witness denied the suggestion that he got recorded his false statements under Section 161 Cr.P.C and under Section 164 Cr.P.C. All the SIM cards issued by him in his name were through e-Kyc of Jio company.

WITNESSES RELATED TO ELECTRONIC EVIDENCE:-

PW-32 Ajay Kumar, Nodal Officer, BSNL, Sector-34A, Chandigarh brought the summoned record i.e. original customer application form (CAF) pertaining to phone numbers 01722584397, 9467525553 and 9467680053. Witness deposed that landline number 01722584397 and mobile number 9467525553 have been subscribed by Ram Bhagat and mobile number 9467680053 has been subscribed by Sushila. Witness proved the CAF of landline number 01722584397 as Ex.PW32/A colly, CAF of mobile number 9467680053 as Ex.PW32/B (colly) and CAF of mobile number 9467525553 as Ex.PW32/C. During cross examination, PW-32 stated that he was not the custodian of original CAF of mobile numbers. The custodian of original CAF of landline number was landline division of Chandigarh Circle, BSNL.

PW-33 Rajesh Mittal was posted as SDE (CM-CCN) office of PGMTD, BSNL Chandigarh from May 2015 to 31.01.2020. He had provided CAF, CDR along with certificate under Section 65B

Evidence Act of some mobile numbers and landline numbers. He proved the CDR of mobile number 9467680053 for the period from 21.09.2016 to 22.09.2017 as Ex.PW33/A, CDR of mobile number 9467525553 for the period from 21.09.2016 to 22.09.2017 as Ex.PW33/B. He further proved the CAF of mobile number 9468073929 as Ex.PW33/C and CDR for the period from 21.09.2016 to 22.09.2017 as Ex.PW33/D. Certificate under Section 65 B Evidence Act of CDRs of three numbers is Ex.PW33/E. He further proved the CDR of landline number 0172-2584397 for the period from 01.08.2016 to 19.08.2017 as Ex.PW33/F and certificate under Section 65 B Evidence Act as Ex.PW33/G. He proved the CAF of mobile number 7837789500 as Ex.PW33/H and CDR for the period from 15.11.2016 to 22.11.2017 as Ex.PW33/I and certificate under Section 65 B as Ex.PW33/J. He further proved the CAF of mobile number 9467304186 as Ex.PW33/K and its CDR for the period from 01.07.2017 to 20.07.2017 as Ex.PW33/L and certificate under Section 65B Evidence Act as Ex.PW33/M. During cross examination, witness denied the suggestion that all CDR data and certificates under Section 65B are false, forged and fabricated documents. Witness admitted that he himself generated the CDR Ex.PW33/I by accessing to the system which is

connected with the server. Witness deposed that CDR data of the mobile numbers 9467304186, 9468073929, 9467680053 and 946752553 were received by him through e-mail sent by Haryana Circle to Punjab Circle and then Nodal Officer, Punjab Circle sent the same to him. Witness deposed that he had not downloaded the CDR pertaining to landline number 01722584397 as the same belongs to different landline section.

PW-35 Rajwinder Singh having a shop of electricals “Punjab Electronics” Sector- 18C, Chandigarh deposed that a SIM (JIO) was issued to one person namely Naresh digitally. The police officials made enquiries about that particular SIM and details were provided by the witness. Witness has proved the attested copy of CAF of mobile number 7973415192 having SIM number 8991867040002247707 as Ex.PW35/A and stated that he had issued the said SIM to one Naresh on 18.01.2017.

During cross examination, PW-35 deposed that his uncle was the owner of the shop. It was the proprietorship firm. The suggestion has been denied that Punjab Electronics was not authorised to sell SIM cards or that he had not handed over any document to the police officials or that he is deposing falsely.

PW-36 Mohd. Akhtar testified on behalf of Anmol Watches and Electronics Pvt. Ltd vide authority letter Ex.PW36/A. The witness deposed about the bill / invoice in respect of Mobile Motorola model moto G4 Play Black IMEI No. 358221073148157 Ex.PW36/B and the photocopy of the bill from judicial file having signature of salesman Sangeet Kumar Ex.PW36/C.

During cross examination, PW-36 denied that bill produced by him is forged and fabricated. Witness also appeared at the subsequent stage of trial and produced carbon copy of the invoice Ex.PW36/B. Witness also brought the copy of registration certificate in respect to GST Ex.PW36/D and of PAN card Ex.PW36/E in respect of Anmol Watches and Electronics Pvt. Ltd.

PW-51 Amit Dabra, Nodal Officer, Vodafone mobile Services Ltd has proved the CAF of mobile number 8396861786 as Mark PW51/A and its CDR for the period from 01.09.2016 to 20.09.2017 as Ex.PW51/B. Witness further proved the CAF of mobile number 9780008235 in the name of Registrar, High Court being part of corporate connections along with copy of photo ID proof of Renu Kalia and letter for corporate connection and its CDR for the period 01.10.2016 to 03.10.2017 as Mark PW51/C and Ex.PW51/D respectively.

Witness has further proved the CAF of mobile number 9417184363 in the name of Ishwar Singh as Mark PW51/E and its CDR as Ex.PW51/F and certificate under Section 65 B Evidence Act as Ex.PW51/G. Witness has further proved the CAF of mobile number 9999332329 in the name of Kuldeep Singh as Mark PW51/H and its CDR for the period from 01.06.2017 to 31.08.2017 as Ex.PW13/B and certificate under Section 65 B Evidence Act with regard to CDR of the said mobile as Ex.PW51/I.

During cross examination, PW-51 admitted having been called by Registrar (Vigilance) and admitted his statement dated 29.08.2017, part of Ex.PW50/PX. Witness furnished CD containing call details and denied the suggestion that same was false and fabricated. Server of Vodafone was situated in Pune in the year 2016-2017. The duration for which data was preserved and available was one year and one month. CDRs were obtained by the witnesses by having access to the server through his computer system. The suggestion has been denied that data has not been correctly downloaded or saved or that data is fabricated at the instance of SIT.

PW-52 Surjit Singh, Assistant Nodal Officer, Vodafone Idea Limited had provided the CAF, CDR, location chart along with certificate under Section 65 B of certain mobile numbers to investigating

agency. Witness has proved the CAF of mobile number 8054012444 in the name of Virender Kumar Sharma as Mark PW52/A and its CDR for the period from 01.09.2016 to 13.09.2017 as Ex.PW52/B and its location chart as Ex.PW52/C and certificate under Section 65 B Evidence Act as Ex.PW52/D.

Witness has proved the CAF of mobile number 9812477565 in the name of Sushil Kumar as Mark PW52/E and its CDR for the period from 01.07.2017 to 30.09.2017 as Ex.PW52/F and its location chart as Ex.PW52/G and certificate under Section 65 B Evidence Act as Ex.PW52/H.

Witness has also proved the CAF of mobile number 9466893023 in the name of Tejinder Bishnoi as Mark PW52/I and its CDR as Ex.PW52/J and its location chart as Ex.PW52/K and certificate under Section 65 B Evidence Act as Ex.PW52/L.

During cross examination, witness did not tell the exact actual / precise geographical coordinates of the cell towers mentioned in the location chart nor of their range of 1.5 km. Witness denied the suggestion that the CDR and the location chart filed by him are false and fabricated. The CDR extracted from the server were saved in the hard disk of his office computer at Mohali. The CAF forms along with annexures exhibited were generated from the computer system by downloading the same. The

suggestion has been denied that original CAF form has not been deliberately produced or that record of CAF is fabricated. Witness denied the suggestions that tower chart does not depict the correct location or that CDRs, tower locations are false and fabricated.

PW-61 Prakash Saxena, Nodal Officer, Reliance Jio Infocom Ltd deposed that during the investigation of present case, the then Nodal Officer Sh.Baljeet Chauhan had supplied CAF, CDR, location chart along with certificate under Section 65 B Evidence Act of some mobile numbers to investigating agency. He proved the attested copy of CAF of mobile number 9877339926 in the name of Ayushi and its CDR for the period from 01.09.2016 to 20.09.2017 as Ex.PW61/A and Ex.PW61/B, attested copy of CAF of mobile number 7986293481 in the name of Ram Bhagat and its CDR from 01.09.2016 to 20.09.2017 as Ex.PW61/C and Ex.PW61/D and certificate under Section 65B Evidence Act of CAF and CDR of both these mobile numbers are Ex.PW61/E. Witness has further proved the attested copy of CAF of mobile number 8360753268 in the name of Ashish Kumar and its CDR from 01.09.2016 to 01.10.2017 as Ex.PW61/F and Ex.PW61/G and certificate under Section 65B Evidence Act as Ex.PW61/H, attested copy of CAF of mobile number 7973415192 in the name of

Naresh Kumar and its CDR for the period from from 01.09.2016 to 01.10.2017 as Ex.PW61/J and Ex.PW61/K and certificate under Section 65B Evidence Act as Ex.PW61/L, attested copy of CAF of mobile number 7015247047 as Ex.PW61/M in the name of Subhash and its CDR for the period from 01.09.2016 to 22.09.2017 as Ex.PW61/N, period from 10.07.2017 to 11.07.2018 as PW61/Q and certificates under Section 65B Evidence Act as Ex.PW61/O and Ex.PW61/R, Cell ID / location chart of above said mobile numbers as Ex.PW61/P and Ex.PW61/S.

Witness has further proved the CAF of mobile number 7973096266 in the name of Subal Chand Mandal and its CDR from 01.01.2017 to 22.09.2017 are Ex.PW61/T and Ex.PW61/U and location chart of the said mobile number as Ex.PW61/V. Witness has further proved the CAF of mobile number 8168433775 in the name of Sunita and its CDR from 22.09.2016 to 22.09.2017 as Ex.PW61/W and Ex.PW61/X and its location chart as Ex.PW61/Y and certificate under Section 65 B of the said mobile number as Ex.PW61/Z. Witness has also proved the CAF pertaining to mobile number 8168072078 in the name of Asha Bansal and its CDR from 06.11.2017 to 08.11.2017 as Ex.PW61/Z1 and Ex.PW61/Z2 and its location chart

Ex.PW61/Z3 and certificate under Section 65 B Evidence Act as Ex.PW61/Z4.

During cross examination, witness denied the suggestion that he is not authorised to depose and produce the record. He never worked at Mohali office of Reliance Jio. He has no personal information or knowledge about the present case. The suggestion has been denied that no such data was available on the server. He denied that the printouts of the record were supplied to him by the IO or that he had only put his seal or signature on the same. Witness could not tell the radius range of the towers as mentioned in the location chart. The suggestion has been denied that Cell ID charts are false and fabricated at the instance of IO. Witness denied the suggestion that CDRs of mobile numbers 9877339926, 8360753268, 7973415192 and 8168433775 are false and tampered being inconsistent with call data records. The suggestion has been denied that exhibited electronic records are not correct copies of data captured by server of Reliance Jio in the year 2016 to 2018.

PW-66 Jasdeep Singh, Nodal Officer deposed that he is acquainted with the handwriting and signature of Sh.Munish Bindra, the then Nodal Officer, Airtel as he had seen him writing the documents. Witness has proved the certificate under Section 65B

Evidence Act pertaining to mobile numbers 9876751133 and 9876970888 as Ex.PW66/A bearing the signature of Munish Bindra at point A. Witness deposed that original CAF pertaining to aforesaid mobile numbers have already been destroyed being old record as per department of Telecoms (DOT), Govt. of India. Witness has proved the attested copy of CAF of mobile numbers 9876970888 and 9876751133 in the name of Sunil Kumar as Ex.PW66/B and Ex.PW66/E bearing the signature of Munish Bindra and its CDR for the period from 01.06.2017 to 31.08.2017 as Ex.PW66/C and Ex.PW66/F and for the period from 01.09.2017 to 21.12.2017 as Ex.PW66/D and Ex.PW66/G. Witness has proved the letter dated 14.07.2018 as Ex.PW66/H through which the aforesaid documents were provided by Munish Bindra to SIT. During cross examination, witness admitted that he has not worked with Munish Bindra at the same office. Witness admitted that documents attested by Munish Bindra were not retrieved, signed or stamped in his presence. Witness denied the suggestion that CDRs are false and fabricated.

PW-69 Paramjit Singh, posted as AGM (External) South, office of GMTD, BSNL deposed that in the year 2017, he had provided the copy of CAF, CDR along with certificate under Section 65B Evidence Act for the BSNL landline number 0172-2584397 to

the SIT. He has proved the attested copy of CAF, CDR for the period from 01.08.2016 to 19.08.2017 of the said landline number and also certificate under Section 65B Evidence Act. During cross examination, witness denied the suggestion that CDR produced by him are false and fabricated.

PW-70 Pardeep Kumar posted as AGM (EB & Marketing, CSC), BSNL deposed that copy of CAF, CDR along with certificate under Section 65B Evidence Act of BSNL mobile numbers 9467680053, 9468073929 and 9467525553 were provided to SIT through Rajesh Mittal, the then SDE (CM-CCN), BSNL, Sector-34, Chandigarh. Witness has proved the CAF, CDR for the period from 21.09.2016 to 22.09.2017 of the said mobile numbers and certificate under Section 65 B Evidence Act. During cross examination, witness denied the suggestion that CDRs produced by him are false and fabricated.

PW-75 Sanjay Bhatnagar, Nodal Officer, Vodafone Idea Ltd has proved the CAF of six mobile numbers 8054012444, 9812477565, 9466893023, 8396861786, 9417184363 and 9999332329 for the period 2017 as Ex.PW75/A to Ex.PW75/F and certificate under Section 65B Evidence Act as Ex.PW75/G. Witness deposed that CAF of mobile number 9780008235 is not available as the number

was de-activated on 05.06.2017. The number was corporate connection in the name of Registrar, High Court. This number was activated on 11.12.2009. Copy of subscriber detail pertaining to said number is available in their system as Ex.PW75/H and the copy of letter dated 17.05.2012 of the Ministry of Information and Technology is Ex.PW75/I. During cross examination, witness denied the suggestion that he is not a nodal officer or not a competent person on behalf of Vodafone Idea Ltd. Witness admitted that nodal officers has no role concerning processing of CAF and issuance, verification and activation of SIM. Witness denied the suggestion that original of the exhibited documents were never in existence or that exhibited copies are false and fabricated documents. Witness denied the suggestion that exhibited CAFs do not belong to the named subscribers. Witness denied the suggestion that information provided by him pertaining to mobile number 9870008235 is false and fabricated.

EXPERT WITNESSES:-

PW-44 Dr.Aanchal Dwivedi, Scientist B, CFSL, Chandigarh had examined Ex.CD/1 (Moser baer) received on 02.09.2022 containing the questioned conversations. The specimen voice sample of accused Sunil Kumar @ Titu was recorded vide Ex.CD/2. Witness has deposed about her detailed

report dated 20.09.2022 Ex.PW44/A. CDs have been proved as Ex.PX4 and PX5. During cross examination, the suggestion has been denied that she prepared the report at the instance of SIT without following the procedure or that her report is false and fabricated.

PW-48 Dr. M. Bhaskar, Director, CFSL deposed about receiving the exhibits of the present case and after examination of the same and after retrieving the data, same was handed over in a separate hard-disc to the forwarding authority. Witness has deposed about report Ex.PW48/A bearing his signatures. Pen drive and the mobile phone have been identified as Ex.PX-6, PX-7, laptop as Ex.PX-8, mobile phone as Ex.PX-9, hard-disk as Ex.PX-10. Also the detailed report is Ex.PW48/B. Mobile phones have been identified as Ex.PX-11 and Ex.PX-12, mobile phone and pen-drive as Ex.PX-13 and Ex.PX-14, laptop with inbuilt hard disk as Ex.PX-15, hard-disk with data cable as Ex.PX-16.

During cross examination, PW-48 denied that samples received by him were tampered or that he has not extracted any data from the exhibits and has mechanically prepared the report. PW-48 further deposed that he extracted the data at one time in hard-disk PX-10 from parcels number 7 to 11 of report Ex.PW48/A. The new blank hard-disk was

supplied to him by SIT. The witness had tallied the seals on the parcels received by him with the sample seal. The counterfoil of acknowledgment is Ex.PW48/DA. The printout of the data extracted from the devices was not taken. After copying the data in Ex.PX-10, PW-48 re-checked the same for the purposes of verification. Witness denied that he submitted a false report under the pressure of police.

PW-58 D. P. Gangwar, Assistant Director, CFSL is an expert witness relating to Audio Video examination. He received two CDs containing CDR and questioned conversations. He also recorded specimen voice sample of Suman, Sushila and Sunita at Audio Video Lab, Chandigarh on 03.04.2018. On examination of questioned conversations with specimen voice samples, the report dated 30.05.2018 has been submitted by the witness vide Ex.PW58/A along with CD/1 Ex.PX-17, CD/2 Ex.PX-18, CD/3 Ex.PX-3, CD/4 Ex.PX-19, CD/5 Ex.PX-20. On 12.10.2018, again sealed parcels containing CDs were received and after examination of questioned conversations with specimen voice samples, the report was submitted vide Ex.PW58/B along with CD(HC) Ex.PX-21, letter Ex.PX21/A, CD (ptnr) Ex.PX-2 and Pen-drive Ex.PX-23. Witness also deposed about his report Ex.PW58/C along with CD/1 Ex.PX-4 and CD/2 Ex.PX-22) with respect to matching of questioned

and specimen voice sample. Witness also examined the pen-drive 64GB and also recorded the specimen voice of Ram Bhagat (husband of Sushila) and Kuldeep and submitted his analysis /report vide Ex.PW58/D (CD C/1 Ex.PX-24 and CD C/2 Ex.PX-25). CDs have also been identified by the witness during his testimony.

During cross examination, PW-58 denied that he is not an expert or experienced to submit the report about voice matching or that he has not examined 2500 cases. Witness claimed himself to be an expert in computer forensic, mobile forensic, crime scenes, soil, paint, copyright products, shirt button comparison, automobile paint. He got the training in different fields. He admitted that no diploma or course is done in voice examination, however, according to PW58, he had undergone six months training in voice analysis. The suggestion has been denied that he or the CFSL Chandigarh was not competent to examine the electronic records. According to the witness, report furnished by him is accurate and there is no margin of error but also admitted that error may be possible. The questioned conversations were heard several times. There are 10-15 parameters for auditory analysis. Hash value of questioned CDs was not checked and same was not required for voice comparison. It is admitted that

Ex.PW58/DA along with certificate under Section 65 B Evidence Act was submitted by him.

During cross examination, the suggestion has been denied that standard operating procedure has not been followed or that he is deposing falsely. It is also denied that report has been incorrectly prepared at the instance of SIT.

PW-59 Dr.Amandeep Kaur, Scientist B, Ballistics, CFSL, Chandigarh is also an expert witness. She examined exhibits (M/1 to M/5, SC/1 to SC/6 and MC/1 to MC/3) of this case and extracted data from them in the hard-disk mark BHD/1. She proved her report dated 18.12.2018 as Ex.PW59/A. Witness identified the exhibits produced before the court. Witness identified the CD/1 and CD/2 as Ex.PX-17 and Ex.PW-18 mentioned in the report Ex.PW58/A. Witness identified mobile M/1 along with MC/1 as Ex.PX-26, mobile M/2 along with SC/1 and SC/2 as Ex.PX-27, mobile M/3 along with sim cards SC/3 and SC/4 as Ex.PX-28, mobile M/4 along with sim cards SC/5 and SC/6 and micro SD card MC/2 as Ex.PX-29 mentioned in her report Ex.PW59/A. Witness identified the hard-disk along with data cable as Ex.PX-31.

During cross examination, PW-59 admitted that she is not having any diploma or degree in data extraction but she has undergone training in

computer and cyber forensic. The suggestion has been denied that she is not an expert or qualified in mobile data extraction. The blank hard-disk was provided by the police to the Director, CFSL, Chandigarh. The suggestion has been denied that no data was extracted by her or supplied in the Hard-disk. The suggestion has also been denied that police manipulated the data or that hash value of the extracted data do not match with transferred data existing in the original device. Three instruments were used for extracting the data i.e. Universal Forensic Extraction Device and physical analyser (hardware and software), mobile check (hardware and software) and FTK (software). Witness has denied the suggestion that her report is false and fabricated or that she is deposing falsely at the instance of SIT.

PW-63 Akhlesh Kumar, Assistant Director, CFSL, Chandigarh examined Ex.M-1 along with SIM-1 and the data including whatsapp chat retrieved from Ex.M-1 provided in the Pen drive. His detailed report is Ex.PW63/A. Mobile and pen-drive have been identified as Ex.PW63/M-1 and Ex.PW63/M-2 respectively. Witness also analysed Ex.M-2 along with sim-1 and SD-1 and his detailed report in this regard is Ex.PW63/B. Mobile along with sim and SD card is Ex.PW63/M-3 and pen drive is Ex.PW63/M-4. Witness also examined the exhibits

M-1 along with sim-1, M-2 along with sim-2 and M-3 along with sim-3. Witness proved his detailed report dated 31.12.2018 as Ex.PW63/C. Mobile (M-1) along with sim-1 is identified as Ex.PW63/M-5 and mobile phone make Redmi M-2 along with one sim-2 has also been identified by the witness as Ex.PW63/M-6. Mobile phone make Samsung M-3 along with sim-3 has been identified as Ex.PX-30 and pen drive as PX-23.

During cross examination, witness denied the suggestion that no data is extracted or supplied to the SIT or that he has prepared a false and fabricated report.

WITNESSES RELATED TO INVESTIGATION:-

PW-2 W/HC Guddi from PS Nazafgarh joined the investigation of the present case, whereby investigating officer Inspector Punam Dilawari along with other police officials visited the house of accused Sunita, where Sunita produced a mobile which was seized vide memo Ex.PW2/A dated 11.11.2017.

PW-3 HC Verender joined the investigation of the present case having been posted with Operation Cell, Chandigarh Police, Sector-26, Chandigarh. Witness deposed about arrest of accused Balwinder Kumar Sharma vide arrest memo Ex.PW3/A dated 28.12.2017 and personal search memo Ex.PW3/B,

arrest cum surrender form Ex.PW3/C. The witness also deposed about joining the investigation on 30.12.2017, when house of accused Balwinder Kumar Sharma was searched and seizure memo Ex.PW3/D was prepared. During cross examination, witness denied that accused Balwinder Kumar Sharma was already detained or that no proceedings were conducted or that he signed the relevant memos at the subsequent stage.

PW-5 ASI Madhu PS Nazafgarh has deposed about joining the investigation whereby accused Sunita was arrested vide arrest memo Ex.PW5/A, personal search memo Ex.PW5/B.

PW-6 Sr. Lady Ct. Alka attached to the SIT, Operation Cell, Sector-26, Chandigarh joined the investigation of the case and deposed about seizure of mobile phone from the house of sister of accused Sunita from Gemini Park vide seizure memo Ex.PW2/A. PW-6 has also been the witness of the arrest of the accused Sushila vide arrest and personal search memo Ex.PW6/A and Ex.PW6/B on 14.01.2018. PW-6 also prepared transcripts with respect to DVD vide Ex.PW6/C. Witness denied during cross examination that she never participated in the investigation or that they did not visit the house of accused Sushila. The transcript was prepared by the witness on the instructions of DSP

Krishan Kumar. The suggestion has been denied by the witness that she is not stating the truth.

PW-7 Sub-Inspector Resham Singh conducted videography and photography at Burail Jail where accused persons were made to confront with each other. According to the witness two cameras at different angles were fixed and cassettes (duration 60 minutes) were changed. In all, 8 cassettes were recorded which were handed over to DSP Krishan Kumar. In the computer branch, 8 cassettes were converted into DVCs and DVDs and same were seized vide memo Ex.PW7/A. The concerned DVCs and DVDs have been proved as Ex.P1 - P8 and Ex.P9 - Ex.P16. The witness has denied the suggestion that he never participated in the investigation or that his signatures were taken on blank papers.

PW-10 ASI Didar Singh joined the investigation of the present case on 28.06.2018, while accused Kuldeep Singh was in the custody of SIT. The witness has deposed about disclosure statement of accused Kuldeep Ex.PW10/A. No recovery was effected in pursuance of the disclosure statement. PW-10 again joined the investigation on 11.10.2018 and deposited three sealed parcels with CFSL, Chandigarh vide acknowledgment Ex.PW10/B. Witness again deposited five parcels on 12.10.2018

with CFSL, Chandigarh vide acknowledgment Ex.PW10/C. Similarly on 04.01.2019, witness collected 8 sealed parcels from CFSL, Chandigarh and deposited the same with Malkhana. On 13.08.2020, witness visited CFSL for collection of four parcels along with reports.

During cross examination, witness denied that he did not collect any parcel or that no such receipt was given by CFSL or that he is not stating the truth.

PW-12 SI Lakhwinder Singh was posted with PS Sector-3, Chandigarh and joined the investigation whereby accused Kuldeep Singh was arrested vide arrest memo Ex.PW12/A and personal search memo Ex.PW12/B.

PW-14 Hari Singh Grewal was posted as Registrar, Recruitment with High Court of Punjab and Haryana having joined the post on 04.10.2017. Witness deposed that on 07.10.2017 a team headed by DSP Krishan Kumar visited his office and seized the articles lying in the office of Registrar, Recruitment. The articles were also seized from cabinet of Stenographer. The seizure memo Ex.PW14/A was prepared in this regard. The witness also identified the articles so seized i.e CPU Ex.P-19, Keyboard Ex.P-20, mouse Ex.P-21, two power cables Ex.P-22 and Ex.P-23, USB cable Ex.P-24, printer Ex.P-27, machine Ex.P-30,

keyboard Ex.P-31, mouse Ex.P-32, USB cable Ex.P-33, monitor cable Ex.P-34, monitor Ex.P-37, two power cables Ex.P-38 and Ex.P-39, Ex.P-42, black color pen driver Ex.P-45 and Sandisk pen driver Ex.P-46.

PW-23 Lady Ct. Sarita joined the investigation of the case in respect of arrest of accused Ayushi vide personal search memo Ex.PW23/A. During cross examination, the witness deposed that she was asked to join the investigation by Inspector Punam Dilawari. Accused Ayushi was produced at the residence of Ld. Judge at Jhajjar. The suggestion has been denied that personal search memo was subsequently signed or that she did not join the investigation as stated.

PW-24 Paramjeet Kaur constable with Police station Sector-3, Chandigarh, joined the investigation of this case along with DSP Krishan Kumar and Inspector Punam Dilawari and other police officials, when they went to the house of accused Sunita at Nazafgarh, Delhi on 08.11.2017 and accused Sunita was arrested vide arrest memo Ex.PW5/A and personal search memo Ex.PW5/B. During cross examination, witness denied the suggestion that investigation was not joined by her or that accused Sunita was not arrested in her presence.

PW-26 SI Satyawan was permanently attached with Operational Cell, SIT, Sector-26, Chandigarh. The witness has deposed about arrest of the accused Balwinder Kumar Sharma vide Ex.PW3/A and Ex.PW3/B. During cross examination, suggestion has been denied that accused was not arrested from Ropar as shown or that he was never a part of SIT team. PW-26 denied that his signatures were taken on the memos at the later stage.

PW-30 ASI Ajay Kumar posted with Crime Branch has deposed about arrest of accused Sunil Kumar @ Titu vide personal search memo Ex.PW30A and disclosure statement Ex.PW30/B. Witness also deposited sealed pullandas before CFSL on different dates. During cross examination, PW-30 denied that no disclosure as stated was made by accused Sunil Kumar or that he is deposing falsely.

PW-43 Sub-Inspector Satwinder Singh, Crime Branch, Sector-11, Chandigarh joined the investigation of the present case during the arrest of accused persons Subhash Chander Godara and Sushil Kumar Bhadu. He was on patrolling duty when the secret information about the presence of accused persons was received. Similarly, he (PW-43) received information about accused Tejinder Bishnoi who was apprehended. The message was conveyed to the investigating officer and formal

arrest was made. During cross examination, PW-43 denied that he was never been the member of SIT. He could not recollect if he assisted SIT and had gone to Kurukshetra during the investigation. The suggestion has been denied that accused persons have been arrested without any ground.

PW-45 Inspector Sher Singh was posted as SHO PS Sector-3, Chandigarh during 16.10.2017 to 24.10.2018. He deposed about supplementary charge-sheets against accused Sushila Ex.PW45/A and CFSL result Ex.PW45/B. During cross examination, PW-45 deposed that he never remained associated with the investigation of the case. The suggestion has been denied that charge-sheet has been filed without application of mind and in a mechanical manner.

PW-34 Inspector Ashwani Attari was posted at MTMC, Sector-9, Chandigarh during 2017-2020. He deposed about interception of five mobile numbers received from competent authority. The call recordings of these mobiles were provided to the investigating agency in DVD seized vide seizure memo Ex.PW34/A along with certificate under Section 65B evidence Act Ex.PW34/B. The DVD Ex.PW34/MOI and contents of the same have been proved. During cross examination, PW-34 deposed that intercepted calls were heard by him

continuously. Witness denied the suggestion that he intercepted and recorded the calls unauthorisedly without taking due permission or that contents of the DVDs are false, forged and manipulated. The recordings were done with the help of computer through a software 'LIMS'. The blank DVD was obtained from the market. PW-34 denied to be deposing falsely.

PW-56 Ram Pal was posted with SIT and joined the investigation of the present case. He has proved seizure memos Ex.PW56/A and Ex.PW56/B whereby the copies of academic documents were taken into possession and also mobile phones make Samsung were seized vide seizure memo Ex.PW56/C (mobile phones are Ex.PX11 and PX12). He also collected the result from CFSL along with one hard-disk from Dr.M. Bhaskar and handed over the same to DSP Krishan Kumar. The specimen voice of Kuldeep and Ram Bhagat (husband of Suman) were also taken in his presence.

During cross examination, PW-56 deposed that his voice was first recorded and thereafter the voice of Kuldeep was recorded. Accused Kuldeep read the transcript which was already therewith CFSL. The suggestion has been denied the proceedings were not joined by him or that he signed the documents at his office.

PW-60 ASI Jitender was posted as Head Constable with Police Station, Sector-3, Chandigarh in the year 2018 and joined the investigation of this case. He accompanied IO Inspector Punam Dilawari and other police officials during which the police party brought accused Kuldeep (already in custody) to his house at Najafgarh and at his instance one mobile phone make Samsung was recovered vide seizure memo Ex.PW60/A and polythene containing Ash material vide seizure memo Ex.PW60/B. Mobile phone has been identified as Ex.PX-30. During cross examination, the suggestion has been denied that investigation was not joined by the witness or that no recoveries were made at the instance of Kuldeep. The suggestion has been denied that articles have been planted upon the accused.

PW-64 Imanbir Singh Dhaliwal was posted as Judicial Magistrate, Chandigarh from 2016-2019. He recorded the statement of Virender Kumar under Section 164 Cr.P.C during the investigation of the present case and he has proved the court proceedings as Ex.PW64/A (colly). Witness has also recorded the statements of Naresh Kumar, Vijender Singh, Amrish, Ishwar Singh under Section 164 Cr.P.C and identified his signatures on the statements. He also recorded the statement of Surender Singh Bhardwaj and proved the court proceedings as Ex.PW64/B (colly). Witness has also

recorded the statement of Ashish Kumar under Section 164 Cr.P.C as Ex.PW64/C and court proceedings as Ex.PW64/D (colly). Witness has also recorded the statement of Arun Kumar under Section 164 Cr.P.C Ex.PW64/E. During cross examination, witness denied the suggestion that he was working under the pressure of SIT and High Court or that he did not follow the proper procedure for recording the statements or that he prepared false and fabricated statements.

PW-65 Inspector Punam Dilawari remained posted as SHO PS Sector-3, Chandigarh from 2016 to 2018. She was included in the Special Investigation Team with the orders of High Court Ex.PW65/A and in FIR No.194/2017 Ex.PW4/C. The witness has deposed at length about the investigation conducted by the team and has proved seizure memo Ex.PW65/B (relevant record seized from recruitment branch), Ex.PW65/C (seizure memo of pen-drive and mobile phone from accused Balwinder Kumar Sharma), Ex.PW65/D (laptop of accused Balwinder Kumar Sharma). Witness further deposed about arrest and disclosure statement of the accused Sunita Ex.PW65/E and Ex.PW65/G, bills got recovered by Sunita regarding purchase of mobile Ex.PW65/H (colly), seizure of mobile from accused Sunil Kumar @ Titu Ex.PW65/I, seizure memo of documents from Registrar (Vigilance)

Ex.PW65/J, disclosure statement of accused Sushila Ex.PW65/K, recovery of mobile phone at the instance of Sushila Ex.PW65/L, disclosure statement of accused Sushila Ex.PW65/M, disclosure statements of accused Ayushi Ex.PW65/N and Ex.PW65/O, disclosure statement of accused Sunil Kumar @ Titu Ex.PW65/P, supplementary disclosure statement of accused Ayushi Ex.PW65/Q, further disclosure statement of accused Sunil Kumar Ex.PW65/R, disclosure statement of accused Kuldeep Ex.PW65/S, disclosure statements of accused Subhash Godara, Sushil Bhadu and Tajinder Bishnoi Ex.PW65/T, Ex.PW65/U and Ex.PW65/V respectively. The information received from Uber about booking of cab Ex.PW65/X, charge-sheet dated 04.01.2018 Ex.PW65/W, supplementary charge-sheet dated 18.07.2018 Ex.PW65/Y. The witness has also given details about the entire investigation conducted by SIT team and proved various memos and documents prepared during the investigation.

During cross examination, PW-65 could not recollect that videography or photography of search proceedings was conducted at Radha Krishan Temple. The suggestion has been denied that documents, statements, memos, invoices / bills etc are false and fabricated. She denied that on 11.11.2017, Sunita was taken to various hotels,

resorts, yatri niwas and dharamshalas at Kurukshetra where the staff did not identify Sunita for having stayed or visited there. The suggestion has been denied that statement of witnesses Manoj and Suman are false and fabricated. It is denied that no parcels / exhibits / electronic devices , sample or specimen seals were sent to CFSL, Chandigarh or that no CD was handed over by Manoj to SIT on 28.10.2018 or that memo relating to the same is false and fabricated. The suggestions have been denied that material evidence has been withheld like CCTV recordings and that charge-sheets have been prepared without application of mind or in a biased manner. The suggestion has been denied that statements of witnesses have been false and fabricated under Section 164 Cr.P.C. The suggestion has been denied that accused persons have been falsely implicated by fabricating documents and by tampering of electronic evidence. It is denied that no disclosure was ever made by any of the accused (s) or that recoveries have been fabricated.

PW-73 Palwinder Singh, Judicial Magistrate, 1st Class posted at Chandigarh deposed about recording of statement of Mandeep Kumar Bishnoi on 19.10.2018 under Section 164 Cr.P.C Ex.PW40/A. Witness also recorded the statement of Suresh Kumar on 17.10.2018 vide Ex.PW39/A. The suggestion has been denied that statements have

been recorded by him under the pressure of SIT or that he had not ascertained the voluntariness of the witnesses.

PW-74 Krishan Kumar was posted as DSP (Operation), Chandigarh police. By the orders of High Court of Punjab and Haryana, FIR was registered and SIT was constituted comprising of Sh.Ravi Kumar Singh, PW-74 himself and Inspector Punam Dilawari for the purposes of investigation. Witness has given all the details of the investigation conducted by SIT in respect of the present case. Besides deposing about the documents already exhibited, witness has proved the copies of letters Ex.PW74/A, Ex.PW74/B vide which information was sought from Ola and Uber. The relevant part of the register pertaining to rooms at Mandir seized vide memo Ex.PW74/C along with relevant record Ex.PW74/D. The information about arrest of accused Balwinder Kumar Sharma was sent to High Court vide Ex.PW74/E. The key log register of printing room of Punjab and Haryana High Court was seized and relevant copies thereof are Ex.PW74/G. The academic certificates of accused Sushila were taken into possession vide Ex.PW74/H and documents are Ex.PW74/I. The transcripts have been proved as Ex.PW74/G, Ex.PW74/K. The witness deposed about statement of Arun Mahajan who was caretaker of Sanatan Dharam Mandir,

Sector-18, Chandigarh recorded vide Ex.PW74/L and supplementary statement Ex.PW74/M. The disclosure statement of accused Kuldeep is Ex.PW74/N. The exhibits which were taken into police possession were deposited with CFSL vide letter Ex.PW74/A, receipt and acknowledgment Ex.PW74/P. The witness has deposed about analysis chart Ex.PW74/Q showing call details with location chart of mobile number of accused Ayushi. The statement of bank accounts related to the accused persons are Ex.PW74/R, arrest memo of accused Subhash Chander Ex.PW74/T, arrest memo of accused Sushil Kumar Ex.PW74/U, arrest memo of accused Tejinder Bishnoi Ex.PW74/V. The articles belonging to accused Sushil Bhadu such as laptop and pendrive were taken into possession vide Ex.PW74/W. The print out of the relevant data was taken from the pen drive provided by the CFSL vide Ex.PW74/X, Ex.PW74/Y, Ex.PW74/Z, Ex.PW74/Z-1 and Ex.PW74/Z-2. The filtered analysis chart pertaining to call detail records between Sunita, Sushila and petitioner Suman on the basis of CDR is proved as Ex.PW74/Z-5 (colly). The witness has given the detailed account of investigation conducted by the special investigation team in the present case. During cross examination, witness denied that disclosure statements of accused persons including Ayushi have been false and fabricated or

that signatures of Ayushi were taken on blank paper or that no disclosure was made by accused Ayushi. The suggestion has been denied that accused Ayushi has been falsely implicated or that witnesses are false, fabricated and manipulated. Witness has denied the suggestion that he has not fairly investigated the case or that accused persons have been falsely implicated without there being any substance. The suggestion has been denied that all the transcripts as well as recordings, DVDs, DVCs are tampered, false and fabricated. The suggestion is denied that no personal pen-drive of accused Balwinder Kumar Sharma was seized or that Ex.PX7 was official pendrive of accused Balwinder Kumar Sharma and not personal. The suggestion has also been denied that data in mobile phone Ex.PX6, pen-drive Ex.PX7 and laptop Ex.PX8 have been tampered with by the SIT. It is also denied that SIT withheld the material documents which could have favoured the accused persons. The suggestion has also been denied that Balwinder Kumar Sharma was illegally detained at SIT office or that he was arrested from outside sessions house on 28.12.17 and not from his house at Ropar as shown. Witness has denied the suggestion that he has not recorded the statements correctly or that documents relating to arrest of accused Balwinder Kumar Sharma are forged and fabricated. The suggestion has also been

denied that no documents were received by SIT from the High Court or that analysis chart prepared by the witness are false and fabricated. The suggestion is again denied that SIT has falsely implicated Balwinder Kumar Sharma and Sunita in order to give clean chits to the members and staff of Recruitment Committee. The suggestion has been denied that print outs as stated are false and fabricated. The witness has also denied that false statement of Suman and Manoj were recorded without checking about their identity. The suggestion is denied that entire investigation by SIT is false and biased and under the pressure of Arun Kumar Tyagi. It is denied that no material was analysed by SIT or that charge-sheets have been prepared without application of mind. The suggestion is denied that no question paper was ever handed over to Sunita by Balwinder Kumar Sharma as alleged. The recovery of mobile phones have also been disputed by the defence. Witness has denied that he deliberately concealed material information from the court or that accused persons have been falsely implicated on the basis of presumptions and assumptions.

WITNESS RELATED TO RECORD:-

PW-54 Kaushal Pandey, Branch Salesman, HDFC Bank, Barakhamba Road Branch, Connaught Place,

New Delhi has proved the certified copy of statement of account pertaining to account no.50200002581645 in the name of Chandra Prakash s/o Ram Narayan and Tajinder Kumar for the period from 01.05.2017 to 09.08.2018 along with certificate under Section 2A of Banker's Book Evidence Act as Ex.PW54/A and Ex.PW54/B. During cross examination, witness stated that he had not downloaded the account statement. He voluntarily stated that the Barakhamba Road branch is authorised to access respective bank account statements from Chandigarh, Sector-9 Branch.

PW-55 Ravi Kumar, Senior Manager, Axis Bank, Barakhamba Road Branch, Connaught Place has brought the certified copy of statement of account pertaining to account no.915010027314991 in the name of Om Prakash s/o Ram Chander and account number 915010013616678 in the name of Sushil Kumar, both for the period from 01.06.2017 to 31.05.2018. These documents have been received from Madhya Marg, Chandigarh Branch, Sector-9C, Chandigarh under signatures of Mr.Sumit Kumar, Manager and Operations Head bearing signature no.26438. All the documents along with covering letter are collectively proved as Ex.PW55/A.

During cross examination, witness stated he has not downloaded the account statement. He was never

posted in the bank branch where the account is existing. He did not know as to who had downloaded the account statement.

PW-71 Yoginder Kumar from Ola Cabs (ANI Technologies Pvt. Ltd) has brought on record information about booking of taxi ride availed through mobile numbers 8360753268 with user name Mr. Deepak Goyal and 8054012444 with user name Mr. B. K. Sharma. The relevant documents were produced during the investigation by Iktear Uddin (whose signatures have been identified by the witness being acquainted with the same). Letter is proved as Ex.PW71/B. On receiving the summons, the data was again retrieved by this witness with respect to above mentioned two mobile numbers vide document 1 Ex.PW71/C and document 2 Ex.PW71/D along with certificate under Section 65 B Evidence Act Ex.PW71/E. During cross examination, this witness deposed that Iktear Uddin was posted at Bangalore office but used to come to Gurgaon office also. The information was stored in the system where it remains perceptually. The document 1 and document 2 Ex.PW71/C and Ex.PW71/D came from Bangalore office and witness has brought the same. He deposed that he has not generated the data / information as the same has been generated by the legal team. The

suggestion has been denied that documents so brought are forged and fabricated.

PW-72 Vaishali Gupta is the authorised representative of Uber India Pvt. Ltd. She also provided the information with respect to rides booked and availed through mobile numbers 8360753268 with user name Kharoos Kharoos and 8054012444 with user name Balwinder Sharma. The documents were produced during the investigation by Sh. N. Kumar who is now not available in the department. The witness also brought the information pertaining to booking of cabs through above mentioned mobile numbers and same have been proved as Ex.PW72/B (colly) along with certificate under Section 65B Evidence Act Ex.PW72/C.

During cross examination, witness stated that she extracted details of Ex.PW72/B directly from the company's computer system. The information Ex.PW72/B are the exact reproduction of data available in the system. The suggestion has been denied that data provided by her is false and fabricated or that she is not competent to issue certificate under Section 65 B Evidence Act.

FORMAL WITNESSES:-

PW-1 Ct. Jitender Singh was posted as Assistant Malkhana with Police Station Sector-23,

Chandigarh. On the basis of authorisation by SSP, UT, Chandigarh, the witness deposited various sealed parcels with CFSL, Chandigarh on 14.11.2017, 30.11.2017, 24.01.2018 and 21.02.2018 in connection with the present case.

PW-4 HC Gurvinder Singh has deposed about daily diary about registration of FIR dated 19.09.2017 Ex.PW4/A at police station Sector 3, Chandigarh.

PW-8 HC Jaswinder Singh was also posted with photo section of PS Sector-19, Chandigarh and has deposed about the recordings and preparation of DVDs and DVCs.

PW-9 Ct.Birender Singh posted with SIT, Sector-3, Chandigarh, joined the investigation when mobile phone was seized from Deepak Leega vide seizure memo Ex.PW9/A.

PW-11 SI Kulwant Singh posted with SIT, Chandigarh as HC, joined the investigation of the case on 03.04.2018 and deposited one sealed parcel with CFSL, Chandigarh on the instructions of Inspector Punam Dilawari.

PW-13 HC Amit Kumar was posted at PS Sector-5, Panchkula having mobile number 9915123081. The witness was enquired about a phone call made from his mobile on 17.08.2017 to mobile number 9999332329 and the witness revealed that the call

was made by SI Ram Bhagat who requested for using the same. Witness has been cross examined on behalf of defence whereby he denied that he had stated that his phone was used by SI Ram Bhagat.

PW-19 Sube Singh Dhull, Superintendent with Haryana Public Service Commission provided all the record and requisite information to the police with respect to the HCS (JB) Examination 2017. The relevant letters have been proved as Ex.PW19/A and Ex.PW19/B and the record as Ex.PW19/B1 to B4. Also the certified copies of online application forms of Ms.Sunita and Ms. Sushila were provided vide letter Ex.PW19/C and the record is Ex.PW19/C-1 and Ex.PW19/C-2. The witness has denied during cross examination that forms Ex.PW19/C-1 and Ex.PW19/C-2 have been interpolated and tampered.

PW-20 Vishal Nagra, employed with C. L. Aggarwal DAV School, Sector-7, Chandigarh handed over certified copies of staff attendance register to the police team in the year 2017 vide Ex.PW20/A-1 to A-5. Witness admitted having handed over Ex.PW20/B to the police (bearing his signatures).

During cross examination, witness denied that no such document were handed over to the police officials or that documents were manipulated.

PW-21 Anand was Registry clerk in the office of Sub-Registrar, Kalka from July 2016 to April 2018.

Witness has brought the record with respect to the property Manakpur Devilal Moja at Pinjore sold by accused Sushila for Rs.12,50,000/-. Sale deed was registered on 12.07.2017 Ex.PW21/A. The report was provided to the investigating agency vide Ex.PW21/B.

PW-22 Avtar Singh confirmed about the purchase of the plot from Smt.Sushila in the name of his wife Surjit Kaur on 12.07.2017 and the sale deed has been proved as Ex.PW21/A.

PW-25 Manish Kumar, Superintendent with State Transport Authority (STA) office, Sector-18, Chandigarh has deposed about three-wheeler CH01-TA-9628 registered in the name of Virender s/o Khem Karan vide Ex.PW25/A and Ex.PW25/B (screen report and certificate under Section 65 Evidence Act). During cross examination, witness denied the suggestion that certificate under Section 65B Evidence Act is a false and fabricated document.

PW-28 HC Sanjay Kumar was having a diploma in IT and was posted with computer section of Chandigarh police during 2004-2022. The witness converted 12 DVCs brought by ASI Sudhir Kumar on 31.05.18 into DVDs through the computer. After completion of work, DVCs and DVDs were handed over to ASI Sudhir Kumar. The work was

completed during the whole night. On being shown DVCs and DVDs, witness could not identify the DVCs, however, identified the DVDs prepared by him vide Ex.P9 to Ex.P16 (except DVD ExP-15). The certificate furnished under Section 65B Evidence Act has been proved as Ex.PW28/A.

During cross examination, PW-28 deposed that DVDs were issued from stock of computer section. The witness had copied the contents of DVCs into DVDs and for this purpose video capture card installed in the system was used. The contents of DVCs were saved on the desktop. The witness was exclusively involved and no other staff member of computer section was involved. The witness denied the suggestion that he was never the part of process of conversion to DVCs to DVDs or that he was not competent to issue certificate.

PW-31 Mandeep Singh, Sr. Assistant, (Confidential Branch), Punjab and Haryana High Court has deposed about seizure memo Ex.PW31/A and Letter Ex.PW31/B bearing his signatures at point A. Witness has been cross examined.

PW-46 Tulsi Aneja deposed that he used to run a shop under the name and style of M/s Aneja Mobile Ghar, opposite Maina Tourist Complex, Civil Road, Rohtak. On being enquired by the police, PW-46 handed over four invoices of mobile phone sold

from his shop vide Ex.PW46/A (colly).During cross examination, PW-46 denied that he had not sold the mobile phones as stated by him or that he is deposing falsely. It is admitted that invoices contained the first name of the purchaser. No ID proof of the customers who purchased the mobile phones were taken. He further denied that invoices are fabricated.

PW-47 Inspector Sukhdweep Singh has deposed about supplementary charge-sheet Ex.PW47/A.

PW-53 Gopal Rai was residing at Radha Krishan Mandir, Sector-18, Chandigarh and deposed that some police officials had visited Mandir and opened one room in his presence. Witness has no knowledge about anything else. He could not recollect that he provided that key of room no.6 or that Sunita was residing in the said room. Witness also did not identify accused Sunita. Witness identified his signatures on the search memo Ex.PW53/A. Witness was confronted with his statement recorded under Section 161 Cr.P.C Ex.PW53/PB.

PW-57 Inspector Neeraj Sarna SHO PS Sector -3, Chandigarh has deposed about supplementary charge-sheets Ex.PW57/A (against accused Subhash Chander, Sushil Bhadhu and Tejinder Bishnoi) and Ex.PW57/B (CFSL result).

PW-67 Gurjant Singh attached with SIT, joined the investigation of the case. He prepared CD of the intercepted recordings from mobile number 9876970888. The recording was available in the computer system and the witnesses prepared CD which was seized vide seizure memo Ex.PW67/A by Inspector Punam Dilawari. The certificate under Section 65B is Ex.PW67/B. During cross examination, suggestion has been denied that seizure memo is false and fabricated or that he has not generated any CD during the investigation.

STATEMENT OF ACCUSED PERSONS UNDER SECTION 313 Cr.P.C

28. After the closure of prosecution evidence, statements of all the accused persons were recorded under Section 313 Cr.P.C by putting across entire incriminating evidence in question answer form.

When questioned u/s. 313 Cr.P.C, accused Sunita (A-1) denied the prosecution case and the allegations thereof. She stated that no question paper was leaked and there was no criminal conspiracy at all. She never received any question paper nor supplied to Sushila nor made any negotiations with Suman. She did not meet Balwinder Kumar Sharma on 10.07.2017 nor received any question paper nor tried to sell any question paper to any body. She never met Ishwar Singh on 04.08.2017 nor sent any message to him. She never went to the house of Ishwar

Singh. PW-15 Ishwar Singh is deposing falsely in connivance with Arun Tyagi and SIT. According to accused Sunita, she was never in touch with Sushila and she did not know her. The statements of witnesses under Section 164 Cr.P.C were falsely recorded. She denied the conversations with Sushila. The exhibited records, audio recordings, transcripts, CDRs, CAFs, location charts, filtered analysis chart and expert reports are false and fabricated. False writ petition appears to have been filed by Suman in connivance with Jurist Academy to get the exam cancelled. Sunita has even denied to be a student of Jurist Academy. She never resided at Radha Krishan Mandir, Sector-18, Chandigarh. High Court officials are interested and false witnesses and they themselves were suspect in paper leakage rumors. They deposed against her under fear of High Court and to save their own skins. Public witnesses are pressurized by SIT in the name of High court to depose falsely according to the wishes of SIT to create false evidence. Police witnesses deposed falsely under the pressure of senior officials. In this case, even DGP, Chandigarh was called and personally rebuked by High Court who had undertaken to take personal interest in the investigation.

Accused Balwinder Kumar Sharma (A-2) also denied the prosecution case and the allegations thereof. He admitted that he was Registrar (Recruitment) but denied that he leaked the question paper or that he entered into any conspiracy with any accused. According to accused,

no question paper was leaked. PW-15 is an interested witness and himself was suspect being the member of the team who printed the question paper from 12.07.2017 to 14.07.2017, thus was aware of the questions and to avoid enquiry and investigation against himself, he became a false witness.

A question bank of 1600 questions was handed over by him to Justice Sh. Ajay Kumar Mittal, Chairman of the Recruitment Committee. Thereafter, the question bank remained in possession of the Chairman and the Member Hon'ble Mr. Justice Tejinder Dhindsa from 26.05.2017 till 6.00 p.m of 10.07.2017. The questions were selected, modified, deleted and substituted continuously and repeatedly by the Recruitment Committee as per their wisdom. The final question paper containing answer key came into existence only at 6.00 p.m of 10.07.2017. Prior to that from 08.07.2017 till 6.00 p.m of 10.07.2017, the questions and question paper containing answer key were typed (in bold), corrected, formatted by Sh.Gurbax Singh, Secretary of Justice Ajay Kumar Mittal. Sh.Gurbax Singh also mixed up the questions and prepared four sets in official pen drive. He took the print out of four sets of question papers (code wise). During the entire period from 26.05.2017 till 06.00 p.m of 10.07.2017, he provided assistance to the recruitment committee in this regard by placing the question bank before the Members of the committee from time to time. As per the standing

instructions and the practice followed in judicial examinations, all the four hard copies and official pen drive containing soft copies and answer key of the HCS (JB) Preliminary Examination 2017 were handed over by him to Chairman, Hon'ble Justice Sh.Ajay Kumar Mittal at 6.00 p.m on 10.07.2017. His Secretary provided acknowledgment of such handing over in one of his note pads.

The final question paper and official pen drive were received back from Hon'ble Justice Sh.Ajay Kumar Mittal at about 8.00 a.m on 12.07.2017 just before the start of printing of question paper. Sh.Gurbax Singh also remained present during the printing of question paper of HCS (JB) Preliminary Examination 2017 from 12.07.2017 to 14.07.2017. The question paper which was distributed to the candidates on 16.07.2017 was not in his possession from 6.00 p.m of 10.07.2017 till 8.00 a.m of 12.07.2017. On being questioned about his close acquaintance with co-accused Sunita, accused Balwinder Kumar denied this fact. The testimony of PW-20 and PW-62 has been termed as false. According to accused Balwinder Kumar Sharma, he never stayed at any point at Neelkanth Yatri Niwas as alleged nor with Sunita nor the mobile locations were of kurukshetra on these dates. Accused further stated that he has been falsely implicated by false and fabricated testimonies just to give clean chit to the staff and members of the Recruitment Committee in rumors of question paper

leakage. No incriminating document was recovered from his house search. The exhibited records, conversations, transcripts, CDRs, CAFs, location charts, filtered analysis chart and expert reports are false and fabricated. Complaint of Manoj and CRM filed before High court are false. Ex.P-6 was his official pen drive and he was not allowed to have any personal pen drive during judicial services examination. PW-74 Krishan Kumar did not take any mobile or pen-drive from him as alleged.

Balwinder Kumar Sharma further stated that police witnesses have deposed against him under the pressure of SIT and High Court. In this case, FIR was ordered by the High Court. The public witnesses have deposed against him falsely due to fear of SIT and High Court. The High Court officials have deposed falsely against him due to the fear of Recruitment Committee and pressure of Sh.Arun Tyagi. The High Court officials are interested witnesses because they themselves were suspects in paper leakage rumors because they were members of the team which printed the question paper for three days and were aware of the questions set in the question paper. Some of them have personal vendetta against him. Therefore, they have become false witnesses to avoid enquiry and investigation against themselves and also to satisfy their personal grudge. Due to the rumor of paper leakage spread by Suman and got published in the Media, the Members of the

Recruitment Committee came under suspicion. Instead of investigating whether any question paper is leaked or not, the Recruitment Committee straightway decided to fix responsibility upon him, presuming that question paper has been infact leaked. For this purpose, Sh.Arun Tyagi had conducted a fake and false enquiry on the instructions of Sh.Ajay Kumar Mittal and other members of the Recruitment Committee to give them clean chit and falsely implicate him. During those days, Sh.Arun Tyagi was in the zone of consideration for elevation as Judge of High Court and Sh.Ajay Kumar Mittal was the Member of Collegium. Therefore, Sh.Arun Tyagi had prepared false enquiry proceedings, enquiry documents, statements and fake enquiry report against him. The alleged enquiry report was never approved by Hon'ble Chief Justice of High Court of Punjab and Haryana. FIR was got registered on the basis of alleged enquiry report. Punjab and Haryana High court was monitoring the investigation on regular basis. Sh.Arun Tyagi was liasioning on behalf of High Court with the SIT. Taking benefit of this situation, Sh.Arun Tyagi entirely controlled and dictated the investigation. SIT had not conducted any fair and thorough investigation. False evidence is created by SIT under the pressure of Sh.Arun Tyagi so as to justify his false enquiry report. Investigation by SIT after the transfer of PW-74 Krishan Kumar and Sh.Ravi Kumar Singh is illegal because no permission was taken from High

Court to reconstitute the SIT as High Court had constituted the SIT by naming the officers. Accused Balwinder Kumar Sharma claims innocence and false implication.

Accused Sushila also denied the prosecution case and the allegations thereof. She stated that she did not know Sunita and never received any question paper from her and no negotiation with Suman regarding the same was done. The statements of witnesses under Section 164 Cr.P.C were falsely recorded. She had no conversations with Sunita and Suman. The sale of plot was finalized much prior to publication of notification regarding examination. No amount was given to accused Sunita or some one else. The exhibited records, audio conversations, transcripts, CDRs, CAFs, location charts, filtered analysis chart and expert reports are false and fabricated. SIT made every witness to act according to its wishes showing fear of High Court. SIT has created false evidence, threatened and tortured the private / public witnesses under fear of High Court. Witnesses are interested witnesses. Police witnesses have falsely deposed against her under the pressure of their department. Suman has deposed against her under the pressure of High Court and SIT. The oral Agreement to sell on 12.04.2017 with Avtar Singh contains the date of execution of sale deed as 12.07.2017. The date was already fixed. The entire sale consideration amount of Rs.12,50,000/- was received online and remained

deposited in her account till January 2019. She has not taken any cash amount from Avtar Singh. Avtar Singh has deposed falsely under the pressure of SIT about receiving of Rs.2,00,000/- in cash by her. Suman has deposed against her in collusion with Mr.Brar Teacher in Jurist Academy to get the paper cancelled.

In her statement, accused Ayushi denied the prosecution case and the allegations thereof. She stated that she never took any SIM card bearing mobile no. 8360753268 from PW-68 or handed over to co-accused Sunita. She does not know and never met PW-68 Ashish Kumar, and he is a false witness. According to Ayushi, she did not know Sunita and never been her roommate at Radha Krishan Mandir. The exhibited records, conversations, CDRs, CAFs, location charts, filtered analysis chart and transcripts are false and fabricated. She was 12th pass at the relevant time and staying in Radha Krishna Mandir for taking coaching of IELTS in Institute Grey Matters, situated at Sector-17, Chandigarh. To connect the circumstantial chain, prosecution has falsely implicated her in the present case.

When questioned under Section 313 Cr.P.C, accused Sunil Kumar Chopra @ Titu also denied the prosecution case and the allegations thereof. He stated that the exhibited records, audio recordings, CDRs, CAFs, location charts, filtered analysis chart and transcripts are

false and fabricated. As per his knowledge, there was no person namely Gopal working at temple as he was residing adjacent to the temple and was the President of Resident Welfare Association, Sector-18, Chandigarh, however, he was not the President nor any office bearer of Radha Krishan Mandir. He had no connection with Radha Krishan Mandir. SIT made every witness to act according to its wishes showing fear of High Court. SIT has created false evidence, threatened and tortured the private / public witnesses under fear of High Court. Accused claims to have been falsely implicated by Inspector Amanjot Singh, as he made a complaint against him as well as an FIR against his associate namely Vikram Dhiman. Accused has a voice recording of Amanjot Singh as well as Vikram Dhiman to clearly establish that they have falsely implicated him in this matter. Accused was also having a handwritten note of that Amanjot Singh. On his complaint, the said Amanjot Singh got voluntarily retirement on 05.06.2023 from Chandigarh Police. The Radha Krishna Mandir was being run by three trustees and he was not the trustee. He has been falsely implicated due to acrimonious relation with Inspector Amanjot Singh and his associate Vikram Dhiman.

In his statement, accused Kuldeep Singh also denied the prosecution case and the allegations thereof. He stated that the exhibited records, conversations, CDRs, CAFs, location charts, filtered analysis chart and transcripts are

false and fabricated. He is innocent. Witnesses have deposed falsely against him. Sunita never resided at Radha Krishan Temple. He did not make any disclosure statement and his signatures were obtained on many blank papers. Nothing was recovered at his instance and case property has been planted upon him. He has been falsely implicated and he is residing separately from his sister Sunita in Delhi. He is not acquainted with any other accused in any manner.

Accused Subhash Chander Godara also denied the prosecution case and the allegations thereof. He stated that the exhibited records, conversations, CDRs, CAFs, location charts, filtered analysis chart and transcripts are false and fabricated. The question paper was never leaked. The account statements are false and fabricated. He has no acquaintance with Tajinder Bishnoi. a false story has been created by the SIT in order to implicate him, his daughter Ayushi and his distant brother-in-law Sushil Bhadu. She did not know accused Balwinder Sharma, Sunita, Sushila, Kuldeep, Sunil Kumar Chopra @ Titu and Tajinder Bishnoi. His daughter Ayushi was called at SIT office several times and he along with his brother-in-law Sushil Bhadu appeared before SIT. SIT members pressurized them to become false approvers in the present case and when they denied, they were tortured and falsely implicated in the present case. His signatures were taken on several blank papers. Prosecution has created a false story in order to falsely

implicate him along with his daughter Ayushi, distant brother-in-law Sushil Bhadu.

Accused Sushil Bhadu denied the prosecution case and the allegations thereof. He stated that the exhibited records, conversations, CDRs, CAFs, location charts, filtered analysis chart and transcripts are false and fabricated. The question paper was never leaked, he is innocent and has been falsely implicated. He did not know accused Balwinder Sharma, Sunita, Sushila, Kuldeep, Sunil Kumar Chopra @ Titu. His niece Ayushi was called at SIT office several times and he along with his brother-in-law Subhash Chander Godara appeared before SIT. SIT members pressurized them to become false approvers in the present case and when they denied they were tortured and falsely implicated in the present case. His signatures were taken on several blank papers. Prosecution has created a false story in order to falsely implicate him along with his niece Ayushi, distant brother-in-law Subhash Godara.

In his statement, **accused Tajinder Bishnoi** denied the prosecution case and the allegations thereof. He stated that the exhibited records, conversations, CDRs, CAFs, location charts, filtered analysis chart and transcripts are false and fabricated. The question paper was never leaked. He appeared in the exam on his merits. He never approached anybody for sale and purchase of question paper. PW-49 gave the money to him for giving

the same to his cousin brother Subhash as he required money for engagement purpose of his son Vijay. He has no acquaintance with Subhash Chander Godara. He was not involved in any paper leakage. He did not know accused Balwinder Kumar Sharma, Sunita, Sushila, Kuldeep, Sunil Chopra @ Titu, Subhash Godara, Ayushi which can be ascertained from the fact that no call detail record or any other documentary evidence has been proved by the prosecution in this regard.

According to Tajinder Bishnoi, he has a meritorious academic and professional career. He has done LLB from Campus Law Centre, University of Delhi and thereafter practiced in Hon'ble Delhi High Court as well as in Hon'ble Supreme Court of India with his senior Sh.P. P. Malhotra, the then ASG. He also practiced in Punjab and Haryana High Court as well as in District Court and also worked as Assistant Legal Manager in Escorts Limited at Faridabad. He has appeared for many competitive exams and cleared these exams including Assistant District Attorney as well as District Attorney in the year 2017 and thereafter. The said exams were conducted by Haryana Public Service Commission and other agencies. He has obtained good score in those exams. The marriage was solemnized between the cousin sister of accused Sushil Bhadu and the son of his cousin brother (i.e. Subhash) and that is why, accused Sushil Bhadu is also acquainted with his family members. The SIT has falsely implicated him in the

present case and it can be ascertained from the fact that they tortured his friend Satbir and tried to create evidence against him. It is on record in the form of statement of Satbir under Section 164 Cr.P.C as he did not depose as per the dictates of SIT. Satbir has stated truth before the court and that is why prosecution has dropped him and has not examined him during the trial.

Defence Evidence:-

29. In defence, four witnesses have been examined.

DW-1 has been examined on behalf of accused Sunil Kumar Chopra @ Titu, DW-2 Akash Bhardwaj has been examined on behalf of accused Balwinder Kumar Sharma, DW-3 Satbir Singh has been examined on behalf of accused Tajinder Bishnoi and DW-4 Paras Arora, Clerk, Excise and Taxation Department has been examined on behalf of accused Sunita. The sum and substance of the defence evidence is as follows:-

DW-1 Rajeev Bhatia is a Civil Engineer by profession. He was residing in Chandigarh at 1133 (2nd floor), Sector-18, Chandigarh on rent from July, 2017 to April, 2019. He knew Sunil Kumar Chopra being the owner/landlord of aforesaid property and was residing at the ground floor. The Radha Krishna Mandir was situated nearby his residence at Chandigarh. He knew the then trustees of the said Mandir and the names of the said trustees and employees were Sh. Subhash Goyal, Sh. Gopal, Sh. Arun Mahajan, Sh. R.C. Sharma and Sh. Dubey. He

being Civil Engineer, used to provide his services regarding construction and maintenance to the Mandir being socially active. He also provided his services with regard to maintenance of nearby area maintained by the local society in the name and style of 'The Residents Welfare Association, Sector-18, Chandigarh'. Sh. Sunil Kumar Chopra was the President of said Association. Sh. Sunil Kumar Chopra was not having any post or designation or control in the aforesaid Mandir. DW-1 used to attend meetings of the Committee of the Mandir in routine when he was having free time. Sh. Sunil Kumar Chopra never attended the meetings of the Mandir. Sh. Sunil Kumar Chopra attended the meetings of the local welfare association many times. Sh. Sunil Kumar Chopra was arrested by the police in his presence from the backside of SCF no.1, Sector-20 where one ice cream parlour was running. The police officials who arrested Sh. Sunil Kumar Chopra were namely Sh. Amanjot Singh, the then Inspector, Crime Branch, Sh. Narender Patial, the then Inspector, Chandigarh Police, Sh. Surender Singh, Inspector, Chandigarh Police and other police officials, between 9.00-9.30 pm on 21.05.2018, when they were in a meeting with the members of Welfare Association. After the arrest, Sunil Kumar Chopra was taken to Police Station Sector-26, Chandigarh and thereafter police visited the house

of Sh. Sunil Kumar Chopra. They made search of the house on all floors including his residence located at 2nd floor of this house. Being socially active, he was familiar with the name and designation of the aforesaid police officials. The aforesaid Inspector Amanjot Singh of Chandigarh Police had visited the house of Sh. Sunil Kumar Chopra even before his arrest i.e. on 29.09.2017 in the evening at about 8.30 pm along with 3-4 officials. They first rang his door bell and on inquiry from his second floor balcony, they asked for Sunil Kumar Chopra. He found that police had apprehended Sunil Kumar Chopra and took him towards Mandir. DW-1 also accompanied them. The mobile phone of Sunil Kumar Chopra was taken by Inspector Amanjot Singh. They remained there for about 2-3 hours. The police team then instructed Sunil Kumar Chopra to make calls to some persons from his mobile and accordingly on such instructions Sunil Kumar Chopra made calls from his mobile. Some of the calls were also received during this period and the same were taken by Sunil Kumar Chopra. DW-1 has identified the handwriting of Inspector Amanjot on the document Ex.DW1/A being written in his presence. This document was handed over to Sunil Kumar Chopra with instructions to file the same with same contents on a separate paper before the police complaint authority.

During cross examination, DW-1 stated that no rent agreement was executed with Sunil Kumar Chopra. The rent was Rs.10,000/- per month for the first year. The rent receipts were issued. The rent was paid in cash. He denied the suggestion that he never resided in the property of Sunil Kumar Chopra on rent. He did not know how many temples besides Radha Krishan Mandir, were there in the surrounding area. He admitted that he was not knowing the management or trustee of other temples but according to his memory, Sh. S.L. Goyal was the president/trustee of Radha Krishna Mandir during 2017. The minutes of the meeting used to be recorded. He used to attend the meetings as advisor. It is denied that he was never part of any meeting or that he was not advising the temple authorities on any aspect. He denied the suggestion that Sunil Kumar Chopra was the President of Radha Krishan Mandir or that Sh. S.L. Goyal was not the President. Witness denied the suggestion that accused was not arrested in his presence or that he has deposed falsely to this effect. No arrest document was prepared in his presence. He denied the suggestions that accused Sunil Kumar Chopra was arrested by DSP Krishan Kumar or that on 29.09.2017 Inspector Amanjot had not visited the house of Sunil Kumar Chopra or that he was not apprehended at that time. The suggestion is denied that mobile phone of Sunil

Kumar Chopra was not taken by any police official including Inspector Amanjot Singh. DW-1 did not file any complaint against any police official regarding the arrest but voluntarily stated that it was filed by Sunil Kumar Chopra. He did not remember the exact date when Inspector Amanjot Singh had written the alleged document Ex.DW1/A. DW-1 denied the suggestion to be deposing falsely in this case on the behest of accused Sunil Kumar Chopra being friendly with him.

DW-2 Akash Bhardwaj, Senior Assistant, Confidential Branch, Punjab and Haryana High Court, Chandigarh proved the copy of record received through diary no.453/Reg Rectt dated 22.08.2017 (running into 13 pages) as Ex.DW2/A. He has also proved the copy of record received through diary no.463/RR dated 30.08.2017 (running into 9 pages) as Ex.DW2/B.

DW-3 Satbir Singh, Fireman with Fire Brigade at Fatehabad, deposed that in the year 2018, he received a phone call from Chandigarh police informing that summons have been sent for his appearance before Police Station Sector-3 Chandigarh. He appeared and was inquired about Tajinder Bishnoi and also about the fact as to whether he had accompanied him for HCS (Judicial) preliminary exam, 2017. DW-3 further stated that he

was given written material and was asked to memorise the same with directions to depose on the lines of said material before Magistrate. He was also given blank papers and was made to write the said written material several times. He was also threatened for implication in the matter as it was done with Tajinder Bishnoi, if he did not depose as per the written material. It was stated in the written material that they had taken the question paper of the exam prior to appearing in the exam. He (DW-3) was continuously harassed to say so in his statement. At about 6.00 pm, he was allowed to leave the police station. After about 10 days again the phone call and the summons came and he was required to appear before police station Sector-3 Chandigarh. He appeared before the police station where again he was reminded to depose as per the written material before the Magistrate. In the afternoon, he was produced before a Magistrate. The police officials including one lady police official accompanied him to the court and kept him forcing for deposing as per the written material. He got recorded his statement. Witness identified his signature on his statement Ex.DW3/A.

During cross examination, DW-3 stated that he did not disclose before the Magistrate the factum of pressure and threats given to him by the police officials at police station. He had expressed before

the Magistrate that he was under fear. Witness was confronted with his statement where it was not recorded. DW-3 denied the suggestions that he was not given any threats or that no police official asked him to depose as per the alleged written material. He did not file any complaint before Fatehabad police about any such pressure or threat or before any other authority.

DW-4 Paras Arora, Clerk, Excise and Taxation Department, UT, Sector-17, Chandigarh brought the record of allotment of GST Registration to Punjab Electronics and certificate under Section 65B Evidence Act as Ex.DW4/A. He deposed that the record has been taken as print out from the system wherein the entire data is stored / available. During cross examination, witness stated that GST started from 01.07.2017 and liability of Punjab Electronics with respect to GST started from the said date only. The number of nature of goods / commodities supplied by the Punjab Electronics to the GST department are 5 and same are mentioned in the document Ex.DW4/A. The proprietor of the business was permitted only to give maximum 5 nature of goods/commodities.

30. Accused Ayushi, accused Sushila, accused Balwinder Kumar Sharma and accused Tajinder Bishnoi have also filed their written statements and documents for

consideration under Section 313 (5) Cr.P.C to assert innocence and false implication.

ARGUMENTS AND SUBMISSIONS

31. Ld. Special Public Prosecutor Sh. Charanjit Singh Bakhshi arguing on behalf of prosecution submitted that prosecution has been able to establish chain of circumstances proving the culpability of accused persons. The fact is established on record that question paper was processed by procuring a question bank from resource persons and the final question paper was settled in the month of July 2017. Dr. Balwinder Kumar Sharma (A-2) was closely involved and associated in the entire process being the Registrar (Recruitment). The custody of final question paper was with Dr. Balwinder Kumar Sharma which he had kept in a pen-drive and also was having hard-copies.

32. After the complaints of paper leak, matter was reported to the High Court on administrative as well as on judicial side. The vigilance enquiry was conducted wherein statement of Dr. Balwinder Kumar Sharma was recorded and the fact has been admitted by him that question paper was in his custody. In this way, Dr. Balwinder Kumar Sharma (A-2) was responsible for maintaining the sanctity of the question paper.

33. The fact has also been established through sufficient evidence that Balwinder Kumar Sharma and accused Sunita were in closed and intimate relationship. Sunita was one of the candidate for HCS (JB) Preliminary Examination. Their connection is established through mobile calls, SMS from their

official mobile numbers as also through the mobile numbers secretly procured by them. Accused Balwinder Kumar Sharma used to visit Sunita frequently who was preparing for the exam while residing at Radha Krishan Mandir, Sector-18, Chandigarh and taking coaching from Jurist Academy. The final question paper was handed over to Sunita on 10.07.2017 at Sector 24 (as per mobile locations).

34. After receiving the question paper, Sunita (A-1) proposed to sell the same for consideration to other candidates and for this purpose, she contacted Sushila (A-3) who was also one of the candidate of the exam and taking coaching from Jurist Academy. Another candidate of the exam and student of Jurist academy Ms.Suman, wife of Manoj was friend of Sushila and during the sharing of recorded lectures of the academy, Sushila could come across recording of phone call between Sushila and Sunita where there were talking about procuring the question paper. When Suman confronted about this to Sushila, Sushila then revealed to Suman about the custody of question paper with Sunita and offered to contribute towards having the same, for money. The phone conversations held between Suman, Sushila and Sunita were recorded by Suman. They also had a meeting at Sindhi Sweets, Sector-17, Chandigarh, where Sunita agreed to give the question paper of preliminary exam for Rs.10 Lakhs. Subsequently however, Sunita declined to sell the question paper to Suman doubting her credibility. This led to Suman filing proper complaints about paper leak and also she preferred a writ petition on judicial side before the High Court of Punjab and Haryana. The registration of FIR was ordered and also Special

Investigation Team was constituted to investigate the matter. Meanwhile, the exam was scrapped with the orders of High Court (based on vigilance enquiry)

35. During the investigation, the connection between accused persons was established and it was revealed that Sunita shared the question paper with Sushila as also both of them secured top rank in their respective categories. It has also been proved through evidence that accused Ayushi (roommate of accused Sunita) was also involved in the conspiracy by procuring the secret numbers and by connecting to other candidates through her father Subhash Chander Godara (A-7) and maternal uncle Sushil Bhadu (A-8). Question paper was also provided to another candidate Tajinder Bishnoi (accused no.9) through the father and uncle of Ayushi. The mobile phone connection and locations proved on record duly established the connections between the accused persons. During the investigation, accused persons were arrested and their disclosure statements were recorded. Accused Kuldeep (A-6) (brother of Sunita) get recovered Ash material of question paper as he had removed the material lying in the room of Sunita and had burnt the same. The intercepted conversations between accused Kuldeep Singh and Ram Bhagat (husband of accused Sushila) also show that they were involved in tampering with the evidence as also the similar facts have emerged from the conversations between accused Ayushi and Sunil Kumar Chopra and between Sunil Kumar Chopra with other employees of Mandir. Accused Sunil Kumar was involved in arranging the rooms for candidates and in tampering with the evidence.

36. Ld. Special Prosecutor also pointed out the testimony of PW-15 Ishwar Singh to submit that conduct of Sunita whereby she tried to contact and offer bribe to Ishwar Singh after the draft result was prepared, is a strong circumstance pointing towards the mens rea (guilty mind of accused Sunita). Further, the testimony of PW-21 Anand and PW-22 Avtar Singh have been relied upon to raise the point that Sushila even disposed off her property at the relevant time in order to arrange money for paying to Sunita for the question paper. Ld. Special Prosecutor also relied upon the statements of PW-41 Suman and PW-42 Manoj and on the recorded conversations (CD Ex.PX2) to say that prosecution has successfully proved the important circumstances establishing the guilt of the accused persons, which are inconsistent with any hypothesis of innocence.

37. Referring to the statements of accused persons recorded under Section 313 Cr.P.C, Ld. Special Prosecutor submitted that there is no merit in the contentions of the accused persons. The defence evidence produced on record has not been able to create any impact and by any stretch, the plea of innocence taken by accused persons is not established. The electronic evidence (mobile calls, locations, recorded conversations, contents of pendrive, CD etc) have been confirmed as genuine and authentic by various expert witnesses examined on the aspects. Detailed written arguments have also been submitted. Prosecution has relied upon the following judgments in support of arguments:-

1. Firozuddin Basheeruddin & Ors. vs. State of Kerala, 2001 SCC (CrL.) 1341.
2. Rajiv Kumar vs. State of U.P. (2017) 8 SCC 791.
3. Ram Lal vs. The State of Himachal Pradesh, AIR 2018 SC 4616.

38. On behalf of accused Sunita, Ld. Counsel Sh.Ramesh Kumar Bamal argued that case of the prosecution is based on suspicion, speculations, surmises, presumptions and in violation of the principles of criminal jurisprudence. The material witnesses of the prosecution are PW-41 Suman and PW-42 Manoj and according to their statements, the call conversations were recorded in the Mobile Ex.PX1, which was extracted by SIT in hard-disk Ex.P-10 from CFSL, however, no such call recordings are available in the hard-disk. The CDs containing voice samples are also disputed for want of certificate under Section 65 B Evidence Act. There are no recordings prior to the schedule of exam and the CD produced on record showing conversations does not contain any incriminating dialogue nor the same have been authenticated with comparison of voices. The experts reports are only corroborative and cannot be taken as substantive evidence. The prosecution has heavily relied upon the CD particularly Ex.PX2 handed over by PW-42 to SIT but the same is inadmissible and unreliable for want of valid certificate under Section 65 B Evidence Act as also PW-42 was not competent to issue such certificate. Transcripts have also not been proved on record. There is undue delay in reporting of the matter by complainant Suman. She did not come forward with

the audio conversations to allege about paper leak. Only after the examination was over, Suman came out with the complaint of paper leak with a view to get the exam cancelled in collusion with the officials of Jurist Academy. PW-42 Manoj cannot be relied upon as he is an impostor and having criminal antecedents. Evidence of complainant is not of sterling quality so as to inspire confidence. The prosecution has also failed to prove the meeting between Sunita, Sushila and Suman on 15.07.2017 at Sindhi Sweets. No conversations of the alleged meeting were recorded or produced by prosecution. Mere complaint is not the proof of its truthfulness. The filing of writ petition before the High Court is not enough to prove the charges. Disclosure statements have no value in law having been recorded during police custody as also disclosure statement of Sunita is forged and fabricated and does not bear her signatures.

39. The Vigilance enquiry report has no legal value and the same cannot be read into evidence as against accused Sunita. The court is not bound by the findings of enquiry officer and has to arrive to its own independent findings. The alleged result was never declared or approved as also original result was not produced on the record. Securing top position in the exam will not lead to the inference that the question paper was accessed by them. Prosecution has failed to prove on record the factum of stay of Sunita at Yatri Niwas, Kurukshetra as also call detail records are not sufficient to infer conspiracy between the accused persons. The Mobile numbers attributed to the accused persons as secret numbers have no basis as sim cards and mobile numbers stand in the name of third persons. It is also clear on record that

the invoice of purchase of mobile /SIM from Anmol Watches and Punjab Electronics have been fabricated. Prosecution has filed the charge-sheet under the pressure of SIT and High Court as also the witnesses have deposed under the pressure of SIT. The investigation is biased and tainted. The golden principles of circumstantial evidence have not been made out on record. There are various variations and contradictions in the statements of prosecution witnesses and there is no evidence to suggest that Sunita resided at Radha Krishan Mandir, Sector -18, Chandigarh or that she was the student of Jurist Academy or that she procured question paper from accused Balwinder Kumar Sharma or that she offered to share the question paper on payment of money. The recovery of Ash material at the instance of brother of accused Sunita has no truth as it is improbable that the accused would keep the burnt material after burning the question paper. Referring to the testimony of investigating officers, it is submitted that they have not responded to the important questions put in the cross examination, by pretending loss of memory. The call detail records of various mobile numbers are contradictory particularly the data provided by PW-51 Amit Dabra to the Registrar (Vigilance) and to the SIT. The story narrated by PW-15 Ishwar Singh about house visit of Sunita is false and improbable. No evidence is led that Sunita had any link with other accused persons. Detailed written arguments have also been submitted. Ld. Counsel has relied upon the following judgments in support of his arguments:-

1. Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh, AIR 2022 SC 5273.

2. R. K. Dey vs. State of Orissa, AIR 1977 SC 170.
3. Anvar P. V. vs. P. K. Basheer, AIR 2015 SC 180
4. Raj Kumar Singh vs. State of Rajasthan, AIR 2013 SC 3150
5. Munshi Prasad vs. State of Bihar (2001) AIR 2001 SC 3031
6. Sanjay Sinh Ramrao Chavan vs. Dattaray Gulabrao Phalke (2015) 1 RCR (Criminal) 570
7. Rai Sandeep @ Deepu vs. State of NCT of Delhi, AIR 2012 SC 3157.
8. Roshan Lal Saini vs. CBI (2011) 2 RCR (Criminal) 36.
9. Perumal Raja @ Perumal vs State, 2024 INSC 13.
10. P. Sirajuddin vs. State of Madras (1970) 1 SCC 595.
11. H.C. Ashwani vs State (2018) 9 AD (Delhi) 392.
12. Vijesh vs. State of Kerala (2018) 4 KLT 826
13. CBI vs. V. C. Shukla (1998) 2 RCR (Criminal)
14. Ram Singh & Ors. vs Ram Singh (1986) AIR SC (3)
15. Havovi Kersi Sethna vs Kersi Gustad Sethna, AIR 2011 Bombay 283.
16. Jahan Singh vs. CBI, (2020) 2 RCR (Criminal) 794.
17. Girwar Singh vs. CBI (2016) 5 RCR (Criminal) 757
18. Devinder Singh vs. CBI 2014 SCC OnLine Del 1216
19. Venkatesh vs. The State of Karnataka, Criminal Appeal No.1353 of 2015.
20. Mahabir Prasad Verma vs. Dr. Surinder Kaur, AIR 1982 SC 1043.
21. Ramesh Chandra Agrawal vs. Regency Hospital Ltd. AIR 2010 SC 806.
22. Rajiv Singh vs State of Bihar (2016) 1 RCR (Criminal) 640.

23. Shri Madhukar K. Farde vs. CBI (2012) 1 GoaLR 375.
24. M. G. Agarwal vs. State of Maharashtra, AIR 1963 SC 200
25. Darshan Singh vs. State of Punjab, Criminal Appeal No.163 of 2010.
26. Rajesh Yadav vs. State of UP (2022) 1 Law Herald (SC) 877.
27. Vijender & Ors. vs. State of Delhi (1997) 6 SCC 171
28. Ramaiah vs. State of Karnataka, (2014) AIR (SC) 3388.
29. Kailash Gour & Ors. vs. State of Assam (2012) AIR (SC) 786
30. Budai Bhagaban Murmu & Anr. Vs State of Orissa (2010) 1 Crimes 76.
31. Phool Chand vs. State of UP, (2004) CriLJ 1904.
32. Gurdev Singh vs. The State of Punjab, Crl. Appeal No.682-SB of 2004 dated 23.10.2008
33. Ram Chander vs. State (Govt. of NCT of Delhi) (2009) 4 RCR (Criminal) 880.
34. Banarsi Dass vs State of Haryana, AIR 2010 sc 1589
35. Karan Singh vs. State of Haryana, AIR 2013 SC 2348
36. Ashish Batham vs. State of M.P. (2002) 7 SCC 317

40. Arguing on behalf of accused Balwinder Kumar Sharma, Ld. Counsel Sh.Syed Hasan Isfahani submitted that first and foremost, there is no valid sanction for initiating prosecution against accused Balwinder Kumar Sharma who has been a public servant and member of Higher Judicial Service posted as Registrar (Recruitment) on deputation. No proper material was furnished to competent authority and there is no application of mind on the part of competent authority and

therefore sanction is illegal and invalid. On merits, the prosecution has failed to establish incriminating circumstances against accused Balwinder Kumar Sharma. The prosecution has failed to prove that question paper was in the possession of accused Balwinder Kumar Sharma. Prosecution has failed to stand on its own legs and has not examined any witness who could depose about the custody of question paper or handing over the same to accused Sunita. The entire case is based on presumption, surmises and conjectures. The prosecution has shown the recovery of pendrive containing question paper on 28.09.2017 Ex.PW65/C, but by the time examination was already over and question paper was available in public domain. It is further submitted that the process of finalization of question paper involved many rounds of selection, deletion and modification by the Members of Recruitment Committee and also the raw questions changed hands among the judges / members of Recruitment Committee. The secretary of Justice Ajay Kumar Mittal namely Gurbax Singh was also in possession of final question paper as he typed and formatted the same. The final question paper was handed over in hardcopy and soft copy to Justice Ajay Kumar Mittal (Chairman). The question paper along with pendrive was brought back by A-2 straight to the printing room in the morning of 12.07.2017. It is alleged that accused was not in possession of final question paper. The Members of the Recruitment Committee and Gurbax Singh, Secretary of Ajay Kumar Mittal, have been kept out of the purview of investigation and only Registrar (Recruitment) has been made as a scapegoat. The relevant documents on this aspect

have been concealed by SIT. The office order (part of Ex.PW50/PX) showing responsibilities of Registrar, (Recruitment) is not legally proved nor the said order proves that accused Balwinder Kumar Sharma was actually having the custody of question paper.

41. Ld. Defence Counsel further strongly disputed the correctness of vigilance enquiry conducted by PW-50 Arun Kumar Tyagi as well as statement of Balwinder Kumar Sharma recorded as EW-4. The record of enquiry has not been properly proved and the statement of Balwinder Kumar Sharma recorded as EW-4 is lying in the bunch and is not proved separately. The signatures of Balwinder Kumar Sharma have not been identified on the said statement. The pen-drive Ex.P7 recovered from Balwinder Kumar Sharma has not been proved as personal pen-drive as also printout Ex.PW74/Y is not admissible or reliable for want of Section 65B Certificate. Prosecution has also failed to bring on record the chain of exhibits by properly examining the officials carrying the exhibits of the case. Hard-disk Ex.PX10 is also not admissible in evidence for want of requisite certificate. The findings of vigilance enquiry cannot be relied upon or taken into consideration for violation of principles of natural justice as also the report was not confronted to A-2 in his statement recorded under Section 313 Cr.P.C. Enquiry was not fairly conducted by Arun Kumar Tyagi (PW-50) as also he was biased against the accused (Balwinder Kumar Sharma). The other officials of recruitment branch (who were also suspects) were not investigated despite the fact that they were possible source of alleged leakage.

42. It is further argued on behalf of defence that there is no nexus proved on record between Balwinder Kumar Sharma and Sunita. Even if any link is established between them, the question arises as to whether the question paper was leaked. The mobile calls, locations and other details do not prove intimate and close relationship between Balwinder Kumar Sharma and Sunita as also the electronic evidence has not been properly proved on record for want of requisite certificates under the Evidence Act. The secret numbers attributed to Balwinder Kumar Sharma and Sunita, is the result of imagination of SIT and prosecution and by pressuring the witnesses, false evidence is created to show that accused Balwinder Kumar Sharma and Sunita were in constant contact through their secret mobile numbers. The enquiry or investigation qua the other persons who were having the custody of question paper was not conducted. The authenticity of seizure memos and other documents prepared during the investigation have been strongly disputed. Detailed written submissions have also been filed. Ld. Counsel for accused has relied upon the following judgments in support of his arguments:-

1. Nanjappa vs. State 2015 (4) JJC 2409
2. Bhupinder Singh Chaudhri vs. Lt. Governor
3. Addagada Raghava vs Addagada Chenchamma AIR 1964 SC 136.
4. Bhagirath vs. State of Madhya Pradesh, AIR 1976 SC 975
5. Parminder Kaur @ P. P. Kaur @ Soni vs State of Punjab (2020) 3 RCR (Criminal) 225.

6. R. K. Dey vs. State of Orissa, AIR 1977 SC 170.
7. Gian Prakash Sharma vs. CBI (2004) 3 RCR (Criminal).
8. Anand Sawrup Data vs. Punjab National Bank (1997) 3 RCR (Civil) 437.
9. State of UP vs. Mohd. Iqram, AIR 2011 SC 2296.
10. Mohinder Singh vs State of Punjab (2018) 4 RCR (Criminal) 62.
11. Vijender vs. State of Delhi (1997) 6 SCC 171.
12. Shambu Nath Mehra vs State of Ajmer, AIR 1956 SC 404
13. Shivaji Chintappa Patil vs State of Maharashtra, AIR 2021 SC 1249.
14. CBI vs V. C. Shukla (1998) 2 RCR (Criminal) 17.

43. Arguing on behalf of accused Sushila, Ld. Counsel Sh.Naveen Kumar submitted that the present case was registered by virtue of orders of High Court and by that time, the examination was already scrapped. The High Court had already concluded in its proceedings that the paper was leaked and therefore the question arises whether the investigating agency was free and fair in conducting the investigation of the case and could come to the different conclusion as recorded by the High Court. Referring to the elements and ingredients of offence of cheating, Ld. Counsel submitted that there is no element of inducement whereby complainant Suman (PW-41) was induced by Sushila. The allegations against Sushila that she disclosed 10-12 questions to Suman and thereafter induced her for purchasing the question paper, have not been proved as also there are

contradictions and improvements on this aspect. Prosecution has also alleged that Sushila entered into transaction about sale of property for the purposes of arranging money for purchasing question paper. Witness in this regard PW-21 Anand and PW-22 Avtar Singh have only proved the transactions amounting to Rs.12,50,000/-, however the statement of account produced by Sushila with her statement under Section 313 (5) Cr.P.c shows that the said amount has been still lying in her account and not utilized for any purpose. Ld. Counsel further argued that circumstantial evidence brought on record is not sufficient to prove the involvement of accused Sushila. Merely being topper of the exam is not sufficient to prove about paper leak. It is alleged that Sushila has been falsely implicated. The recorded conversations brought on record through CD Ex.PX1 is not proved according to the law of evidence and therefore cannot be taken into consideration. Ld. Counsel also pointed to the testimony of PW-41 Suman and PW-42 Manoj to assert that they are not the reliable witnesses. They were interested in getting the exam cancelled and therefore created the entire version of paper leak. No recovery has been affected at the instance of accused Sushila as also her alleged disclosure is not admissible in evidence. It is prayed that accused Sushila deserves to be acquitted.

44. Arguing on behalf of accused Ayushi (A-4), her Counsel Sh.Uday Singh submitted that prosecution has not proved incriminating circumstances against accused Ayushi sufficient to record her conviction. The allegations of the prosecution that Ayushi was room-mate of co-accused Sunita and

was involved in the conspiracy by procuring SIM-cards for being used by accused persons and also that messages to PW-15 Ishwar Singh were sent from the mobile phone of Ayushi (9877339926), are neither proved nor lead to the conclusion that Ayushi was part of larger conspiracy. The prosecution has also alleged that father and maternal uncle of accused Ayushi namely Subhash Chander Godara and Sushil Bhadu came in contact with Sunita and arranged one candidate accused Tajinder Bishnoi. No evidence has been brought on record in this regard showing any link between Sunita and accused Subhash Chander Godara and Sushil Bhadu through Ayushi. It is further submitted that Ayushi was not the candidate for the judiciary exam as also she was not even law-graduate. The witnesses who purchased SIM cards in their name have not been made accused. Even if, it is admitted that accused Ayushi procured SIM cards for being used by the accused persons, the fact does not lead to the inference that she knew the purpose for which the phone would be used. Similarly, accused Ayushi could not have any knowledge about the nature of messages sent from her mobile to PW-15 Ishwar Singh. So far as the charge for the offence under Section 201 IPC is concerned, there is no evidence on record that accused Ayushi in any manner tampered with or destroyed the evidence of the case. The recorded conversations although not admitted and not proved as per law of evidence, are not incriminating in any manner. Nor accused Ayushi was involved in removing or destroying the material relating to HCS (JB) Preliminary Examination. Detailed written submissions have also been filed. Ld. Counsel has relied

upon the judgment **Devi Lal vs. State of Rajasthan (2019) 19 SC 447.**

45. Arguing on behalf of accused Sunil Kumar Chopra @ Titu (A-5), Ld. Counsel Dr. Anil Kumar Gupta submitted that pleas of prosecution against this accused have not been supported by any evidence much less incriminating evidence. As per the prosecution, accused Sunil Kumar Chopra arranged rooms for candidates at Radha Krishan Mandir and he was also having knowledge of leaked question paper. No witness has been examined by the prosecution who could depose about the involvement of accused Sunil Kumar Chopra in arranging rooms for the candidates of the exam. There is nothing on record to suggest that Sunil Kumar Chopra was even having any control over the affairs of the Mandir. The intercepted recorded conversations with accused Ayushi cannot be relied upon as same are not legal and also the nature of conversations do not prove any offence on the part of accused Sunil Kumar Chopra. Ld. Counsel referred to the testimony of DW-1 Rajeev Bhatia and asserted that accused Sunil Kumar Chopra has been falsely implicated at the instance of Inspector Amanjot. The disclosure statements of other accused persons are not admissible in evidence and cannot be read against Sunil Kumar Chopra. Accused Sunil Kumar Chopra was arrested even prior to the arrest of accused Ayushi, although prosecution has stated that on the identification of accused Ayushi, accused Sunil Kumar Chopra was arrested. The intercepted recorded conversations have been recorded after the offence of paper leak, if any, was already committed. The conversations do not reveal that accused

was involved for disappearance of evidence of the commission of the offence. The entire evidence of the prosecution even if taken as true, do not suggest involvement or participation of accused Sunil Kumar Chopra. Written arguments have also been filed. Ld. Counsel has relied upon the following judgments:-

1. Nilesh Dinkar Paradkar vs State of Maharashtra, (2011) 4 SCC 143
2. Shiv Kumar vs. State of M.P. (2022) 9 SCC 676.
3. Anil Sharma vs. State, 2004 (3) RCR (CrI.) 774 (SC).
4. Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116.

46. Sh. Sameer Chandra, Ld. Counsel for accused Kuldeep Singh (A-6) submitted that there is no evidence against accused Kuldeep Singh showing his involvement in the commission of alleged offences. The disclosure statement of accused Kuldeep Singh is not admissible in law and cannot be brought within the ambit of Section 27 of Indian Evidence Act. The alleged recovery of Ash material cannot be relied upon as it is next to impossible that after burning the question paper, the accused would preserve the Ash material. The prosecution has also relied upon the intercepted conversations between Kuldeep Singh and Ram Bhagat (husband of accused Sushila). These conversations have not been proved as per law of evidence and even Ram Bhagat has not been called for evidence to identify the voices. The transcript Ex.PW6/C, in relation to intercepted conversations do not prove anything incriminating against the

accused. Ld. Counsel referred to the testimony of expert witness in relation to the report Ex.PW58/D and submitted that during cross examination, the witness himself admitted that error was possible in making the report. The witnesses of the prosecution are interested and they have deposed under the pressure of SIT. Even through the locations of mobile phone of Kuldeep Singh, nothing has been proved on record to show his involvement. Written arguments have also been filed on behalf of accused. Ld. Counsel has relied upon the following judgments:-

1. Lohit Kaushal vs. State of Haryana (2011) 1 SCC (Cri) 955.
2. Amit Pratap & Anr. Vs State, 2012 (1) JCC 86.
3. Alope Nath Dutta & Ors. vs State of West Bengal, (2008) 2 SCC (Cri) 264.
4. P. K. Narayanan vs. State of Kerala, 1995 SCC (Cri) 215.
5. Vijayan vs. State of Kerala, 1999 SCC (Cri) 378

47. Ld. counsel Sh.Arun Khatri presented his arguments on behalf of accused Subhash Chander Godara (A-7), Sushil Bhadu (A-8) and Tajinder Bishnoi (A-9). It is submitted that none of the three accused was privy to the paper leak as also there is nothing on record to indicate that these accused conspired with A-1 Sunita and A-2 Balwinder Kumar Sharma to get the question paper out before the exam. No connection is shown with the main accused persons prior to the exam. As per the prosecution, accused Subhash Chander Godara and accused Sushil Bhadu were present at Radha Krishan Mandir, Sector-18,

Chandigarh on 14.07.2017, 15.07.2017, 16.07.2017 as per their mobile locations. The presence itself at the Mandir is not incriminating circumstance and does not suggest about involvement in conspiracy to paper leak. The prosecution has alleged that accused Tajinder Bishnoi was in touch with Sushil Bhadu through mobile locations and both even met on 15.07.2017 at Sector-17, Chandigarh. This fact also does not prove anything incriminating particularly when Tajinder Bishnoi and Sushil Bhadu are relatives. Transfer of money on behalf of accused Tajinder Bishnoi in favour father of Sushil Bhadu and Sushil Bhadu has been alleged to be a strong circumstance but this transfer of money do not lead to the conclusion that question paper was purchased by accused Tajinder Bishnoi. As per the bank account statement, on 20.07.2017 Rs.5,00,000/- was transferred from the account of Tajinder Bishnoi to the account of Om Prakash (father of Sushil Bhadu). On 21.07.2017 Rs.2,00,000/- have been transferred to Sushil Bhadu. The defence has been able to show that money was transferred for the purpose of marriage and the relevant wedding card has been placed on record bearing the name of Om Prakash (father of Sushil Bhadu) and Chander Prakash (father of Tajinder Bishnoi) . Nothing has been recovered from the accused persons to attribute any kind of involvement in the case. So far as the result of HCS (JB) examination is concerned, where Tajinder Bishnoi has secured 2nd rank, Ld. Counsel submitted that this isolated fact would not lead to any culpability particularly when no connection with the main accused persons is shown. The prosecution has failed to bring clear evidence against the accused

persons and the allegations are based on conjectures and surmises. All the above three accused persons deserve to be acquitted for want of evidence.

ANALYSIS AND FINDINGS

48. The case of prosecution is based on circumstantial evidence. It is settled law that in cases of circumstantial evidence, incriminating evidence must be such that it leads only to the hypothesis of the guilt and reasonably exclude every possibility of innocence of the accused persons. Also, the circumstances proved must form a complete chain consistently pointing to the involvement of the accused persons in the commission of the crime.

49. A three-Judge Bench of Supreme Court in **Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116** held as under:-

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established.

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in **Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra[(1973) 2 SCC 793]** where the following observations were made: "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

50. A full bench of Supreme Court in a recent judgment **Ramanand @ Nandlal Bharti vs. State of Uttar Pradesh (2022) AIR (SC) 5273** made the following observations about appreciation of circumstantial evidence:-

“45. In ‘A Treatise on Judicial Evidence’, Jeremy Bentham, an English Philosopher included a whole chapter upon what lies next when the direct evidence does not lead to any special inference. It is called Circumstantial Evidence. According to him, in every case, of circumstantial evidence, there are always at least two facts to be considered:

a) The Factum probandum, or say, the principal fact (the fact the existence of which is supposed or proposed to be proved; &

b) The Factum probans or the evidentiary fact (the fact from the existence of which that of the factum probandum is inferred).

46. Although there can be no straight jacket formula for appreciation of circumstantial evidence, yet to convict an

accused on the basis of circumstantial evidence, the Court must follow certain tests which are broadly as follows:

1. Circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
2. Those circumstances must be of a definite tendency unerringly pointing towards guilt of the accused and must be conclusive in nature;
3. The circumstances, if taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused but should be inconsistent with his innocence. In other words, the circumstances should exclude every possible hypothesis except the one to be proved”.

51. In the light of aforesaid settled legal prepositions, the present case has to be analysed. The following circumstances have emerged from the facts and evidence brought on record:-

- (i) Process and custody of question paper of HCS (JB) Preliminary Examination 2017.**
- (ii) Specific complaint and writ petition against candidates of the exam, accused Sunita and Sushila.**
- (iii) Vigilance Enquiry Report and registration of FIR.**
- (iv) Telephonic conversations between accused Sunita and Sushila with complainant dated 15.07.2017.**
- (v) The result showing Sunita and Sushila topping the exam in their respective categories and conduct of accused Sunita.**

(vi) Nexus between Balwinder Kumar Sharma, Registrar (Recruitment) and Sunita (candidate of the exam).

52. As per the principles of criminal jurisprudence and mandate of law, the prosecution in order to succeed in a criminal trial, based on circumstantial evidence has to prove the incriminating circumstances beyond all reasonable doubts by means of clear and cogent evidence. The court has to essentially undertake an exhaustive and analytical appraisal of the evidence so produced and record its findings. Let us, therefore, examine the chain of above-mentioned circumstances, sought to be proved on behalf of prosecution:-

(i) Process and custody of question paper of HCS (JB) Preliminary Examination 2017.

53. The time line of HCS (JB) Preliminary Examination 2017 has been that advertisement was published on 20.03.2017 (Ex.PW19/B-2) and the date of preliminary examination was 16.07.2017. Accused Balwinder Kumar Sharma was posted as Registrar (Recruitment) at High Court of Punjab and Haryana, Chandigarh vide order dated 01.04.2014 (part of Ex.PW50/PX colly). Vide office order dated 06.04.2011 (part of Ex.PW50/PX colly), the responsibility and duties of Registrar (Recruitment) were published. The Registrar (Recruitment) was assigned the following responsibilities:-

Officer	Responsibility and Duties	Reporting Authority
Registrar (Recruitment)	(i) Over-all in-charge of the Recruitment Cell including the staff posted therein.	The Chief Justice
	(ii) Maintenance of the Confidential records pertaining to examination keys, resource persons to set question papers for different recruitments, resource persons for checking of the answer sheets, (wherever required) and the process of preparation of the result.	Concerned Recruitment Committee
	(iii) Recruitment/Maintenance and updating of the data regarding actual and anticipated vacancies in the Subordinate and Superior Judicial Services, High Court Establishment and the Subordinate Courts.	Concerned Recruitment Committee / The Chief Justice
	(iv) Preparation of Annual Selection Calendar for all types of recruitments.	Concerned Recruitment Committee
	(v) Updating of eligibility conditions, reservations policies and other recruitment related decisions taken by the State Governments and other High Courts from time to time.	Concerned Recruitment Committee
	(vi) Training Programme for the newly recruited staff / officers (other than Judicial Officers)	The Chief Justice

54. On the basis of above assignment of duties, it is clear that Registrar (Recruitment) was overall incharge of the recruitment branch and was having access and control over the confidential records particularly the question papers, checking of answer sheets and preparation of result etc. During the investigation, DSP (SIT) vide letter Ex.PW50/A addressed to Registrar (General), Punjab and Haryana High Court, sought information about the process of question paper and the said information was provided vide letter dated 28.09.2017 Ex.PW50/C. It has been specifically mentioned therein that,

(i) question paper for HCS (JB) Preliminary Examination 2017 after its finalisation and answer key remained in the custody of Registrar (Recruitment) and no individual was authorised to open /re-open the question paper except with the orders of Recruitment Committee.

(ii) The question papers were printed in the printing room attached with the recruitment cell of the court.

(iii) It is important to maintain the confidentiality of the Resource Persons for utilization of their services in future. In such circumstances it would not be appropriate to disclose their names, designation and other particulars. Further, they merely supplied the Question Bank and were not aware of the Question Papers for HCS (JB) Preliminary Examination 2017 set by this court and cannot be said to be Question Paper setters. However, the names of the Resource Persons can be provided, if necessary, in a sealed cover.

55. The High Court of Punjab and Haryana ordered vigilance enquiry into the allegations of paper leak. The statement of Dr. Balwinder Kumar Sharma was recorded (as EW-4) on 28.08.2017 during the vigilance enquiry. The relevant and important portions of the said statement are as follows:-

The process for setting up the question paper for HCS (JB) Preliminary Examination 2017 was started in the beginning of May 2017 by appointing four experts who provided about four hundred questions each. The question bank was received by me by 26.05.2017. I do not remember when I took the print outs of the question bank. However, in the end of May 2017, I went to HMJ Ajay Kumar Mittal requesting him to set the question paper as I was under the impression that His Lordship may not be available in the month of June 2017 due to summer vacations and no sufficient time will be left on reopening of this Court on 03.07.2017 as the examination was to be held on 16.07.2017. His Lordship told me that His Lordship will be available in the second half of the June 2017 and the question paper will be set by the end of June 2017. I do not remember the date but prior to 22.06.2017 HMJ Ajay Kumar Mittal told me that the question paper will be set up by HMJ T.S. Dhindsa. I contacted HMJ T.S. Dhindsa on 22.06.2017 but His Lordship was out of station and as subsequently directed I handed over the question bank to HMJ T.S. Dhindsa on 25.06.2017 at his residence. On 27.06.2017, HMJ T.S. Dhindsa asked me by way of telephonic call to collect the question paper from His Lordship's chamber in the High Court on 28.06.2017 as

His Lordship was to come to this Court on that date. On 28.06.2017, I personally collected the question bank in which the selected questions were ticked by His Lordship. His Lordship told me to cross check the language, answer options and typographical mistakes and to delete/correct ambiguous questions, repeated questions and questions having more than one correct answer. I corrected the mistakes and on 28.06.2017 and 29.06.2017, I segregated the selected questions expert wise and subject wise by making cut, copy, paste from question banks sent by the experts. On 29.06.2017 or 30.06.2017, I informed HMJ Ajay Kumar Mittal that HMJ T.S. Dhindsa had selected two hundred questions instead of one hundred twenty five questions. HMJ Ajay Kumar Mittal asked me to prepare separate file of one hundred twenty five questions out of file of about two hundred selected questions. On 01.07.2017, I went to HMJ Ajay Kumar Mittal for approval of the question paper having one hundred twenty five questions. HMJ Ajay Kumar Mittal asked me to show the question paper to HMJ T.S. Dhindsa as His Lordship had selected the question paper. I gave the question paper to HMJ T.S. Dhindsa on 03.07.2017 or 04.07.2017. HMJ T.S. Dhindsa asked me to collect the question paper before 10.00 am on 05.07.2017 or 06.07.2017 as I do not remember the date as I was also busy in making arrangements for Practical test-cum-Interview for the posts of Drivers on the establishment of this Court in Children Traffic Park, Sector-23, Chandigarh. I personally collected the question paper from HMJ T.S. Dhindsa on

05.07.2017 or 06.07.2017 just before 10.00 a.m. and HMJ T.S. Dhindsa said that the questions selected were ok. This fact was conveyed by me to HMJ Ajay Kumar Mittal, Chairman of the Recruitment Committee but I do not remember as to whether it was conveyed on the same day or subsequent day. HMJ Ajay Kumar Mittal asked me to go ahead with finalization of question paper after cross checking the same for ambiguities, mistakes, duplication etc. so that there was no litigation regarding the same as was the case in the past. I made corrections in the question papers from 06.07.2017 to 08.07.2017, then I told HMJ Ajay Kumar Mittal that I was not able to type the question papers and finalise the settings etc. of the same in which on HMJ Ajay Kumar Mittal directed Shri Gurbax Singh, Joint Registrar-cum-Principal Secretary to HMJ Ajay Kumar Mittal to assist me in this regard. Shri Gurbax Singh, Joint Registrar-cum-Principal Secretary to HMJ Ajay Kumar Mittal assisted me from 08.07.2017 onwards. The question paper was finalized on 10.07.2017. On 10.07.2017 as per the desire of HMJ Ajay Kumar Mittal, final question paper was handed over to His Lordship at about 11-11.30 am. HMJ Ajay Kumar Mittal returned the question paper with some language corrections and replacement of one question at about 2-2.30 p.m. on 10.07.2017. Thereafter, I and Shri Gurbax Singh incorporated the corrections and prepared final draft which was treated as Question Paper Code 'A'. We prepared question papers Code 'B', 'C' and 'D' from Question Paper Code 'A' on 10.07.2017. On that date, the printouts were not

taken as I thought that some more mistakes may come to the mind and I kept the pen drive having data of all the questions papers with me. The print outs of the question papers were taken by me on 11.07.2017 and the pen drive and the print outs remained in my custody in my briefcase with numerical lock. The printing of the questions papers started on 12.07.2017 and continued till just before lunch on 14.07.2017.

The master copy of the question papers Code 'A', 'B', 'C' and 'D' and the pen drive remained in my custody in my briefcase with numeric lock till the next day of the holding of the HCS(JB) Preliminary Examination i.e. till 17.07.2017 on which date the master copies, drafts on which the corrections were made were destroyed except one set which contained the source of the questions so that in case of the litigation or objection on the question /answer key, the source could be ascertained. During the above said period, I used to carry the briefcase to my residence and bring the same back to this Court with me.

56. During the investigation, electronic devices were seized from the possession of Dr. Balwinder Kumar Sharma and vide seizure memo Ex.PW65/C, a pen-drive (red and black sandisk 4 GB) was seized. The seizure of pen-drive has been proved by both the investigating officers of the case PW-65 Inspector Poonam Dilwari and PW-74 DSP Krishan Kumar and pen-drive has been produced as Ex.PX-6. Vide expert report Ex.PW48/A, the contents of pen-drive were retrieved and

provided in the hard-disk. The print out of the hard-disk was taken vide Ex.PW74/Y which includes the final question paper along with answer keys. The Pen-drive Ex.PX-6 has been checked on computer. It is found containing various formats / drafts of legal multiple choice questions as well as final question paper with answer keys of HCS (JB) Preliminary Examination 2017. On further checking the contents of pen-drive, it is found containing material relating to other posts of Punjab and Haryana High court like Clerk Exam 2016. The nature contents of pen-drive further prove that it was belonging to Registrar (Recruitment) who was overall incharge of various recruitments in the Punjab and Haryana High court relating to various positions. It is insignificant whether the pen-drive was official or personal, the fact is properly proved on record that pen-drive was seized from Balwinder Kumar Sharma and was containing the final question paper with answer keys.

57. On appreciation of above evidence, it is clear that accused Dr.Balwinder Kumar Sharma was having the custody and control of the final question paper with answer keys (including the question bank initially provided by resource persons).

58. Accused, however, disputed this fact and raised the plea in his statement u/s 313 Cr.P.C that process of finalisation of question paper involved many rounds of selection, deletion and modification by the Members of recruitment committee and also the raw questions changed hands among the members of Recruitment Committee. The final question paper was also in the

possession of Gurbax Singh, Secretary to Justice A. K. Mittal. Accused further claimed that the final question paper was handed over in hard copy and soft copy to Justice Ajay Kumar Mittal (Chairman of the Committee) and was taken back from him only in the morning of 12.07.17 and was taken for printing straightaway. However, these pleas were never raised at the time of enquiry before the Registrar (Vigilance). It has also been argued on behalf of accused Balwinder Kumar Sharma that PW-50 Arun Kumar Tyagi, Registrar (Vigilance) has not conducted the fair enquiry and has created false evidence. On examining these pleas, I am of the opinion that there is no truth in the defence pleas. The statement of Dr. Balwinder Kumar Sharma was recorded by Registrar (Vigilance) on oath as EW-4. At no point of time, Dr. Balwinder Kumar Sharma raised any grievance that his statement was not recorded correctly by the Registrar (Vigilance). Also, the credibility of PW-50 Arun Kumar Tyagi cannot be doubted as he has been a public servant and recorded statement of accused Balwinder Kumar Sharma in discharge of his official duties. It is important to note that in his affidavit dated 31.08.2017 Ex.PW50/DA (admitted by accused Balwinder Kumar Sharma), there is an admission that he was examined on 28.08.2017 by the Registrar (Vigilance). In the said affidavit, the fairness of the Enquiry Officer or authenticity of the statement so recorded have not been challenged. It is, therefore, clear that plea of accused Dr. Balwinder Kumar Sharma that his statement as EW4 has not been proved or that same has been falsely created by PW-50, has no merit or substance.

59. The Judges of High Court get sufficient number of support staff members to assist them in discharge of their official functions. The Recruitment Committee was headed by Justice A.K. Mittal being Chairman and Registrar (Recruitment) being the Head of the Branch, acts as Secretary to the Committee. It is difficult to believe that Chairman of the Committee would personally keep the confidential records including the question paper. The defence raised by Balwinder Kumar Sharma to the effect that question paper was with Chairman of the Recruitment Committee, is only an afterthought. Even otherwise, it is clearly proved on record that accused Balwinder Kumar Sharma was having the custody of final question paper (with answer key) after its finalization.

(ii) Specific complaint and writ petition against candidates of the exam, accused Sunita and Sushila.

60. After HCS (JB) Preliminary Examination 2017 was held on 16.07.2017, Manoj Kumar (PW-42) filed complaints about paper leak about which he testified in his testimony and the complaints have been proved as Ex.PW42/A, Mark PW42/B and Mark PW42/C. The complaints were preferred by Manoj Kumar as his wife Suman (PW-41) shared information with him about Sushila and Sunita claiming the possession of question paper and after they met Sunita at Sindhi Sweets, Sector-17, Chandigarh on 15.07.2017 where negotiations about sale of question paper, were held.

61. The complaint Ex.PW42/A has been addressed to Chief Justice, Punjab and Haryana High Court, Chandigarh and is dated 20.07.2017. Prior to this on 19.07.2017, similar complaints have been moved before Commissioner of Police, Panchkula (Mark PW42/B) and before DGP, Haryana Police (Mark PW42/C). In the said complaints, Manoj Kumar narrated all the facts and specifically named Sunita and Sushila for having claimed possession of question paper and having offered to sell the same. The factum of meeting at Sindhi Sweets, Sector-17, Chandigarh has also been mentioned. Manoj Kumar (PW-42) also mentioned in the said complaints that they have call recordings as a proof and would submit the same on record. Complaint Ex.PW42/A was supported by his affidavit.

62. On 05.08.2017, complainant Suman (PW-41) also moved on judicial side before High Court of Punjab and Haryana by filing writ petition (CRM-M No. 28947 of 17) Ex.PW41/A (colly), disclosing the facts in detail and specifically naming Sunita for having the possession of question paper and for negotiating to share the same for consideration. The petitioner Suman also mentioned in the said writ petition about recorded conversations and even reproduced the transcripts of conversations so held between her and Sushila relating to exam and question paper. Suman also mentioned about moving of the complaints by her husband Manoj Kumar before the police.

63. The relevant record of complaints and writ petition has been proved through attested copies and also by producing the original and since the record is official and has come from

the genuine source i.e. High Court of Punjab and Haryana, same is taken as properly proved.

64. In view of above depositions and the record, the circumstance is established that complaints came from other candidate (petitioner Suman PW-41) specific against accused Sunita and Sushila about the paper leak. It is important to note that complaints were filed promptly after the examination and when no action was taken on the complaints, the writ petition was also filed on the judicial side on 05.08.2017. Complaints and writ petition were filed even before the result was prepared and therefore at this time, it was not in the knowledge of any one, that Sunita and Sushila have secured top ranks in their respective categories.

65. The defence has raised the issue of credibility of Manoj Kumar (PW42) by pointing out his criminal antecedents whereby he was convicted in criminal cases of serious offences. It is also contended that Manoj Kumar has other name Vinod @ Lakhmi. On consideration of these contentions, I find that antecedents of Manoj Kumar (PW-42) are not relevant to this case. Every sinner has a future and even if Manoj Kumar suffered imprisonment in criminal cases, it would not affect his credibility in relation to this case, particularly because his complaints are duly supported by evidence. The complaints were preferred by him as Manoj Kumar and on the same identity he has deposed before this court.

66. In view of above, the filing of complaints and writ petition about paper leak, forms a crucial and incriminating circumstance in the chain of circumstantial evidence.

(iii). Vigilance Enquiry Report and registration of FIR.

67. The initial inquiry was conducted by Registrar (Vigilance) of Punjab and Haryana High Court. It is of great importance as it was conducted immediate to the paper leak and relevant officials and witnesses had no time to manipulate the circumstances or the record. The vigilance enquiry was conducted in the matter by Registrar (Vigilance) Arun Kumar Tyagi (PW-50). During the vigilance enquiry, the statements of concerned witnesses and officials were recorded and also their call records and audio recordings dated 15.07.2017 were taken into consideration. The vigilance enquiry was held in the matter in pursuance of orders of the Recruitment Committee and vide his report dated 29.08.2017 Ex.PW50/PX1, Registrar (Vigilance) drew the following conclusions:-

- i. That Dr. Balwinder Kumar Sharma, Registrar (Recruitment) handled and was having custody of the question papers from the time the question paper was set till the question papers were distributed for the examination;**
- ii. That Ms. Sunita and Ms.Sushila were having the copies of the question paper for HCS (JB)**

Preliminary Examination 2017 before the above-said examination;

iii. That Ms. Sunita was previously known to and having acquaintance with Dr. Balwinder Kumar Sharma, Registrar (Recruitment) and that Ms. Sushila was known to and having acquaintance with Ms. Sunita and Ms. Suman was known to and having acquaintance with Ms. Sushila before HCS (JB) Preliminary Examination 2017.

iv That Ms. Sunita procured copy of question paper for HCS (JB) Preliminary Examination 2017 from Dr. Balwinder Kumar Sharma, Registrar (Recruitment) and thereafter she supplied copy thereof to Ms. Sushila and negotiated with Ms. Suman for supplying copy of the question paper to her for consideration.

68. On the judicial side, while dealing with the Writ Petition, (CRM M. No.28947 of 2017) filed by Suman (PW-41), a detailed order was passed by the Bench on 15.09.2017 (Ex.PW65/A) giving directions for registration of FIR and constitution of SIT. The relevant portion of the said order is reproduced as under:-

8. Mr. Kanwaljit Singh, Senior Counsel appearing for the High Court fairly submitted that keeping in view gravity of the issues involved, the High Court does not have any objection in case the matter is got investigated from an independent

agency, however, the investigation should be by some senior officers, preferably by constituting a Special Investigating Team. He further submitted that the examination having been conducted at Chandigarh and even in the complaint filed by Manoj, it is claimed that some conversation or transaction had taken place in Sector-17 at Chandigarh, hence, it would be appropriate if FIR is registered at Chandigarh. He further suggested that it would be necessary to monitor the investigation as well, as the issue involved is required to be taken on logical end and truth is required to be unearthed.

9. Keeping in view the aforesaid fair stand taken by the High Court, in our view, FIR deserves to be registered at Chandigarh, initially in terms of the recommendations made in para 'd' of the report of the Committee, for further investigation by constituting a Special Investigating Team. Ordered accordingly.

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14. Keeping in view the seriousness of the matter and report of the Registrar (Vigilance), prima facie, pointing out involvement of Dr. Balwinder Kumar

Sharma, Registrar (Recruitment), and further recommendations made by the Committee for deeper probe and disciplinary action against him, we recommend that the officer be placed under suspension with immediate effect pending disciplinary proceedings, fixing his head quarter at any place other than Chandigarh.

69. The circumstance about vigilance enquiry report and registration of FIR has been properly proved on record through oral and documentary evidence. The report clearly indicted Sunita, Sushila and Balwinder Kumar Sharma and this circumstance is incriminating in nature.

(iv). Telephonic conversations between accused Sunita and Sushila with complainant Suman dated 15.07.2017.

70. Recorded conversations are also an important piece of evidence and the prosecution has heavily relied upon the same. The recorded conversations are brought on record by way of Compact Disc (CD) (got prepared by PW-42 Manoj Kumar) from the original mobile of his wife Suman Ex.PX1. The original mobile phone has been produced during the trial and identified by Suman (PW-41).

71. The law of admissibility of tape recorded conversation is established through the judgments of Hon'ble Supreme Court. In **R.M Malkani vs State of Maharashtra, (1973) 1 SCC 471** Supreme Court laid down the essential conditions

which, if fulfilled or satisfied, would make a tape recorded statement admissible otherwise not; and observed:

"Tape recorded conversation is admissible provided first the conversation is relevant to the matters in issue; secondly, there is identification of the voice; and, thirdly, the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record. The contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under Section 8 of the Evidence Act. It is *res gestae*. It is also comparable to a photograph of a relevant incident. The tape recorded conversation is therefore a relevant fact and is admissible under Section 7 of the Evidence Act".

72. In the case of **Ram Singh vs. Col. Ram Singh, AIR 1986 SC 3** it was held that:

31. "Thus, so far as this court is concerned the conditions for admissibility of a tape recorded statement may be stated as follows:-

(1) The voice of the speaker must be duly identified by the maker of the record or by others who recognise his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the maker it will require very strict proof to determine whether or not it was really the voice of the speaker.

(2) The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence - direct or circumstantial.

(3) Every possibility of tampering with or erasure of a part of a tape recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.

(4) The statement must be relevant according to the rules of Evidence Act.

(5) The recorded cassette must be carefully sealed and kept in safe or official custody.

(6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances.

73. The version of the complainant Suman (PW-41) has been that she recorded the conversations with Sushila on her mobile phone and thereafter her husband got transferred the said conversations into a compact disc (CD) and the said CD was submitted before High Court at the time of filing of writ petition. The CD of audio conversations was also handed over to SIT on 28.10.2018 by husband of Suman (PW-42 Manoj Kumar) vide seizure memo Ex.PW42/E along with certificate under Section 65 B Evidence Act Ex.PW42/F and this CD has been produced and played during the trial as Ex.PX2. The original mobile phone of Suman was seized during the investigation vide seizure memo Ex.PW42/D and produced during the trial Ex.PX-1. This contained 8 audio files of conversations wherein complainant Suman and accused Sushila have been talking to each other about the exam and the question paper. In the said conversations, Sushila also got connected Suman to Sunita. Transcripts in this regard have been produced as Ex.PW41/C. It is important to note that relevant portions of transcripts were also included in the writ petition (Ex.PW41/A) filed before High Court of Punjab and Haryana.

74. PW-41 Suman and PW-42 Manoj Kumar in their testimony have confirmed the genuineness of the CD and the recorded conversations. Suman has identified the voices contained in the

CD as well as confirmed the transcripts Ex.PW41/C (colly). The specimen voice sample of complainant Suman and accused Sushila and Sunita were taken during the investigation and were sent for expert analysis for comparison with questioned voices contained in the CD. The voice matching has further confirmed that the recorded conversations had taken place between Suman, Sunita and Sushila. The report in this regard is proved as Ex.PW58/A.

75. Each person has distinctive voice with characteristics features. The technology is in a position to say whether two voice recordings are of the same person or of two different individuals. With the development of science and technology, the voice sample can be analyzed or measured on the basis of time, frequency and intensity of speech sound waves so as to compare and identify the voice of the person who must have spoken or participated in recorded telephonic conversations. Voice sample is “identification data” which can be used for the purposes of recognition of questioned voices.

76. The prosecution has examined expert witness PW-58 D. P. Gangwar, Assistant Director, CFSL, Chandigarh. He has 32 years experience in the field of Forensic Science including Audio Video examination. The questioned audio conversations contained in CD/1 and CD/2 were compared with CD/3 (Ex.PX-3 specimen voice sample of Suman), CD/4 (Ex.PX.19 specimen voice sample of Sushila) and CD/5 (Ex.PX-20 specimen voice sample of Sunita) and were analysed by PW-58 vide his report Ex.PW58/A. On examining the credentials of this witness, I find

that he is an expert in the field of voice identification and used scientific and advanced methods to compare the questioned voices. PW-58 has confidently answered all questions put across during his cross examination and there is no scope to disbelieve the expertise and report Ex.PW58/A dated 30.05.2018. Report is specific and clear. There is no reason to doubt the credibility of expert witness who has done his job properly and elaborated the procedure adopted by him during the auditory examination. There has been no specific suggestion on behalf of defence that questioned voices are not of accused or that they do not match with the specimen voices. The defence has pointed out the admission of PW-58 in cross examination, whereby he stated that error may be possible in the report, but also, as per the version of PW-58, generally the report furnished after analysis is accurate with no margin of error. In my opinion, the expert report is a strong piece of evidence and adds credibility to the genuineness of audio recordings.

77. The defence has raised questions about admissibility of recorded conversations by arguing that they are not substantive piece of evidence and prescribed guidelines for acceptance of audio recordings are not met in the present case. It is contended that recorded conversations can only be relied upon as corroborative evidence of conversations deposed by any of the parties and in the absence of evidence of any such conversations, the recorded conversations are indeed no proper evidence and cannot be relied upon. It is also contended on behalf of defence that CD Ex.PX2 has not been properly proved on record

as same is not the original device wherein recording was done and secondly PW-42 Manoj Kumar who allegedly got the recorded conversations copied into CD through computer was not competent to issue certificate under Section 65 B (4) of Evidence Act.

78. The complainant and her husband have maintained the version from the very beginning that conversations were recorded on her mobile by Suman and thereafter recordings got copied into CD. The CD was also presented before High Court of Punjab and Haryana at the time of filing of writ petition and also handed over to SIT during the investigation. According to Manoj Kumar (PW-42), he got the CD prepared through a shop at Sector-22, Chandigarh and computer used for transferring the data, was in possession of shopkeeper. He denied the specific suggestion that contents of the CD have been manipulated.

79. There is no dispute about the law that contents of documents may be proved either by primary or by secondary evidence. Section 65 B speaks of admissibility of electronic records which deals with existence and contents of electronic records, being proved, once admissible into evidence. In accordance with settled law, the certificate under Section 65 B (4) is unnecessary, if the original document itself is produced and this can be done by owner of a laptop, computer, tablet or even a mobile phone by stepping into the witness box and proving that device concerned, on which the original information is first stored is owned and operated by him. However, where it becomes impossible to physically bring such system or network

to the court, then the only means of providing information contained in such electronic record can be in accordance with Section 65 B (1) together with certificate under Section 65 B (4) Evidence Act. According to the legal position, the person who gives the certificate under Section 65 B (4) Evidence Act can be any one out of several persons who occupied a “responsible official position” in relation to the operation of the relevant device, as also the person who may otherwise be in the “management of relevant activities” thereof and the person must depose on the basis of his knowledge and belief.

80. Coming to the case in hand, before the matter about paper leak was reported, the conversations dated 15.07.2017 were recorded on the mobile phone and later copied into CD. The CD of the audio conversations was got prepared from a computer shop by PW-42 Manoj Kumar under his supervision and control and therefore he was competent to issue certificate under Section 65 B (4) of Indian Evidence Act.

81. During the trial, the CD Ex.PX-2 containing audio conversations dated 15.07.2017 were played and voices have been duly identified by PW-41 by confirming that these are the same audio conversations, which she recorded on her mobile phone. The mobile phone Ex.PX1 has been checked at the final stage and the original audio recordings / files are found intact and same have been heard thoroughly and also matched with the transcripts Ex.PW41/C. Accordingly, the audio conversations are proved by bringing the original device (Ex.PX1) and therefore

even the certificate under Section 65B Indian Evidence Act is not required.

82. The audio conversations have also been played and heard at the final stage. The conversations appearing in CD and mobile are clearly audible, continuous and uninterrupted and matching with the specimen voices. The dialogues are naturally and mutually spoken by the speakers ruling out any possibility of editing and tampering. The voices are clearly audible and there is no disturbance. Suman(PW-41) who recorded the voices, have properly identified the same and expert report also matched the voices. I therefore, conclude that recorded conversations fulfill all parameters of admissibility and proof as per law.

83. Coming to the nature of conversations (dated 15.07.2017), it is clear that there has been long discussion about sale and purchase of question paper and that meeting of Sunita, Sushila and Suman took place at Sindhi Sweets, Sector -17, Chandigarh. Some of the relevant portions of the conversations are being reproduced (with english translations) as follows:-

Date 15.07.2017 Call Time: 12:13:27

सुमन:- तो फिर वो बात कर ले न तू ये कह रही है कि भई Pre का तो पहले हम free में दिलवा दूंगी मैं। और main कि आगे कर लेगी बात फिर जो होगा। जो लेना देना होगा।

Suman:- Means you are saying that preliminary you will get for free and would further talk about main and would see, what is to be exchanged.

सुशीला:- नहीं, फिर इसके थोड़े बहुत तो देने पड़ेंगे ।

Sushila:- No, some little you have to give.

सुमन:- अब थोड़े बहुत प आ गई।

Suman:- Now you are on some little.

सुशीला:- थोड़े बहुत, बिल्कुल free थोड़ी यूं तो पेपर थोड़ा बहुत देना ही पड़ेगा। वो मैंने कहीं नहीं थी एक बन्दे न बात करी है कि वो कह रहा था चल भई 5 दे दियो। बताई नहीं थी तेरे को ये बता ।

Sushila:- Some little, paper cannot be absolutely free, something you have to give. I told you that I talked to one person and he was saying that ok give 5. I told you.

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सुशीला:- मैं वही तो कह रही हूँ फिर।

Sushila: Samething I am saying.

सुमन:- इसका मतलब तेरे पास तो पेपर आ रहया है।

Suman: Means you are getting the paper.

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सुमन:- मैंने पता चै तो तू ले रही है पेपर अर चै तू फिर वहाँ जा ली तैयारी करन बस ये दो ही काम हैं। अगर ऐसा होया तो मैं तो

जिंदगी, मैं न, मैं तो फोन करूंगी नहीं तेरे को मेरे को तो जिन्दगी में बात न करिए फिर क्योंकि ऐसे भई फिर दोखेबाज friend तो रखने ही नहीं।

Suman: I know that you are taking the paper and you are going for preparation there. If this is so, I will not call you and talk to you for the whole life, because I don't want such dishonest friend.

सुशीला:- वो तो मैं हॉ भरूंगी पेपर वालों को तब बुलावेगी न वा यूं थोड़ी बुलावेगी। हॉ final करी नहीं है मैंनें।

Sushila:- If I say yes to the people having paper only then they would call me. I have not finalised with them.

सुमन:- तू final करले बात, नहीं तो मुझे पेपर भेज दे फोटो खींच के तेरे को बता दूंगी अगर अकेली करा न तूनें मैं तो बात नहीं करूं जिंदगी में तेरे से बस।

Suman:- You finalise, otherwise you send me the paper by clicking the photos. I tell you, if you would do it alone, I will not talk to you for the whole life.

मैडम (Sunita) - हॉ भई सुमन क्या हाल है।

Madam(Sunita):- how are you.

सुमन:- ठीक हैं, हो गई इससे बात मैंने तो इससे कहा था कि मखा यार जैसे तू करेगी वैसे कर लिए ।

Suman: Fine. I have spoken to her and told her as you wish you do.

मैडम (Sunita):- देखो मैंने इसको पहले बताया था मैंने इसको 2-3 बार कह दिया था कि अगर अपनापन है तो इसको पहले ही फोन किया था कि सुशीला ऐसे-ऐसे है लेकिन इसको विश्वास नहीं हुआ secondly यूं है कि 2-3 बार कहेंगई कि सुशीला आज बात करनी है सुशीला यूं कही गई नहीं यार ऐसे नहीं होता- ऐसे नहीं होता-ऐसे नहीं होता ऐसा कुछ नहीं होता चलो भई ठीक है तो सुमन कोई बात नहीं।

Madam (Sunita) :- See I earlier told her 2-3 times that if there is personal relation, so I called her to say Sushila it is like that, but she did not trust, secondly 2-3 times Sushila called for having conversation but Sushila did not go, things do not take place like this, things do not happen like this, right Suman doesn't matter.

सुमन:- यार काम ऐसा है ये कि इसमें विश्वास बहुत कम होता है लोगों को काम ही ऐसा है ये समझा करो म्हारी जानकारी में भी है बन्दे, पता है इतना पैसा है तो लोगों को बड़े उससे वो करना पड़ता है भई।

Suman: Friend, the matter is such where trust is very low, people do like that, please understand, we also know some persons when so much money is involved, then people have to be like..

मैडम (Sunita) :- इसलिए है, देखो हर जगह हर किसी से बात हो नहीं सकती ना हर कोई इसमें बात कर सकता ठीक है ना

हम मिलते हैं थोड़ी देर के बाद half an hour के बाद आज्ञा यहाँ पे 17 Sindhi पे।

Madam (Sunita) : See, we cannot talk everywhere nor everyone can talk to us, right, we meet after sometime, come to 17, Sindhi after half an hour.

सुमन:- ठीक है।

Suman: Right

मैडम (Sunita):- ठीक है ना Sindhi Sweets पर बैठते हैं आ जा।

Madam (Sunita) : Come, we sit at Sindhi Sweets.

Date 15.07.2017 Call Time 18:49:17

सुशीला:- 10 त कम कोनी मानअ वो मना कर गई।

Sushila: she is not agreeing in less than 10, she has refused.

सुमन:- वो तो हम भी मना कर आये थे फिर इतने के पेड़ो पर लग रहे हैं ये भी तो मना कर आये थे इसके तो ऊपर का है ही नहीं ना। चल कोई बात ना।

Suman: We also declined about that, as if it is available on trees and this does not cost so much, ok, no issue

सुशीला:- अगर तेरे को मेरे पर यकिन नहीं है तो मैं तेरे घर आजाऊ हूँ दोनो पड़ लेंगे बैठ के।

Sushila: If you do not trust me, I come to your house, we would study together.

सुमन:- मुझे पता है तेरा तो ले रही है तू, मनअ पता है यार मैं समझती नहीं क्या वो तेरी friend है मेरी थोड़ी है इतना तो पता ही है।

Suman:- I know you are taking, I know and I understand that she is your friend not mine, this much I know.

सुमन:- तेरी और उसकी एक बात है चल कोई बात न तेरी friend है यार मुझे क्या लेना है वो तो तुम्हारी बात थी भई इतने में हो जाएगा तो ठीक है।

Suman:- You and her have dealing, no matter she is your friend, I have nothing to do, it is between you and her.

सुशीला:- अरे friend कौन friend है आजकल पैसो के मीत है मेरे कान्या इतने है नहीं।

Sushila: There are no friends. These days there are friends for money. I don't have this much.

Date 15.07.2017 Call Time 20:17:49

सुमन:- जैसे भी इतने मांगअ है, अर फेर यूं भी मुझे नहीं लगा रहया अक ले रही है वो जो तेरे को दिया होगा ना पेपर दिया था. वो जो दिया था पेपर ले रही थी झूठा।

Suman: She is asking for so much money and if she is taking, then must have given paper to you or the paper which was given was false.

सुशीला:- जैसे दिखा दिया होगा किसी Academy का व UG से 2-4 बता रख हैं क्या पता क्या है न।

Sushila: who knows, paper shown was of academy or of UG, 2-4 she told.

सुमन:- वो तो कल पता लग जागा, question ओ, तनै देखे थे ना उसमें वे अगर आये पागे तो मान लेंगें कि या सच बोले थी।

Suman: It would be known tomorrow, if the questions you have seen, come in the paper, we would agree that she was telling the truth.

सुशीला:- हूँ हूँ।

Sushila:- Yes. Yes.

सुमन:- अगर वो question नहीं आये पाए।

Suman: If those questions are not found in the paper.

सुशीला:- चल न्युं है सुमन तू सोच, तू नाराज होगी मेरे से सच में ऐसा कुछ नहीं है पैसा का लालच है सबका। कौन करवावे था न्युं अगर ये कर लेती तो फंसती चली जाऊंगी मैं। अकेली ना होऊं इसलिए मैं तेरे को साथ मिला रही थी। फिर तेरे को

बुलाया, अगर ऐसी बात होती तो त एक बार सोच के देख क्यों बुलाती ।

Sushila:- Suman, you think you would get annoyed, in reality there is nothing like that, everyone is having greed for money. If I do like this, I would be in trouble. I never wanted to be alone and therefore asked you to be with me. I called you if it was like that, why would I call you.

सुमन:- यार वो तो बात ठीक है तेरी लेकिन अगली की बातों से भी वो देख कितनी तो बात बदल ली। मैं तो तेरे ऊपर थोड़ा वो था तू न्यून कहवे थी कि हाँ इसने मेरे हाथ में पेपर दिया है।

Suman: Friend, you are right but see that she is changing her version. You were saying that she did give paper in your hands.

Date 15.07.2017 Call time 20:24:30

सुशीला:- अगर इसा कोई, हाँ ADA की पर जोर देवेंगे अगर कुछ है तो तेरे husband से कर लिए बात। और क्या नाम है अगर जो चीज मैंने देखी थी वैसे डिटो मिल गई तो देखेंगे cancel भी करावेंगे। क्यों नहीं।

Sushila:- If it is like this, we would stress on ADA and if there is something, you talk to your husband. If I get the same thing which I had seen, we would see and get cancelled also, why not

सुमन:- हाँ वो तो अच्छी बात है।

Suman:- that is the good thing

सुशीला:- कोशिश करके देखेंगे, अर करेंगे।

Sushila:- We would try

सुमन:- कोशिश क्या वो तो बाद कि बात है। अभी तो क्या पता वो आयेगा, मुझे नहीं लगता उसका original है वो। बात खत्म ठीक है। क्योंकि दस दिन पहले कहीं पेपर नहीं छपता यार। जो तू कह रही है कि देखा है।

Suman:- what try, it is to be seen subsequently, we don't know if that will come, I don't feel that is original. Matter ends, because paper is not printed 10 days prior which you are saying you have seen.

सुशीला:- वो blackmail कर रही होगी कि पैसे निकाल ले ।

Sushila:- She must be blackmailing to extract money.

सुमन:- क्या पता वो पैसे निकालने के लिए कर रही होगी।

Suman:- Who knows, she might be doing it to extract money.

सुमन:- ना वो तो पहले पैसे वाला system होगा क्या पता क्या है। Duplicate paper होगा। अगर वही पेपर है तो कल पता लग जायेगा question answer एक आधा और बता दे question answer याद हो जो। मेरे पूरे भी नहीं करवाये। यूं बोली दस पन्द्रह तो याद हैं एक भी नहीं, मतलब मुझे पाँच सात लिखवाये।

Suman:- That must be system of money who knows what it is. Might be duplicate paper. If this is the same paper, it would be known tomorrow. Tell me

one or more question answer if you remember, you have not given me complete, as you were mentioning about remembering 10-15 and you disclosed to me 5-7.

सुमन:- बातों में आकर पैसे दे देंगे पहले, बात खत्म और कल clear हो ही जायेगा। अगर question वही आए पागे तो फिर हम मान लेंगे कि ये सही बोलै है।

Suman:- We would give money as per claim, matter ends and would get cleared tommorrow. If same questions are found then we would agree that she was right.

सुशीला:- मजा जब आवे तब cancel करवाएगे कुछ डाल के, cancel होना चाहिए यार।

Sushila:- we would feel good if we get it cancelled. It must be cancelled.

सुशीला:- हाँ मिल जुलकर कर लेते तो ठीक था, अगर था तो, न्यू भी नहीं बेरा न हकिकत क्या थी।

Sushila:- It would have been right if we had done it by contribution, we don't know what is the reality.

सुमन:- अगर इकट्ठा करते तो ये तो पता ही था।

Suman:- If we would have done together, it was already known.

सुशीला:- जभी मिला रही थी में अकेली नहीं फसना था में नहीं।

Sushila:- that why, asking you to be with me, I never wanted to get into trouble alone.

सुमन:- इकट्ठे होते तो कर लेते, यूं थोड़ी न कि अलग-अलग, 9-10 लाख पेड़ पर थोड़ी न लग रहे हैं कि तोड़ कर दे दें।

Suman:- We would have done it by contribution, it is not possible separately, 9-10 Lakhs are not hanging on trees that we can pluck and give.

Date 15.07.2017 Call Time 21:00:24

सुशीला:- पता नहीं देखी जायेगी, पच्छतावांगे कि खुश होवांगे, के होगा।

Sushila:- Don't know what would happen, whether we would regret or we would be happy.

सुमन:- बस कुछ नहीं होगा, मैं ना पच्छताऊ, पच्छताने का क्या मतलब है यार।

Sushila:- Nothing would happen, I don't regret, there is no reason to regret.

सुशीला:- यार मिल गया तो पच्छतावा भी होगा यार, कर ही लेते शायद। फिर यार इतना हो भी कौनी मुँह ज्यादा पाड़े है। यार फिर mains में अटक आती।

Sushila:- Friend, if we get the same, we would regret to have done it perhaps. Even then, was asking too much or, then could stuck in mains.

सुमन:- यार किस पै है इतने 1-1 करोड़ रुपये न्यू बता मुंह बा दिया आपना मुंह खोल दिया आपना, जैसे पेड़ पै ते तोड़ के हम इसके मुंह में डाल देंगे ऐसे थोड़ी होवे है अक नहीं।

Suman:- Who is having 1 -1 crore rupees. You tell me, she opened her mouth as if, we would pluck from trees and pour into her mouth, this does not happen like this.

सुशीला: हूँ हूँ।

Sushila:- Yes. Yes.

सुमन:- काम भी तो हो ना।

Suman: Work should also be done.

सुशीला:- आदमी दो दो मिनट में बात बदलअ है अक Fair करवा दूंगी फिर कह रही है बाद में लाके दिये मतलब यो यू कह रहा है दाने डाल रही है लेकिन मान ले Pre हो जाता है न्यू कहवे है करतीए मेरे को 25 mains के लिए advance में चाहिये।

Sushila:- The person changes the version in every two minutes saying would get it fair and then give subsequently, meaning she was saying, she was

inviting but suppose pre happens then she seeks 25 for mains in advance.

सुमन:- हाँ।

Suman:- Yes

सुशीला:- वो कहाँ से दयूंगी मैं एक दम यार advance म कैसे दूंगी और क्यूं दूंगी और आगे mains का तनै बेरा है Pre का तो मान भी ले कर भी दे और वो ना हो फेर।

Sushila:- From where I would give, how I would give advance and why and for mains you know, even if happens for a pre and that does not happen then.

सुमन:- क्या ठोस चाहिये तेरे से बड़ा ठोस सबूत क्यो होगा eye witness है तू तेरे हाथ में पेपर दिया है अगली नें। तेरे से बड़ा ठोस सबूत होगा कोई।

Suman:- What solid, there can be no solid proof than you, you are eye witness, she has given paper in your hands, there would be no solid proof than you.

सुशीला:- फिर मेरी कौन मानेगा दिया है पेपर, तो फिर न्यूं कह है तू भी तो फसेगी क्यो लेण गई थी।

Sushila:- Then who would agree to me that paper was given, as they would say, why I had gone to take and I might get into trouble.

सुमन- मैंने तो देखा होता मैं तो करवा दियूं अर मेरे हाथ में पेपर आया हो ना तो मैं तो यूं कह दूंगी जाके सीधा कि मेरे हाथ में रखा है इसने पेपर और ये ये question थे thats all.

Suman:- If I would have seen the paper, if paper had come into my hands, I would say straightaway that she had handed over the paper to me and these were the questions, thats all.

सुशीला:- मैं भी कर दूंगी, टेंशन ना ले तू।

Sushila:- I would also do, you don't take tension

सुमन:- बस तो फेर।

Suman:- Ok then

सुशीला:- साथ मिलेगी तो गवाह रहिये, मेरे से बताया करती।

Sushila:- If you are with me, be the witness that I used to tell you

सुमन:- डरती है ना वा तो थोड़ी सी वैसी है ना कुछ वा यूं डरगी मेरे ख्याल यार कि जब इननें न्यू कह दी की हम भी रोहतक के हैं वा यूं सोचे थी कि बानिया-बुनिया होंगे चल अपना वो करले, वा थोड़ी सी यूं हिचक गई कि रोहतक के हैं उस चक्कर में हट गई वो।

Suman:- She fears, she is like that and she got little frightened, I think when we told her that we are from Rohtak, then she thought we are from Baniya Community and then she was little hesitant as we are from Rohtak and for that reason she backtracked.

सुशीला:- तेरे husband नैं एक wording गलत कहदी उसमें सारा काम खराब हो गया। मैं सोची दिखाह होवेगी किमें setting होवेगी। तुने नहीं बोलना बीच में मखा ठीक है भई।

Sushila:- Your husband used wrong wordings and for this matter got spoiled. I thought there would be setting, and I thought not to intervene

Date 15.07.2017 Call Time 21:37:55

Date 15.07.2017 Call Time 22:07:55

सुशीला:- न्यू नहीं ना ना, फिर उसको यूं है न यो लालच दिया था कि हम mains में आजायेंगे तो अगले दिन उसको पैसे कैसे देऊंगी mains के लिए 25 यूं बता फेर तू advance में मांगे है न्यू कह है ज्यादा नहीं तो 25 तो मुझे जरूर चाहिये।

Sushila:- No. It is not like that, the thing is, we gave her attractive offer that if we come in mains, next day how would I give money for mains 25 demanded in advance. She was saying, if not more atleast 25 she should have.

सुमन:- ना अब तो यार मना करे थी कि बाद में दे दिये चल कवे थी र।

Suman:- No, she was now denying that may give thereafter, as she was saying.

सुशीला:- Pre की कवे थी mains में advance में कहते है मैडम, pre-pre की कह रही है बाँद में।

Sushila:- She was saying for pre, for mains she was seeking advance, for pre she was saying to pay subsequently.

सुमन:- वे तो तनै बताये लेकिन अब तू उसके टच में आज गई दोबारा तो फिर उसने तेरे को मना कर दिया तो अब तुने भी मेरे को वो कर दिया अक नहीं।

Suman:- She told you but when you got in touch with her again today, she denied and the same you have done to me.

सुशीला:- नहीं उससे मेरे को नहीं दिखाया वो, वो कह रही है final कर mains के लिए कि होते ही token money जमा करवावेगी तो मैं तेरे को आगे करूंगी नहीं तो नहीं, उसने मेरे को ये कहा है सिर्फ, अर मेरा पेपर clear नहीं हुआ तेर ली लगा ले फेर तू क्या मानेगी तू न्युं नहीं पच्छतावेगी।

Sushila:- No, she has not shown me, she is saying to finalise, for mains deposit token money and only then she would do further, otherwise not, she has said to me, if I do not clear the paper, then you would agree and would not regret.

सुमन:-फेर उसके साथ यूं देख तेरे को पेपर दिखा दिया मेरे को थोड़ी दिखाया उसने अगर मेरे को दिखा देती तो तू कहती।

Suman:- She had shown you the paper and not to me. if she had shown me the paper, then you would have said.

सुमन:- जो पढ़ के आई वो बता दे मेरे को question फटा-फट। मैं पढ़ लूंगी अब।

Suman: Please tell me the questions which you have read. I would study.

सुशीला:- मेरे को नहीं दिखाया उसने 5 बजे पहुंची हूँ मैं।

Sushila: She has not shown me. I have reached at 5.00 p.m.

सुमन:-अब अच्छी friend है मेरी, मेरे को question बता दे, मैं फटा-फट पढ़ लूंगी यार

Suman:- You are my good friend tell me the questions, I would promptly study.

सुमन:- चल देख लिये अपना फोन खूला रखिये क्या पता अगली फोन कर ले, तू भी कर ले।

Suman:- Ok see, you keep your phone open, She might call you, you also call her.

सुशीला:- नहीं उठा रही, मिलाया था, busy ना वो बन्द आ रहा है उसका, ये नम्बर मौजूद नहीं है यूं लिखा आवे है।

Sushila:- she is not picking up, I dialled, it was not busy but closed, flashing that this number is not available.

सुशीला:- मैं तो कुछ बोलन जोगी भी ना छोड़ी न, बाद में उसतै लइत-लूड़ती भी, तेरा husband न एक wording गलती कह के नाश कर दिया सारा, साली न पाँच-पूँच तक भी ले आते।

Sushila:- you have not left me capable to say anything, I would have fought with her. Your husband by saying wrong wording spoiled everything. we would have brought her to five.

84. The prosecution has been able to successfully establish the genuineness, the relevance and incriminating nature of recorded conversations which are an important link in the chain of circumstantial evidence.

(v). The result showing Sunita and Sushila topping the exam in their respective categories and conduct of accused Sunita.

85. PW-15 Ishwar Singh, Superintendent, Recruitment Branch, Punjab and Haryana High Court has given detailed testimony wherein he deposed that result was prepared on 31.07.2017 and 01.08.2017 by scanning OMR sheets. It was found that topper candidate was more than prescribed age of 42 years and her name was Sunita from general category. This fact was informed to Balwinder Kumar Sharma, Registrar (Recruitment) who mentioned about woman having benefit of age relaxation if she is deserted /divorced / having proceedings under Section 125 Cr.P.C. During this period, Ishwar Singh received call on his mobile and the caller informed that she was Sunita. Sunita also attempted to meet Ishwar Singh and requested him to speak to her exclusively but Ishwar Singh did not permit. Again when this information was shared, Balwinder Kumar Sharma asked Ishwar Singh to have atleast listened to her. Sunita again telephoned Ishwar Singh to say that she was ready to do anything so much so, that in the evening, Sunita reached the residence of Ishwar Singh and attempted to bribe him by taking out polythene from her bag. Ishwar Singh warned her to call the police and Sunita had to leave. During cross examination, PW-15 Ishwar Singh deposed that his mobile was seized by SIT vide seizure memo Ex.PW15/A. The statement of Ishwar Singh was also recorded during the vigilance enquiry. His mobile phone was produced during the trial as Ex.P1. On opening the mobile phone, details were found matching with the screenshots Ex.PW15/E and Ex.PW15/F proving that there were calls and SMS(messages) to Ishwar Singh on 04.08.2017 sent from mobile number 9877339926 (number existing in the name of Ayushi).

Accused Sunita has been duly identified by Ishwar Singh in the court. It is also clear from the messages that sender wanted to meet Ishwar Singh exclusively and was asking for time. When Ishwar Singh (PW-15) was cross examined on behalf of accused Sunita, he categorically denied the suggestion that Sunita never called him or sent any message or that she did not visit his house. No motive could be attributed to Ishwar Singh (PW-15) to depose falsely against accused Sunita.

86. Even otherwise, on perusal of statements of Ishwar Singh recorded under Section 164 Cr.P.C Ex.PW15/D and recorded before Registrar (Vigilance) Ex.PW15/C, I find that witness remained strong and consistent on his version and there is no reason to disbelieve him or to doubt his credibility. The fact therefore is proved on record that Sunita being candidate of HCS (JB) Preliminary Examination 2017 attempted to bribe Superintendent of Recruitment Branch after the result was prepared and objection of age was raised by him before Registrar (Recruitment) Balwinder Kumar Sharma. This raises strong inference that Sunita was getting inside information about her rank / result despite the fact that result was not declared.

87. The OMR sheets of Sunita and Sushila as well as draft result has been produced on record by way of attested copies (part of Ex.PW17/B colly) which shows that Sunita topped the general category by scoring 456.8/500 by attempting 115 questions correctly. Accused Sushila scored 425.6/500 by attempting 108 questions correctly.

88. PW-29 Surender Singh Bhardwaj, owner of Jurist Academy at Chandigarh claimed that Sunita and Sushila were the students of his academy. He testified that both Sunita and Sushila were average students and it was surprising that they secured first position in their respective categories in the exam. The testimony of PW-29 has been controverted on behalf of defence by suggesting that Sunita and Sushila were not the students of Jurist Academy. It has also been argued that no record has been produced by PW-29 to prove this fact. However, on analyzing the testimony of PW-29, I am of the opinion that there is no reason to disbelieve him as he had no motive to depose falsely against accused Sunita and Sushila. PW-41 Suman has also confirmed in her testimony that she was taking coaching at Jurist Academy and Sushila was also taking the coaching. During cross examination, no suggestion has been given to PW-41 that Sunita and Sushila were not the students of Jurist Academy. Before the Registrar (Vigilance) Sunita and Sushila in their statements admitted that they were students of Jurist Academy.

89. In the background of Suman complaining before authorities about paper leak by Sunita and Sushila, the factum of Sunita and Sushila scoring high marks and topping the exam in their respective categories, raises a strong inference that they have performed not on the basis of merit but because they had access to the question paper prior to the exam.

90. The above circumstance accordingly stands established by the prosecution.

(vi). Nexus between Balwinder Kumar Sharma, Registrar (Recruitment) with Sunita (candidate of the exam).

91. According to the prosecution, the accused persons Dr. Balwinder Kumar Sharma, Registrar (Recruitment) and Sunita (candidate of the exam), have been in close intimate relationship and in order to give benefit to Sunita, Dr. Balwinder Kumar Sharma by abusing his official position provided the question paper to her and she subsequently negotiated with other candidates to share the same for consideration. The prosecution seeks to prove the factum of close intimate relationship of Sunita and Balwinder Kumar Sharma, firstly by way of call detail records, secondly through record of stay at Yatri Niwas, Kurukshetra and thirdly through visits of Balwinder Kumar Sharma to the place of Sunita i.e. Radha Krishan Mandir, Sector-18C, Chandigarh.

92. Communication is an integral part of lives of people. The way we communicate has changed significantly through time, from telephone, to e-mails, to social media and to digital communication. The use of smart mobile phones is most important means of communication and has become inevitable. Every time, calls are connected or messages sent / received from mobile phone, the data is entered in the system. Therefore, use of mobile phone leaves behind the evidence from where the activities can be tracked.

93. To analyze the call detail record, firstly the mobile phone numbers used by accused persons to connect must be proved on record. As per evidence, mobile numbers

(8168433775 and 8396861786) were being used by Sunita. PW-61 Prakash Saxena has proved the relevant record relating to mobile number 8168433775, CAF (Ex.PW61/W), CDR (Ex.PW61/X) from 22.09.2016 to 22.09.2017 and location chart (Ex.PW61/Y). PW-75 Sanjay Bhatnagar has proved the record relating to mobile number 8396861786 CAF (Ex.PW75/D) and PW-51 Amit Dabra has proved its CDR (Ex.PW51/B) from 01.09.2016 to 20.09.2017.

94. On perusal of the record of mobile numbers (8168433775 and 8396861786), particularly customer application forms and identity documents therewith, it is clear that numbers were applied and allocated to Sunita on 22.12.2016 (8168433775) and 29.07.2016 (8396861786) respectively.

95. On the other hand, accused Balwinder Kumar Sharma was using mobile number 8054012444 as proved with the testimony of PW-52 Surjit singh and the record CDR (Ex.PW52/B) from 01.09.2016 to 13.09.2017 and location chart Ex.PW52/C. PW-75 Sanjay Bhatnagar has proved the CAF of the said mobile number Ex.PW75/A. Accused Balwinder Kumar Sharma was also using official mobile number 9780008235 allocated in the name of Registrar, High Court. PW-51 Amit Dabra proved its CAF (Mark PW51/C) and CDR Ex.PW51/D from 01.10.2016 to 03.10.2017).

96. On perusal of the record of mobile numbers (8054012444 and 9780008235), particularly customer application forms and identity documents therewith, it is clear that numbers were so allocated to Balwinder Kumar Sharma.

Mobile number 9780008235 was allocated to Registrar, High Court on 11.12.2009 and the said number was de-activated on 05.06.2017 (Ex.PW75/H). The electronic evidence relating to the customer applications (CAF) and call details (CDR) of above mobile numbers have been proved by authorised officials of service providers duly supported with certificates under Section 65 B Indian Evidence Act.

97. During the vigilance enquiry in his statement recorded as EW-4, Balwinder Kumar Sharma admitted about using abovementioned mobile numbers as follows:-

“I do not know topper girl Ms.Sunita in any manner. I have never met her. I cannot say whether I ever talked to topper girl Ms. Sunita on mobile number or on landline phone but I generally received phone calls from the candidates regarding the ongoing examinations. I might have received the calls from Ms.Sunita also. I have mobile phone numbers 97800-08235 and 80540-12444. The mobile phone numbers of my wife and my son are also in my name. One of the mobile phone number is in the name of my son. I have disclosed all the mobile phone numbers in my letter sent to this court. I do not enquire from the candidate about his/her name if the candidate makes repeated calls. Sometimes if I feel that the mobile phone number appears to be known then I make a call to know as to the identity of the person who had called me. My mobile phone number 97800-08235 is in public domain but my other mobile phone number is not in public domain and some candidates might have made a call on the same if I made call with my other mobile phone number. I do not remember to whom mobile number 83968-61786 belongs. I have seen the call details record which is Exhibit EW 4/B which shows that there were about 726 voice calls/ SMSs between my mobile phone

number 80540-12444 and mobile phone number 83968-61786 and the duration of some of the calls is about 1800 seconds or more. I have seen the calls details record which is Exhibit EW4/C which shows that there were about 34 voice calls/ SMSs between my mobile phone number 97800-08235 and mobile phone number 83968-61786.

I have seen the copy of list of candidates for the post of HCS (JB) Preliminary Examination 2017 sent by Haryana Public Service Commission to Superintendent, Recruitment Cell and the copy of the same Exhibit EW4/D in which at serial number 16662, candidate Sunita s/d/w/o etc Ranjit Singh, DOB : 10-07-1973, Category : General, resident of 242/1, Ganga Bishan Nagar, Saini College Road, Rohtak, Haryana has mentioned her contact number as 83968-61786. I do not know anything about this document. I do not know anything about 760 calls/SMSs made between mobile phone number 83968-61786 and my mobile phone numbers 97800-08235 and 80540-12444. I do not know as to who talked on these above said mobile phone numbers and for what purpose. The information given in the call details record is incorrect. I am being made a scapegoat to save someone but I cannot tell by whom I am being made a scapegoat and to save whom.”

98. During the Vigilance enquiry, the detailed statement of accused Sunita was recorded as EW-9 wherein she admitted call detail records between phone numbers 8396861786 and 9780008235 but feigned ignorance as to how these calls were made from her mobile. According to Sunita, she was not knowing Dr.Balwinder Kumar Sharma.

99. On analyzing the call detail records of above mobile numbers of accused Sunita (8168433775 and 8396861786) and mobile number of accused Balwinder Kumar Sharma,

(8054012444), it is found that there have been multiple calls between them during the period 01.09.2016 to 14.02.2017, showing long duration conversations. Also, there are several calls in between official mobile number 9780008235 used by Balwinder Kumar Sharma and mobile number 8396861786 used by accused Sunita during this period. Although, the defence has tried to dispute the genuineness of call detail records but in my opinion, there is no reason to disbelieve the testimony of these official and neutral witnesses who have proved the record by retrieving the data from the computer system. There is no scope of error or manipulation nor the witnesses had any motive to fabricate the evidence.

100. From the electronic evidence relating to call details of accused Sunita and Balwinder Kumar Sharma, the fact is clearly established that they were knowing each other very well and were frequently connecting to each other on phone and conversing for long durations. The frequency and duration of calls between Sunita and Balwinder Kumar Sharma, indicates to their close relations and proximity.

101. Further, the prosecution case is that after February 2017, both the accused persons stopped communicating on their official/ regular mobile numbers and obtained secret numbers to remain connected to each other. Mobile number 8360753268 was allegedly used by Balwinder Kumar Sharma, although the same was in the name of Ashish Kumar (PW-68) as per CAF Ex.PW61/F. As per testimony of PW-68 Ashish Kumar, he obtained Jio SIM 8360753268 and handed over the same to

accused Ayushi (A-4) at her request. The fact that the said number was being used by Balwinder Kumar Sharma is proved through location chart Ex.PW61/P (8360753268) which shows that mobile was being operated from the places which included Sector 24, Chandigarh (Residence of accused Balwinder Kumar Sharma) and Punjab and Haryana High Court (work place of Balwinder Kumar Sharma) and other places, where the regular / official numbers (8054012444/9780008235) of Balwinder Kumar Sharma were also having the simultaneous location.

102. It is evident that the mobile number 7973415192 was procured by accused Sunita from Naresh Sharma (PW-37) and she was using the said mobile number to connect to the secret number of Balwinder Kumar Sharma (8360753268). It is proved with the testimony of Naresh Sharma that he handed over Jio SIM to Sunita at her request. Also this phone number had simultaneous location with regular mobile (8168433775 and 8396861786) of accused Sunita.

103. The witnesses Ashish Kumar (PW-68) and Naresh Sharma (PW-37) have stood their ground during the cross examination and remained firm on their version that SIM cards were procured by them at the instance of accused persons (Ayushi and Sunita).

104. On analyzing the call detail records between these two numbers (7973415192 and 8360753268), it is found that there are again multiple / several calls of long durations showing that both these numbers remained constantly connected to each other.

105. It is argued on behalf of defence that both these secret numbers cannot be attributed to the accused persons as there is no documentary evidence on this aspect. However, I am not inclined to attach any value to the defence version as prosecution witnesses have been clear in their depositions that phone numbers were procured by them at the instance of accused persons. Further, the locations from where the phone numbers were operating confirm that they were being used by accused Balwinder Kumar Sharma and Sunita. It is also important to note that locations of regular numbers of the accused persons 8396861786 (sunita) and 8054012444(Balwinder Kumar Sharma) are matching with their respective secret numbers.

106. The second point raised by prosecution to prove the close relationship of Balwinder Kumar Sharma and Sunita has been the record of stay at Neelkanth Yatri Niwas, Kurukshetra. Pratap Sharma (PW-62) has proved the visitor register Ex.PW62/A (colly) to show that accused Balwinder Kumar Sharma resident of 1024/24, Chandigarh stayed at Neelkanth Yatri Niwas on few occasions as follows:-

- (i) 25.12.2016 - 27.12.2016
- (ii) 04.03.2017
- (iii) 08.04.2017 - 09.04.2017
- (iv) 13.05.2017 - 14.05.2017
- (v) 23.06.2017

107. The online booking receipts have also been proved of all the above dates vide Ex.PW62/D along with certificate under Section 65 B Indian Evidence Act Ex.PW62/E.

108. On examining the visitor register of Yatri Niwas as well as booking receipts, it is clear that every time, stay at Yatri Niwas was booked by Balwinder Kumar Sharma by mentioning his residential, e-mail and mobile phone details. On each occasion Balwinder Kumar Sharma is accompanied by his wife as mentioned in the visitor register. The signatures of Balwinder Kumar Sharma are also appearing on the visitor register confirming his stay during the period at Neelkanth Yatri Niwas. As per location chart of mobile number 8054012444 of accused Balwinder Kumar Sharma, his location on all these dates is of Haryana, thus corroborating the evidence of his stay at Yatri Niwas.

109. The prosecution has been able to show through the record of C.L.Aggarwal DAV Model School, Sector 7B, Chandigarh where Mrs.Deepa Sharma wife of Balwinder Kumar Sharma was working as a teacher, that on all the dates Balwinder Kumar Sharma stayed at Yatri Niwas, his wife was present at her school. The school attendance register has been proved as Ex.PW20/A1 to Ex.PW20/A5. Also, through location of mobile number 7837789500 used by Deepa Sharma w/o Balwinder Kumar Sharma (as also mentioned in her school records) proved through CDR (Ex.PW33/I), it is clear that on all the above-mentioned dates (when accused Balwinder Kumar Sharma stayed at Neelkanth Yatri Niwas) his wife Deepa Sharma was present at

Chandigarh. Thus, the presence of wife of Balwinder Kumar Sharma during stay at Yatri Niwas is completely ruled out.

110. The question now arises as to with whom accused Balwinder Kumar Sharma stayed at Neelkanth Yatri Niwas. The answer to this question is found in the location charts of mobile numbers (8168433775 and 8396861786) of Sunita. The location of both these mobile numbers was simultaneous with the location of Balwinder Kumar Sharma's mobile number making it clear that accused Sunita was also present at Kurukshetra (Haryana) on all these dates.

111. Given the clear evidence about long duration phone calls of Balwinder Kumar Sharma and Sunita, the only conclusion comes from the mobile locations is that accused Balwinder Kumar Sharma and Sunita were together at Kurukshetra. It cannot be a co-incidence that on all the above mentioned specific dates, the mobile locations of Sunita and Balwinder Kumar Sharma have been of the same place.

112. Thirdly, the prosecution also seeks to prove the visits of Balwinder Kumar Sharma through record of taxi rides Ola and Uber. On perusal of the record so proved by PW-71 Yoginder Kumar and PW-72 Vaishali Gupta, I find that alleged visits of Balwinder Kumar Sharma to Radha Krishan Temple would not lead to the conclusion that he visited there only to meet Sunita. It is not shown that Sunita was permanently residing at Radha Krishan Temple or that on the dates taxi rides were booked, Sunita was staying at the Mandir.

113. However, the prosecution through the mobile calls and locations and through record of Yatri Niwas, has been able to prove the closeness of Sunita and Balwinder Kumar Sharma and this circumstance in itself, is incriminating against the accused persons.

False explanation offered by accused persons

114. On careful analysis of the prosecution evidence and defence pleas, it is clear that accused persons have been giving false explanations in defence.

115. During the trial, accused Sunita denied the prosecution case in toto. She pleaded that she never met Ishwar Singh nor sent any message to him. She was not the student of Jurist Academy and was not knowing Sushila. She denied to be the resident of Radha Krishan Mandir, Sector-18, Chandigarh. Sunita also denied the electronic evidence relating to mobile phone and locations.

116. However, when the statement of Sunita was recorded by Registrar (Vigilance) as EW-9, she admitted to be the student of Jurist Academy and also the fact that she was knowing Sushila. Sunita even admitted the fact that she tried to meet Ishwar Singh, Superintendent (Recruitment Branch) and even claimed that Ishwar Singh informed her that she was topper of the exam as per the result and also admitted having used mobile number (9877339926) of Ayushi. Sunita also admitted about meeting Suman at Sindhi Sweets, Sector-17, Chandigarh, although twisted the facts by saying that Suman was cheating and demanding money from Sushila. Sunita admitted exchange of

voice calls and SMS with phone (8054012444) of Balwinder Kumar Sharma. Sunita even identified her voice in the audio recordings dated 15.07.2017. However, during the trial, Sunita disputed the above facts by taking inconsistent pleas.

117. Accused Balwinder Kumar Sharma also made false submissions during the trial. He denied having the possession of question paper of HCS (JB) Preliminary Examination 2017 and that no pen-drive was taken from him. He also denied the fact that he was knowing Sunita although he admitted during the Vigilance enquiry that 726 voice calls were exchanged with her. Accused specifically denied having visited Kurukshetra or stayed at Neelkanth Yatri Niwas and strongly disputed the mobile phone calls and locations.

118. Both accused Sunita and Balwinder Kumar Sharma have been taking inconsistent pleas and giving false explanations. The defence pleas have been proved to be false and baseless. This can be taken as an additional link in the chain of circumstantial evidence. The conclusion can be drawn that both the accused persons have been dishonest in making their submissions in defence and this circumstance is pointing towards the guilt of accused persons.

Conclusion from above circumstances

119. From the above detailed discussion as to the circumstances, the natural and obvious inference comes that accused Balwinder Kumar Sharma was the most potential source from where the question paper could be leaked as he only was having exclusive possession of question paper of HCS (JB)

Preliminary Examination 2017. Since accused Sunita was in close relationship with accused Balwinder Kumar Sharma and was also candidate of the exam, she got the copy of question paper from Balwinder Kumar Sharma and became the beneficiary of the conspiracy. As accused Sunita was having the copy of question paper with her prior to the exam, she negotiated with Sushila and Suman to share the question paper on payment of money and demanded Rs.10 Lakhs for preliminary question paper. This led to filing of complaints and writ petition by Suman alleging paper leak. Accused Sunita and Sushila topped the preliminary examination in their respective categories by securing high marks despite being average students. This further leads to the conclusion that they were having the question paper with them before the exam. This cannot be taken as co-incidence that the candidate in close relationship with Registrar (Recruitment) tops the examination. The detailed vigilance enquiry also resulted in findings against accused Sunita, Balwinder Kumar Sharma and Sushila.

120. To sum up, the circumstances are incriminating in nature, form a complete chain and are consistent with the culpability of accused persons and inconsistent with their plea of innocence.

Role of accused Sunita (A-1) and Balwinder Kumar Sharma (A-2)

121. The individual role and participation of accused persons needs to be analysed before coming to the conclusion about their specific culpability.

122. The accused persons have been charged for the offence of criminal conspiracy punishable under Section 120B IPC. Accused Balwinder Kumar Sharma has been charged for committing substantive offences under Section 409, 420 IPC and u/s. 13 (1) d, r/w Section 13 (2) of Prevention of Corruption Act 1988 and accused Sunita has been charged for committing substantive offences under Section 8 and 9 of Prevention of Corruption Act 1988 and under Section 201 IPC.

123. To bring home the charge of conspiracy within the ambit of Section 120-B IPC, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. It is difficult to establish conspiracy by direct evidence and therefore an inference could be drawn from the proved facts and material, from which it would be reasonable to establish a connection between the alleged conspiracy and the acts done pursuant to the said conspiracy.

124. To constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of the conspiracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implication. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deduced from

the circumstances of the case and the conduct of the accused involved in the conspiracy. Criminal conspiracy is an independent offence in the Penal Code. The unlawful agreement is sine qua non for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express or partly implied.

125. In **“Shivanarayan vs. State of Maharashtra”**, AIR 1980 Supreme Court 439, it was held that,

“It is manifest that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the inferences drawn from acts or illegal omission committed by the Conspirators in pursuance of a common design.”

126. In **Kehar Singh & Ors. vs. The State (Delhi Administration)**, AIR (1988) SC 1883, Supreme Court has observed as under:-

38....."Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of the two persons is necessary. Nor it is necessary to prove the actual words of communication. The

evidence as to transmission of thoughts sharing the unlawful design may be sufficient.

127. The expression “Criminal Breach of Trust” is defined under Section 405 IPC which provides as under:-

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes off that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

128. To attract the offence under Section 409 IPC, the following ingredients must be satisfied:-

- (i) The accused must be a public servant or a banker, merchant or agent;
- (ii) He must have been entrusted, in such capacity, with property; and
- (iii) He must have committed breach of trust in respect of such property.

129. Accordingly, unless it is proved that accused is a public servant or a banker etc and was “entrusted” with the property which he is duty bound to account for and that such a person has committed criminal breach of trust, Section 409 IPC may not be attracted. ‘Entrustment of property’ is a wide and generic expression. While the initial onus lies upon the prosecution to show that the property in question was as such entrusted to the accused and misappropriated thereof, the burden

shifts upon the accused to prove that the obligation vis-a-vis the entrusted property was carried out in a legally acceptable manner.

130. The offence of criminal misconduct by public servant is provided under Section 13 (1)(d) of Prevention of Corruption Act 1988.

131. In pursuance to the judgment of Supreme Court, **Neeraj Dutta vs State (NCT of Delhi), (2023) 4 SCC 731**, the following ingredients are required to be proved for bringing home the guilt of a public servant under the above mentioned provision, namely:-

- (i). The accused must be a public servant.
- (ii). By corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or by abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.
- (iii) To make out an offence under Section 13 (1) (d), there is no requirement that the valuable thing or pecuniary advantage should have been received as a motive or reward.
- (iv) An agreement to accept or an attempt to obtain does not fall within Section 13(1)(d).
- (v) Mere acceptance of any valuable thing or pecuniary advantage is not an offence under this provision.
- (vi) Therefore, to make out an offence under this provision, there has to be actual obtainment.

(vii) Since the legislature has used two different expressions, namely “obtains” or “accepts”, the difference between these two must be noted.

132. The ingredients of the offences punishable under Section 409 IPC and under Section 13(1)(d) of Corruption Act are made out against accused Balwinder Kumar Sharma as he in the capacity of a public servant had exclusive possession of the final question paper of HCS (JB) Preliminary Examination 2017 and by virtue of his assignment as such, he was under solemn obligation to maintain the sanctity and integrity of the competitive exam. However, accused Balwinder Kumar Sharma provided the question paper to his close friend accused Sunita who got the benefit and secured highest marks. In this way accused Balwinder Kumar Sharma committed criminal breach of trust and used the question paper for his own benefit and accordingly misappropriated the same. Similarly, the accused Balwinder Kumar Sharma by abusing his position as public servant, obtained the question paper which has been a valuable thing, for his close friend Sunita. The criminal conspiracy to commit the offences under Section 409 IPC under Section 13(1) (d) of Prevention of Corruption Act 1988 is clearly discernible from the circumstances proved on record as against Sunita and Balwinder Kumar Sharma.

133. The issue of sanction under Prevention of Corruption Act has been raised on behalf of accused Balwinder Kumar Sharma on the plea that proper material was not placed for consideration of the competent authority and further there is

no application of mind on the part of competent authority. The sanction cannot be taken as legal and valid.

134. The law on this subject has been considered in detail by the Supreme Court of India in its judgment, **State of Maharashtra through CBI vs Mahesh G. Jain, 2013 (8) SCC 119**. The Apex Court culled out various principles of law relating to the sanction which are as follows:-

14. From the aforesaid authorities the following principles can be culled out: -

14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before him and, after consideration of the circumstances, has granted sanction for prosecution.

14.3. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and his satisfaction was arrived at upon perusal of the material placed before him.

14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

14.5. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.

14.6. If the sanctioning authority has perused all the materials placed before him and some of them have not been proved that would not vitiate the order of sanction.

14.7. The order of sanction is a pre-requisite as it is intended to provide a safeguard to public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hyper-technical approach to test its validity.

135. Coming to the case in hand, in view of the aforesaid principles and on proper analysis of the sanction order Ex.PW27/A, I am of the opinion that sanction has been granted on due application of mind by the sanctioning authority. The necessary material was placed and made available to the sanctioning authority and on consideration of the same, sanction has been granted. The sanctioning authority was satisfied with respect to the sufficiency of material. The ratio is that sanction should speak for itself and the satisfaction of the sanctioning authority should be apparent by reading the order. In the present case, sanction order speaks for itself and it is clear that sanctioning authority on due appreciation of the material, proceeded to grant the sanction in favour of the prosecution.

136. So far as offences under Section 420 IPC and Sections 8 and 9 of Prevention of Corruption Act 1988 are concerned, I have gone through the definitions, ingredients and scope of the same.

137. There are three components of the offence under Section 420 IPC:-

- (i) deception of any person

(ii) fraudulently or dishonestly inducing that person to deliver any property to any person and

(iii) mens rea of the accused at the time of making the inducement. It goes without saying that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

Section 8 Prevention of Corruption Act reads as under:-

8. Offence relating to bribing of a public servant.--

(1) Any person who gives or promises to give an undue advantage to another person or persons, with intention--

(i) to induce a public servant to perform improperly a public duty; or
(ii) to reward such public servant for the improper performance of public duty;

shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:

Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:

Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:

Provided also that when the offence under this section has been committed by commercial organisation, such commercial organisation shall be punishable with fine.

Section 9 Prevention of Corruption Act reads as under:-

9. Offence relating to bribing a public servant by a commercial organisation.

(1) Where an offence under this Act has been committed by a commercial organisation, such organisation shall be punishable with fine, if any person associated with such commercial organisation gives or promises to give any undue advantage to a public servant intending--

- (a) to obtain or retain business for such commercial organisation; or
- (b) to obtain or retain an advantage in the conduct of business for such commercial organisation:

Provided that it shall be a defence for the commercial organisation to prove that it had in place adequate procedures in compliance of such guidelines as may be prescribed to prevent persons associated with it from undertaking such conduct.

(2) For the purposes of this section, a person is said to give or promise to give any undue advantage to a public servant, if he is alleged to have committed the offence under section 8, whether or not such person has been prosecuted for such offence.

(3) For the purposes of section 8 and this section,--

(a) "commercial organisation" means--

(i) a body which is incorporated in India and which carries on a business, whether in India or outside India;

(ii) any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India;

(iii) a partnership firm or any association of persons formed in India and which carries on a business whether in India or outside India; or

(iv) any other partnership or association of persons which is formed outside India and which carries on a business, or part of a business, in any part of India;

(b) "business" includes a trade or profession or providing service;

(c) a person is said to be associated with the commercial organisation, if such person performs services for or on behalf of the commercial organisation irrespective of any promise to give or giving of any undue advantage which constitutes an offence under sub-section (1).

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under Section 7A, 8 and this section shall be cognizable.

(5) The Central Government shall, in consultation with the concerned stakeholders, including departments and with a view to preventing persons associated with commercial organisations from bribing any person, being a public servant, prescribe such guidelines

as may be considered necessary which can be put in place for compliance by such organisations.

138. Cheating during the exam amounts to unfair means and it is different and distinct from the offence of cheating as per Section 415 IPC. In the facts of this case, the offences under Section 409 IPC and 420 IPC are mutually exclusive and ingredients of Section 409 IPC is alone made out. The essential ingredient is either entrustment or dominion over the property under Section 409 IPC and if the case of the prosecution falls under entrustment then dishonest inducement to deliver the property (which is the necessary ingredient for offence under Section 420 IPC) does not arise.

139. In the judgment of **Wolfgang Reim vs. State (Delhi), 2012 (6) AD (Delhi) 568**, Delhi High Court held as under:-

34. Further, a person cannot be charged with the offence of cheating and criminal breach of trust simultaneously for the same transaction because for the offence of cheating, it is a prerequisite that dishonest intention must exist at the inception of any transaction whereas in case of criminal breach of trust, there must exist a relationship between the parties whereby one party entrusts another with property as per law, therefore, for commission of criminal breach of trust, the dishonest intention comes later, i.e, after obtaining dominion over the property by the accused person whereas for commission of cheating, dishonest intention of the accused has to be present at the inception of the transaction.”

140. In view of above legal position, since accused Balwinder Kumar Sharma has been held responsible for the

offence punishable under Section 409 IPC, the offence punishable under Section 420 IPC cannot be imposed against him on the same allegations.

141. In this case, Sunita although negotiated to sell the question paper and provided the same to Sushila but she has not promised to any candidate to give the said advantage by inducing any public servant to improperly perform his duty. Strictly construed, the ingredients of offences of Sections 8 and 9 of Prevention of Corruption Act 1988 are not made out against accused Sunita.

142. On considering the scope and ambit of these provisions and the definitions thereof, I am of the opinion, that the ingredients of offences punishable under Section 420 IPC and under Sections 8 and 9 of Prevention of Corruption Act 1988 are not made out in the present case.

143. In view of detailed analysis of circumstantial evidence (discussed above), the offences under Section 120-B IPC read with Section 409 IPC and Section 13(1)(d) r/w Section 13 (2) of Prevention of Corruption Act are made out against accused Sunita. The offences under Section 120-B IPC read with Section 409 IPC and 13 (1)(d) r/w Section 13(2) Prevention of Corruption Act 1988 and substantive offences thereof are made out against accused Balwinder Kumar Sharma.

144. Accused Sunita has also been charged for the substantive offence punishable under Section 201 IPC on the allegations that documents connected with the offence were removed /destroyed from her room in order to cause

disappearance of evidence. In this regard, there is no evidence brought by the prosecution to prove that any incriminating material relating to the question paper was destroyed by accused Sunita. Even no evidence has come to prove the fact that Sunita was allotted a room or was continuously residing at Radha Krishan Temple, Sector-18C, Chandigarh during the entire relevant period. In my opinion, accused Sunita cannot be held liable for the offence under Section 201 IPC as prosecution has failed to prove the same.

145. Further, from the circumstantial evidence it is clearly emerging that accused Sunita has also committed substantive offence punishable under Section 411 IPC i.e. dishonestly receiving stolen property.

The definition of ‘stolen property’ has been provided under Section 410 IPC which reads as under:-

Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as “stolen property”, whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without [India]. But, if such property subsequently comes into the possession legally entitled to the possession thereof, it then ceases to be stolen property.

146. Section 411 IPC reads as follows:-

Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either

description for a term which may extend to three years, or which fine, or with both.

147. Accused Sunita received the question paper from accused Balwinder Kumar Sharma, Registrar (Recruitment) who obtained the same by committing criminal breach of trust and this fact was very much in the knowledge of accused Sunita. Therefore, accused Sunita dishonestly received and retained the question paper knowing that the same has been obtained through criminal breach of trust. Therefore, ingredients of the offence punishable under Section 411 IPC are clearly made out against accused Sunita.

148. It is true that at the time of framing of charge, offence under Section 411 IPC was not included, however, this would not create any impediment as by virtue of provision of Section 222 Cr.P.C, accused Sunita can be convicted for the offence different from the charged offences, if the same is lesser /minor offence.

149. **Section 222 Cr. P.C** reads as under:-

222. When offence proved included in offence charged- (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be

convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

Illustrations

(a) A is charged under Section 407 of the Indian Penal Code (45 of 1860) with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under Section 406 of that Code in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said Section 406.

(b) A is charged under Section 325 of the Indian Penal Code (45 of 1860), with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

150. In **Bhimanna vs. State of Karnataka (2012) 9 SCC 650**, Supreme Court has held as under:-

‘18... In such a fact-situation, a question also arises as to whether a conviction under any other provision, for which a charge has not been framed, is sustainable in law. The issue is no longer res integra and has been considered by the Court time and again. The accused must always be made aware of the case against them so as to enable them to understand the

defence that they can lead. An accused can be convicted for an offence which is minor than the one, he has been charged with, unless the accused satisfies the Court that there has been a failure of justice by the non-framing of a charge under a particular penal provision, and some prejudice has been caused to the accused.”

151. In view of the above legal position and considering the facts and evidence of the present case, I am convinced that substantive offence punishable under Section 411 IPC is also made out against accused Sunita.

Role of accused Sushila (A-3)

152. Having concluded that offences under Section 409 IPC and u/s 13(1)(d) PC Act and conspiracy thereof are made out against Sunita and Balwinder Kumar and offence under Section 411 IPC is made out against Sunita, it needs to be looked into as to what offence has been committed by accused Sushila. Accused Sushila has been charged for the offence of conspiracy punishable under Section 120-B read with Sections 409, 420 IPC and u/s. 8, 9, 13 (1) d, r/w Section 13 (2) of Prevention of Corruption Act 1988 and also substantive offence under Section 201 IPC. According to the prosecution, accused Sushila has been a part of conspiracy as she received the question paper from accused Sunita and therefore secured highest marks in her category.

153. On analysing the entire circumstantial evidence proved on record, I am of the opinion that role of accused Sushila

comes into picture when the offences of criminal breach of trust and criminal misconduct by a public servant and conspiracy thereof, were already committed. The question paper was first provided to accused Sunita and thereafter she contacted Sushila for sharing the question paper and demanded money for the same. Accused Sushila was not aware nor had any knowledge about the source from where the question paper was procured by accused Sunita. No connection between accused Sushila and accused Balwinder Kumar Sharma has been established. There is no evidence on record to suggest that Sushila had any knowledge even about the involvement of any public servant.

154. Although accused Sushila took advantage by receiving the question paper from accused Sunita but it has not been proved that she acquired the same from Sunita on payment of money. The witness (PW-21 Anand) who has proved the sale of immovable property by accused Sushila could not say as to for what purpose sale was done by accused Sushila. It cannot be presumed that the property was sold by accused Sushila for the purposes of paying money to accused Sunita for purchasing the question paper. There is also no evidence to suggest that accused Sushila was part of the conspiracy whereby the question paper of preliminary examination 2017 was provided to accused Sunita by accused Balwinder Kumar Sharma.

155. The evidence appearing against accused Sushila is the audio conversations wherein she has been talking to complainant Suman about the claim of Sunita having the question paper and seeking contribution from Suman for

purchasing the same. But it is also clear that Sushila and Suman both were sceptical about the genuineness of the claim of Sunita and both wanted to take chances in purchasing the question paper.

156. Although, there is clear evidence that Sushila secured high marks and topped her category which leads to the inference that Sunita offered her to sell the question paper and she might have accepted the said offer and received the question paper, but it is not proved that she paid any money to Sunita for purchasing the question paper. Sushila received benefit from Sunita but it is not proved that she conspired with Sunita to obtain the question paper from Balwinder Kumar Sharma.

157. On considering the ingredients of offences punishable u/s. 409 IPC and u/s. 13(1)(d) r/w Section 13 (2) PC Act, I am of the opinion that same are not attracted qua accused Sushila. She had no contact with public servant Balwinder Kumar Sharma nor had any knowledge about his role and participation in handing over the question paper to accused Sunita and therefore Sushila was not the part of main conspiracy.

158. I, therefore, conclude that Sushila cannot be held responsible for the offence of criminal conspiracy qua offences under Section 409 IPC (criminal breach of trust by public servant) and Section 13 (1)(d) of Prevention of Corruption Act (criminal misconduct by public servant). As already discussed the offences under Section 420 IPC and Section 8 and 9 of Prevention of Corruption Act 1988 are not made out in the facts of this case.

159. Accused Sushila has also been charged for the offence punishable under Section 201 IPC on the allegations that she had broken her mobile phone. However, there is nothing on record to suggest that mobile of accused Sushila was containing any substantive evidence or that same was deliberately broken by accused Sushila in order to cause disappearance of the evidence. Therefore, accused Sushila cannot be held liable for the offence punishable under Section 201 IPC.

160. Since accused Sushila has received direct benefit by acquiring the question paper from accused Sunita, she is liable for the substantive offence punishable under Section 411 IPC for dishonestly receiving stolen property. From the circumstantial evidence, it is clear that accused Sushila while receiving the question paper from accused Sunita, had sufficient reasons to believe that the same was procured illegally by Sunita before the examination. The ingredients of the offence punishable under Section 411 IPC are therefore made out against accused Sushila also. Although accused Sushila has not been charged for receiving stolen property but by virtue of Section 222 Cr.P.C, she can be convicted for the lesser/ minor offence than the offence with which she was charged.

161. In **Shamnsaheb M. Multtani vs State of Karnataka, (2001) 2 SCC 577**, the minor offence in terms of Section 222 Cr.P.C is described as follows:-

“16....What is meant by “a minor offence” for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed

punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-à-vis the other offence”

162. In view of above discussion, accused Sushila is liable for the offence punishable under Section 411 IPC.

Role of accused Ayushi (A-4)

163. The prosecution has alleged conspiracy against accused Ayushi stating that she was the roommate of accused Sunita at Radha Krishan Mandir, Sector-18C, Chandigarh and she provided Sunita with the secret number (8360753268) which was used by accused Balwinder Kumar Sharma and also that through her father Subhash Chander Godara and maternal uncle Sushil Bhadu, she connected to accused Tajinder Bishnoi and provided him the question paper. It is also alleged that messages and calls were made to Ishwar Singh (PW-15) from the mobile phone of accused Ayushi (9877339926).

164. It is no doubt true that there is evidence to show that from the mobile number 9877339926, calls and SMSs were sent to Ishwar Singh (PW-15) but it is also clear that phone was used by accused Sunita. Merely because mobile of accused Ayushi was used by accused Sunita, does not lead to the inference that accused Ayushi was knowing the purpose and context for which her phone was being used by Sunita. Lending phone to Sunita by Ayushi does not constitute any offence by itself. Also there is no

evidence to prove that accused Ayushi was roommate of accused Sunita or that she was allotted room or continuously residing at Radha Krishan Mandir, Chandigarh. The seizure memo Ex.PW74/C whereby the copies of entry register of Mandir (Ex.PW74/D) were seized by SIT, do not meet the standard of proof required under law of evidence. The original register was not summoned or proved through witness. Even otherwise the register only shows stay of Ayushi on 11.05.2017 and 16.03.2017. Also no connection between accused Ayushi and Tajinder Bishnoi has been established to show that they were part of the conspiracy. Although it is true that PW-68 Ashish Kumar stated that he provided Jio SIM 8360753268 to accused Ayushi at her request and same was later secretly used by Balwinder Kumar Sharma for connecting to accused Sunita but this does not constitute any offence and no criminal liability arises.

165. The circumstantial evidence proved on record is not sufficient to establish that accused Ayushi was involved in the conspiracy or that she had any knowledge about the question paper leak or having access to the question paper prior to the exam. The location of accused Ayushi on 14, 15, 16 July 2017 at Radha Krishan Mandir would not lead to the inference that she was part of the conspiracy between accused Sunita and Balwinder Kumar Sharma. Admittedly, Ayushi was not the candidate of the exam nor she had any knowledge that public servant Balwinder Kumar Sharma was involved in providing the question paper. There is no evidence to show that accused Ayushi was knowing that question paper was leaked by public servant Balwinder Kumar Sharma in favour of Sunita.

166. I, therefore, conclude that Ayushi cannot be held responsible for the offence of criminal conspiracy qua offences under Section 409 IPC (criminal breach of trust by public servant) and Section 13 (1)(d) of Prevention of Corruption Act (criminal misconduct by public servant). As already discussed the offences under Section 420 IPC and Section 8 and 9 of Prevention of Corruption Act 1988 are not made out in the facts of this case.

167. Accused Ayushi has also been charged for the offence punishable under Section 201 IPC on the allegations that she removed / destroyed the incriminating material from her room situated at Radha Krishan Temple, Sector-18-C, Chandigarh.

168. **Section 201 IPC** reads as under:-

201. Causing disappearance of evidence of offence, or giving false information to screen offender

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

if a capital offence

shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life

and if the offence is punishable with (imprisonment for life), or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment

and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description proved for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

169. For this purpose, prosecution has relied upon the recorded conversations between accused Ayushi and Sunil Kumar Chopra Ex.PX-4 vide intercepted calls. On examining the nature of conversations between accused Ayushi and Sunil Kumar Chopra, there is nothing to suggest that they removed, handled or tampered with any evidence or incriminating material or that they had any point of time control over the question paper of HCS (JB) Exam. The conversations were recorded through interception in September 2017, much after the offences were already committed and the nature of conversations do not lead to any inference or conclusion that accused Ayushi was involved in tampering or causing disappearance of evidence.

170. In the light of above discussion, it is concluded that prosecution has failed to prove the alleged offences against accused Ayushi.

Role of accused Sunil Kumar Chopra @ Titu (A-5)

171. Accused Sunil Kumar Chopra @ Titu has been charged for the offence of conspiracy punishable under Section 120-B IPC read with Sections 409, 420 and u/s. 8, 9, 13 (1) d, r/w Section 13 (2) of Prevention of Corruption Act 1988 and also substantive offence under Section 201 IPC.

172. The allegations of prosecution are that accused Sunil Kumar Chopra arranged rooms for candidates at Radha Krishan Mandir and made bogus entries in the visitors register. He also helped to remove paper material from the room of Sunita.

173. On analysing the evidence appearing on record, I find that there is no incriminating material against accused Sunil Kumar Chopra. It has not been proved that he was having any control over the affairs of Mandir or that he was in a position to arrange rooms for accused persons without making entries in the register. No witness has been examined to prove the fact that entries in the visitors register were manipulated by accused Sunil Kumar Chopra. Accused Sunil Kumar Chopra was not the candidate of the exam nor received any benefit. There is no material to prove that accused Sunil Kumar Chopra was part of conspiracy hatched between Sunita and Balwinder Kumar Sharma or that accused Sunil Kumar Chopra was knowing about the paper leak or about involvement of public servant therein.

174. Accused Sunil Kumar Chopra @ Titu has also been charged for the substantive offence punishable under Section 201 IPC on the allegations that Sunil Kumar Chopra destroyed the record relating to accommodation at Radha Krishan Mandir,

Sector-18C, Chandigarh. The prosecution has relied upon the recorded conversations contained in Ex.PX4 between accused Ayushi and Sunil Kumar Chopra and also upon the conversations between accused Sunil Kumar Chopra and other officials of Mandir (Gopal and Asha) vide intercepted calls. On examining the nature of conversations, there is nothing to suggest that accused Sunil Kumar Chopra removed, handled or tampered with any evidence or incriminating material or that he had any point of time possession of the question paper of HCS (JB) Exam. The conversations were recorded through interception in September 2017 i.e much after the offences were already committed and the nature of conversations do not lead to any inference or conclusion that accused Sunil Kumar Chopra was involved in tampering or causing disappearance of evidence. I, therefore, conclude that evidence is not sufficient to prove the involvement of accused Sunil Kumar Chopra for the alleged offences.

175. I, therefore, conclude that Sunil Kumar Chopra @ Titu cannot be held responsible for the offence of criminal conspiracy qua offences under Section 409 IPC (criminal breach of trust by public servant) and Section 13 (1)(d) of Prevention of Corruption Act (criminal misconduct by public servant). As already discussed the offences under Section 420 IPC and Section 8 and 9 of Prevention of Corruption Act 1988 are not made out in the facts of this case.

Role of accused Kuldeep Singh (A-6)

176. The role attributed to accused Kuldeep Singh (brother of accused Sunita) is that he removed material relating

to the question paper from the room of Sunita at Delhi and burnt the same. Further, accused Kuldeep Singh put the Ash material in a polythene bag and threw the same on a vacant plot. The prosecution for this purpose relies upon the disclosure statement Ex.PW65/S and recovery of polythene bag containing Ash material vide seizure memo Ex.PW60/B. The accused Kuldeep Singh has also been charged for the substantive offence under Section 201 IPC for causing disappearance of the evidence. The prosecution relied upon recorded conversations between Kuldeep Singh and Ram Bhagat (husband of accused Sushila) contained in a pen-drive Ex.PX-23 transmitted from mobile Ex.M1, Ex.M2 and Ex.M3. The transcripts of the said conversations have also been placed on record vide Ex.PW6/C.

177. On analysing the record, I am of the opinion that there is no incriminating evidence against accused Kuldeep Singh. The disclosure statement made by accused Kuldeep Singh is not admissible being hit by Section 25 of Evidence Act 1872. So far as the recovery of Ash material at his instance is concerned, the same is not believable at all. It is not possible that after six months, Ash material would be found intact in a polythene bag that too from an open plot. Also, it cannot be taken that Ash material was of the burnt question paper of HCS (JB) Examination 2017. The prosecution has failed to inspire confidence in its allegations qua accused Kuldeep Singh.

178. I have also examined the conversations contained in Ex.PX-23, wherein accused Kuldeep Singh and Ram Bhagat are discussing about the facts and events relating to the paper leak

proceedings being conducted by High Court on judicial side and also discussing about seeking solution. The conversations are natural as sister of Kuldeep Singh and wife of Ram Bhagat were involved in the paper leak proceedings but there is nothing in the conversations to show that accused Kuldeep Singh tried to tamper with the evidence or to influence the witnesses. The conversations can only be taken as an intention on the part of Kuldeep Singh in finding ways to save his sister. It is important to note that with similar conversations, Ram Bhagat has not been impleaded as an accused. By any stretch, the evidence of conversations do not lead to any criminality on the part of accused Kuldeep Singh. It is also important to note that call recordings from mobile phones were transmitted to pen-drive Ex.PX-23 as reflected from report Ex.PW63/C but no certificate under Section 65 B Evidence Act has been furnished in support thereof, therefore, the conversations contained in pen-drive Ex.PX-23 have not been proved as per law.

179. In the light of above observations, I conclude that offence u/s. 201 IPC is not made out against accused Kuldeep Singh. Accused Kuldeep Singh cannot be held responsible for the offence of criminal conspiracy qua offences under Section 409 IPC (criminal breach of trust by public servant) and Section 13 (1)(d) of Prevention of Corruption Act (criminal misconduct by public servant) as no evidence of conspiracy or involvement exists against him. As already discussed the offences under Section 420 IPC and Section 8 and 9 of Prevention of Corruption Act 1988 are not made out in the facts of this case.

Role of accused Subhash Chander Godara (A-7), Sushil Bhadu (A-8) and Tajinder Bishnoi (A-9)

180. The involvement of above mentioned three accused in the conspiracy, has been alleged on the basis of disclosure statements of co-accused but the said disclosure statements are not admissible in law under Section 25 of Indian Evidence Act 1872. The presence of above three accused as per mobile locations do not lead to any inference whereby any criminal offence can be attributed to them. The prosecution has also relied upon the transactions of money whereby accused Tajinder Bishnoi transferred amount of Rs.5,00,000/- and Rs.2,00,000/- on two occasions (20.07.2017 and 21.07.2017) in favour of father of Sushil Bhadu namely Om Prakash and to accused Sushil Bhadu. According to the prosecution, the money has been transferred for the leaked question paper and after having access to the same, accused Tajinder Bishnoi secured high marks and got 2nd Rank as per the draft result. The prosecution has also alleged about presence of Tajinder Bishnoi with Sushil Bhadu as per their mobile locations.

181. The defence however, controverted the allegations of prosecution by pleading that Sushil Bhadu and Tajinder Bishnoi are related and the money was transferred for the purposes of marriage as evident from wedding card placed on record showing the names of Om Prakash (father of Sushil Bhadu) and Chander Prakash (father of Tajinder Bishnoi) printed thereupon.

182. Taking over all view of the allegations and evidence, I am of the opinion that prosecution has failed to prove that the above mentioned three accused were privy to the conspiracy hatched between Sunita and Balwinder Kumar Sharma. There is no evidence to indicate that these accused persons conspired with Sunita and Balwinder Kumar Sharma to get the question paper out before the exam as no connection has been established in this regard. The presence of accused persons at Radha Krishan Mandir on 14, 15 and 16 July 2017 would not by itself lead to the inference that they were involved in conspiracy or that they were knowing about the source of leak of question paper or about the involvement of any public servant. The evidence is not sufficient to prove that the money transactions related to the purchase of question paper. It is true that Tajinder Bishnoi secured 2nd rank and this fact raises doubt about his involvement but only to the extent that he might have procured question paper. The single fact of accused Tajinder Bishnoi standing 2nd topper would not be enough to attribute conspiracy to him. No connection between accused Tajinder Bishnoi and other accused Sunita, Balwinder Kumar or Sushila has been established.

183. The charge against these accused persons have been for the offences of conspiracy punishable under Section 120-B IPC read with Sections 409, 420 and u/s. 8, 9, 13 (1) d, r/w Section 13 (2) of Prevention of Corruption Act 1988 but the offences which are made out in the present case are i.e. 120-B IPC read with Sections 409 IPC and u/s. 13 (1) d r/w Section 13 (2) of Prevention of Corruption Act 1988 that too against main accused Sunita and Balwinder Kumar Sharma. These offences

cannot be imposed against Subhash Chander Godara, Sushil Bhadu and Tajinder Bishnoi by any stretch or even by applying the principles of conspiracy.

FINAL CONCLUSION

184. In the light of above detailed observations, I hold that prosecution has been able to prove its case through circumstantial evidence against accused Sunita (A-1), Balwinder Kumar Sharma (A-2) and Sushila (A-3).

185. The offence punishable under Section 120-B IPC read with Section 409 IPC and Section 13(1)(d) of Prevention of Corruption Act 1988 and substantive offence punishable under Section 411 IPC is made out against accused Sunita. I convict her accordingly.

186. The offences under Section 120-B IPC read with Section 409 IPC and 13 (1)(d) Prevention of Corruption Act 1988 and substantive offences under Section 409 IPC and under Section 13 (1)(d) Prevention of Corruption Act 1988 are made out against accused Balwinder Kumar Sharma. I convict him accordingly.

187. I also convict accused Sushila for the substantive offence punishable under Section 411 IPC.

188. For remaining offences i.e u/s. 420 IPC and Section 8 and 9 Prevention of Corruption Act 1988 and u/s. 201 IPC, the above accused persons are acquitted.

189. For remaining accused persons, the circumstantial evidence or its chain is not sufficient and complete and hence, the prosecution has failed to prove their culpability beyond reasonable doubt. In the result, accused persons Ayushi(A-4), Sunil Kumar Chopra @ Titu (A-5), Kuldeep Singh (A-6), Subhash Chander Godara (A-7), Sushil Bhadu (A-8) and Tajinder Bishnoi (A-9) are acquitted in the present case.

190. Before parting with the judgment, I would like to record that paper leaks have far reaching consequences leading to detrimental effects on candidates. It creates an atmosphere of unrest, stress and anxiety among the students and affects their motivation to excel academically. In a country, where unemployment remains a constant worry, paper leak menace adds to delay in recruitments adversely affecting the efficiency of government departments and administrative agencies, which are already dealing with the issue of less human resources. These days, crime is committed through organized rackets comprising of players from across the education sector, people involved in formulating question papers, coaching centres, consultants, hired agencies and printing presses.

191. In order to restore the faith in the process of examination, the issue of paper leaks has to be dealt with by effective implementation of specific stringent laws. The notification of Public Examination (Prevention of Unfair Means) Act 2024, is a welcome step in this direction but preventive measures against such malpractices must be put in place by introducing long term reforms. The aim and objective must be to

bring greater transparency, fairness and credibility to public examinations.

192. In the end, I appreciate the hardwork put in by Ld. Prosecutors and defence counsels in assisting this court during the trial and arguments stage.

Announced in the open court
on the 22nd day of August 2024

(Anju Bajaj Chandna)
Principal District & Sessions Judge-
cum-Special Judge (PC Act) (CBI),
Rouse Avenue District Court
22.08.2024