

A DESH DEEPAK KUMAR VIHANGAM@ DEEPAK KUMAR

v.

THE STATE OF BIHAR

(Criminal Appeal Nos. 673 of 2011)

B MARCH 08, 2022

[SANJIV KHANNA AND BELA M. TRIVEDI, JJ.]

- Penal Code, 1860: ss. 364A and 120B – Kidnapping for ransom and abduction – On facts, a doctor kidnapped for ransom and abducted along with his driver – Six persons convicted u/s. 364A and 120 B, and sentenced to life imprisonment, and ordered to pay fine – On appeal, held: Four of the accused were found present at the house and were involved in the kidnapping – They along with DK, on whose disclosure the amount was recovered from his tenanted premises, were identified by the victims – In view thereof, and the appreciation of evidence, findings and the conclusion of the courts below as regards their conviction, is correct – As regards, K, the Inspector and the I.O. who had detained K with DK, themselves expressed doubt on involvement of K in the crime – Conclusive inference cannot be drawn of an agreement or that K had gone to the bus stand and had picked up DK in pursuance of a plan or scheme to accomplish an objective or even with the knowledge that DK was following the rickshaw because he had to collect ransom – Thus, on facts and depositions made by the IO and the Inspector, K, given benefit of doubt – As regards the two who were arrested on suspicion, the assertions do not meet and satisfy the standard of proof to connect them with the kidnapping of the doctor – Further, there is not even an iota of evidence that any of the kidnappers were known beforehand to them – Family of the victim had received ransom calls even after the arrest of the two – Only after the arrest of DK that the location where the victim after the abduction had been kept was ascertained – Thus, the two also entitled to the benefit of doubt.*

Mohd. Khalid v. State of West Bengal (2002) 7 SCC 334 : [2002] 2 Suppl. SCR 31; State of Kerala v. P. Sugathan & Another (2000) 8 SCC 203: [2000] 3 Suppl.

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SCR 409; Central Bureau of Investigation, Hyderabad v. K. Narayana Rao (2012) 9 SCC 512 : [2012] 9 SCR 54 - relied on.

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<u>Case Law Reference</u>		
[2002] 2 Suppl. SCR 31	relied on	Para 14
[2000] 3 Suppl. SCR 409	relied on	Para 14
[2012] 9 SCR 54	relied on	Para 14

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 673 of 2011.

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From the Judgment and Order dated 20.05.2010 of the High Court of Judicature at Patna in Criminal Appeal (DB) No. 618 of 2006.

With

Criminal Appeal Nos. 674-675, 683, 1714-1715 of 2011.

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Deepak Nargolkar, Sr. Adv., Ms. Prerna Singh, Shikhar Srivastava, T. Mahipal, Shreeyash U. Lalit, Mahesh Kumar, Nikhilesh Kumar, Ms. Devika Khanna, Vishal Sharma, Mrs. V. D. Khanna, Kripa Shankar Prasad, Manu Shanker Mishra, Nishant Kumar, Nithyananda Muthy P, Ms. Bhanu Prabha, Vivekanand Singh, Anirudh Ray, Advs. for the Appellant.

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Abhinav Mukerji, Ms. Pratishtha Vij, Ms. Bihu Sharma, Arshi C. Srivastava, Advs. for the Respondent.

The following Judgment of the Court was delivered :

1. Impugned judgment dated 20th May 2010 passed by the High Court of Judicature at Patna dismissed the appeals preferred by Desh Deepak Kumar Vihangam @ Deepak Kumar, Bimlesh Kumar Singh, Madan Prasad Thathera, Kanhaiya Lal, Ramjee Prajapati and Abhay Kumar @ Pappu, who have been convicted under Sections 364A and 120B of the Indian Penal Code, 1860 ('Penal Code', in short). The aforesaid 6 convicts were sentenced to undergo Imprisonment for Life. Desh Deepak Kumar Vihangam was ordered to pay a fine of Rs. 7,00,000 (Rupees Seven lakh Only), while the rest of the convicts were ordered to pay a fine of Rs. 1,00,000 (Rupees One Lakh Only) each.

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- A 2. The impugned judgment by the High Court however acquits Santosh who was convicted by the trial court. The State has not preferred any appeal challenging the acquittal of Santosh. The impugned judgment has also convicted Pradeep Kumar Shrivastava, who had preferred a petition for special leave to appeal, which was dismissed on 22nd October 2010. Another co-convict, Upendra Kumar Singh, whose conviction was upheld by the High Court, has expired, and hence, his appeal has abated.
- B 3. The case relates to the kidnapping for ransom of Dr. Shashi Kumar Sinha (PW-3), abducted along with his driver Salauddin (PW-5) on 7TH February 2006 while travelling in a car from his residence at Station Road, Dehri, to his clinic at Tilouthu Village. Kiran Sinha (PW-2), the wife of Dr. Shashi Kumar Sinha and Dr. Amitabh Sinha (PW-1), son of Dr. Shashi Kumar Sinha, have deposed that calls for ransom were made. Initially, an amount of Rs. 1,00,00,000/- (Rupees One Crore Only) was demanded, but thereafter, the kidnappers had agreed to release the captives on payment of Rs. 12,00,000/- (Rupees Twelve Lakhs Only).
- C Dr. Amitabh Sinha (PW-1) had deposed that he had paid a ransom of Rs. 12,00,000/- (Rupees Twelve Lakhs Only) to Deepak Kumar at Ranchi on 24th February 2006. At that time, Dr. Amitabh Sinha (PW-1) did not know the name and identity of Deepak Kumar. He came to know about his identity when Deepak Kumar was arrested at Patna by the I.O. Yogesh Chandra (PW-8) and Inspector Krishna Kumar Singh @ K.K. Singh (PW-4). Dr. Amitabh Sinha (PW-1) had visited Patna on 9th March 2006 as the kidnappers had demanded a further sum of Rs. 5,00,000/- (Rupees Five Lakh Only) as ransom. Deepak Kumar and Kanhaiya Lal were arrested at Patna on 10th March 2006. Inspector K.K. Singh (PW-4) and I.O. Yogesh Chandra (PW-8) have deposed that Deepak Kumar
- D F had then made a disclosure statement whereupon the police along with Deepak Kumar and Kanhaiya Lal had proceeded to Village Bar, District Aurangabad, Bihar. Dr. Shashi Kumar Sinha (PW-3) and Salauddin (PW-5) were rescued in the intervening night of 10th and 11th March from the house of Upendra Kumar Sinha situated at Village Bar. Bimlesh Kumar Singh, Madan Prasad Thatthera, Pradip Kumar Shrivastav and Upendra
- E G Kumar Sinha were present at the house and were involved in the kidnapping of Dr. Shashi Kumar Sinha (PW-3) and Salauddin (PW-5). They were arrested. Dr. Shashi Kumar Sinha (PW-3) and Salauddin (PW-5), the victims, identified Deepak Kumar, Bimlesh Kumar, Madan Prasad Thatthera, Pradeep Kumar and Upendra Kumar in the court. On
- H H the basis of the disclosure statement made by Deepak Kumar, Rs.

6,00,000/- (Rupees Six Lakhs Only) were recovered from his tenanted premises at Patna. Some of the currency notes recovered bore the signatures of Dr. Amitabh Sinha (PW-1). A

4. In view of the aforesaid facts, and the appreciation of evidence, we hold that the conviction of Bimlesh Kumar, Madan Prasad Thathera and Deepak Kumar is correct. We are in agreement with the findings and conclusions of the trial court and the High Court in this regard. B

5. We will now be adverting to the case of Kanhaiya Lal. Dr. Amitabh Sinha (PW-1) has deposed that on 9th March 2006 he received a phone call from the kidnapper who asked him to come to Patna with Rs. 5,00,000/- (Rupees Five Lakh Only). He was told to reach Gaighat with the money after taking the route from Hanuman Mandir road to Gandhi Maidan via Frazer Road and to proceed towards Engineering *Mod*, and from the said *Mod* to reach Gaighat. He thereupon had contacted the police who made arrangements to track down the culprits and apprehend them. He reached Patna on 9th March 2006 and spent the night at Arya Samaj Hotel. On 10th March 2006 at 6.30 A.M. he received a call from the kidnappers and was asked to reach Gaighat with the money on a rickshaw as per the route specified. He hired a cycle rickshaw and followed the route as per the instructions of the kidnappers. On the way he crossed the gate of Patna Medical College and reached the Engineering College at about 8.00 A.M. From there, he reached Gaighat at about 8.30-8.45 A.M. C D E

6. After 3 to 4 hours Dr. Amitabh Sinha (PW-1) received a phone call from Inspector K.K. Singh (PW-4) who asked the former to reach Kotwali Police Station. On reaching the police station, Dr. Amitabh Sinha (PW-1) identified Deepak Kumar, as the person who had collected ransom money of Rs. 12,00,000/- (Rupees Twelve Lakh Only) from him at Ranchi on 24th February 2006. Dr. Amitabh Sinha (PW-1) did not recognise Kanhaiya Lal, who was also present as he had been detained by the police. F

7. Inspector K.K. Singh who has deposed as PW-4, has referred to his conversation with Dr. Amitabh Sinha (PW-1) in which Dr. Amitabh Sinha (PW-1) stated that he had been asked to pay ransom money of Rs. 5,00,000/- (Rupees Five Lakh Only) at Patna in the morning of 10th March 2006. Accordingly, on the directions of the Superintendent of Police, a special task force was formed, and he was assigned the duty to lead the raiding party. Inspector K.K. Singh (PW-4) knew the route G H

- A which Dr. Amitabh Sinha (PW-1) was required to follow. At about 6.00-6.30 A.M., Inspector K.K. Singh (PW-4) was informed by Dr. Amitabh Sinha (PW-1) that the culprits had asked him to take a rickshaw and was required to travel around Mahavir Mandir Station. This information was shared by Inspector K.K. Singh (PW-4) with other police officers, including I.O. Yogesh Chandra (PW-8). The Police Team decided to
- B follow Dr. Amitabh Sinha (PW-1) in civil dress. As planned, they followed the rickshaw in which Dr. Amitabh Sinha (PW-1) was sitting. Dr. Amitabh Sinha (PW-1) crossed Frazer Road via Gandhi Maidan and reached Ashok Rajpath. At that time, the police team noticed that one black Yamaha motorcycle was following the said rickshaw. The driver of the
- C motorcycle was not wearing a helmet, whereas the pillion rider was wearing a helmet. They kept a watch on this motorcycle and thereupon stopped the motorcycle near the Patna Medical College. Kanhaiya Lal was driving the motorcycle, and Deepak Kumar was the pillion rider. Thereupon, both of them were taken to Peer Vihar Police Station.
- D However, the police team continued to follow Dr. Amitabh Sinha (PW-1) as he moved forward towards Gaighat. No one came to collect the money in the entire route. Upon interrogation of Deepak Kumar, they came to know of the location where Dr. Shashi Kumar Sinha (PW-3), after the kidnapping, had been detained. The same night the police team proceeded to Village Bar, District Aurangabad, Patna, as noted above,
- E had rescued Dr. Shashi Kumar Sinha (PW-3) and Salaudin [PW-5].

8. I.O. Yogesh Chandra (PW-8) similarly deposed that he was a member of the team which was following Dr. Amitabh Sinha (PW-1), who was sitting on the cycle rickshaw and had thereupon detained Kanhaiya Lal and Deepak Kumar near Patna Medical College.

- F 9. From the aforesaid depositions of Inspector K.K. Singh (PW-4) and I.O. Yogesh Chandra (PW-8), we accept that Kanhaiya Lal along with Deepak Kumar, were detained when they were travelling on the motorcycle at or around Patna Medical College at about 8 A.M. on 10th March 2006.

- G 10. Noticeably, Kanhaiya Lal, in his statement under Section 313 of the Code of Criminal Procedure, 1973 ('Criminal Code', for short) was candid to accept that he had picked up Deepak Kumar from the bus stand as he had been called there to take him to the Patna Medical College. He had stated that he was in the business of running coaching classes and had nothing to do with the incident.
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11. On the question of the involvement of Kanhaiya Lal in the episode of kidnapping and whether his conviction is justified under Section 120B of the Penal Code, we would like to refer to the cross-examinations of Inspector K. K. Singh [PW-4] and the I.O. Yogesh Chandra. (PW-8). K.K Singh (PW-4) in the cross-examination had accepted that :-

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“36. Kanhiya lal never gave any statement regarding this case. I cannot say that whether he was involved in this case or not. I do not investigate mobile phone of Kanhiya Lal. IO sir might took it only he can tell.”

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Inspector K. K. Singh [PW-4] while agreeing that Kanhaiya Lal was brought to Village Bar, but thereafter accepted that “Kanhaiya Lal never spoke regarding the whole incident”. Inspector K. K. Singh [PW-4] also agreed that Kanhaiya Lal had not given any statement “regarding either *len-den* (money transaction) or abduction” during his interrogation. Kanhaiya Lal had told them that he had been asked by Deepak Kumar to take him to Patna Medical College on his motorcycle. Kanhaiya Lal did not point out anything regarding abduction of Dr. Shashi Kumar Sinha (PW-3) and had no criminal history prior to the said date.

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12. Relevant portions of the cross-examination of I.O. Yogesh Chandra (PW-8) reads as under;

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“42. Whether there is any hand of Kanhaiya Lal Gupta in this case or not I have not inquired from anyone. The mobile No. of Mr. Kanhaiya Lal is 9334315014. From Kanhaiya Lal’s mobile nothing more has been called then calling motor cycle for going and bringing the motor cycle is there and nothing else. It has been confirmed from the printout.

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43. In making Kanhaiya Lal as accused there was a talk with SP Sahib. It was an Oral talk and in the diary I have not noted down. Written report which has been submitted in PS Madanpur has not been written the facts that Kanhaiya Lal Gupta was brought in the village of War. In my front K.K. Singh had not said in his statement that Kanhaiya Lal Gupta was also brought to the village-War. Desh Deepak has not pointed out that Kanhaiya Lal had knowledge about this incident. He only pointed out regarding asking for motor cycle and what was the motto, was not pointed out. In Para 142 of the case diary accused Desh Deepak has not pointed any thing about Kanhaiya Lal. Kanhaiya Lal had pointed out only

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- A the facts that he has been caught with Desh Deepak, that is why charge sheet has been submitted against him on the basis of suspicion. It is circumstantial evidence.”
- B 13. Dr. Amitabh Sinha (PW-1), in his cross-examination, had testified that he did not see the police team apprehending Deepak Kumar and Kanhaiya Lal when travelling on the motorcycle near the Patna Medical College. Dr. Amitabh Sinha (PW-1) did not recognize Kanhaiya Lal. As per the prosecution case, Kanhaiya Lal is a resident of Patna. It is also not the case of the prosecution that Kanhaiya Lal was involved in the act of kidnapping, which had taken place on 7th February 2006 at C Tilouthu Village, District Dehri-On-Sone, Bihar. Kanhaiya Lal was not in touch with any of the kidnappers including Deepak Kumar, from 7th February 2006 until the morning of 10th March 2006.

- D 14. At this stage it is imperative to discuss the settled position of law with regard to the ingredients and the standard of proof to be achieved by the prosecution for conviction under section 120-B of the Penal Code. In *Mohd. Khalid v. State of West Bengal*¹ this Court had elucidated the elements of criminal conspiracy which are reproduced as under:

- E “The elements of a criminal conspiracy have been stated to be:
 (a) an object to be accomplished,
 (b) a plan or scheme embodying means to accomplish that object,
 (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and d) in F the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed.”

- G Elaborating upon the standard of proof the prosecution has to meet in establishing criminal conspiracy, this Court in *State of Kerala v. P. Sugathan & Another*² held as under;

“We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is

¹ (2002) 7 SCC 334

² (2000) 8 SCC 203

a matter of inference. The inferences are normally deduced from acts of parties in pursuance of purpose in common between the conspirators. This Court in V.C. Shukla v. State (Delhi Admn.) (1980) 2 SCC 665 held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances giving rise to a conclusive or irresistible inference of an agreement between the two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.”

This Court in Central Bureau of Investigation, Hyderabad v. K. Narayana Rao³ held;

“The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely

³ (2012) 9 SCC 512

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- A available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence.”
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- D 15. When we reflect on the evidence on record in the light of aforementioned dictum, it is apparent that Inspector K.K. Singh (PW-4) and the I.O. Yogesh Chandra (PW-8) who had detained Kanhaiya Lal with Deepak Kumar, have themselves expressed doubt on involvement of Kanhaiya Lal in the crime in question. While we do not doubt that Kanhaiya Lal was taken into custody while he was driving the motorcycle with Deepak Kumar on the pillion behind him, the version given by Kanhaiya Lal, in his statement under Section 313 of the Criminal Code, that he had picked up Deepak Kumar from the bus stand as he had been called there to take him to Patna Medical College gets corroboration from the police team itself. Therefore, we cannot draw conclusive and irresistible inference of an agreement or that Kanhaiya Lal had gone to the bus stand and had picked up Deepak Kumar in pursuance of a plan or scheme to accomplish an objective or even with the knowledge that Deepak Kumar was following the rickshaw because he had to collect F ransom. It is palpable that Inspector K.K. Singh (PW-4) and the I.O. Yogesh Chandra (PW-8) have somewhat corroborated Kanhaiya Lal’s version that he was to drop Deepak Kumar at Patna Medical Collage. Dr. Amitabh Sinha (PW-1) while on the rickshaw had gone past Patna Medical Collage and was not overtaken or stopped by Kanhaiya Lal.
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- G 16. In the aforesaid background, the settled position of law, factual matrix and the depositions made by I.O. Yogesh Chandra (PW-8) and Inspector K.K. Singh (PW-4)], we are inclined to give the benefit of doubt to Kanhaiya Lal.
- H 17. As far as Ramjee Prajapati and his son Abhay Kumar are concerned, it is an accepted position that Ramjee Prajapati was a

compounder who also had a medical store outside the clinic of Dr. Shashi Kumar Sinha (PW-3) at Tilouthu. Their involvement is pleaded on the following assertaions (i) Ramjee Prajapeeti had contacted the family of Dr. Shashi Kumar Sinha (PW-3) when Dr. Shashi Kumar Sinha (PW-3) had not reached the clinic and had raised suspicion that he may have been kidnapped; (ii) Ramjee Prajapati and Abhay Kumar, through their landline and mobile phones, had contacted and spoke to telephone/mobile number 9431028412, which was the telephone/mobile number of Dr. Shashi Kumar Sinha (PW-3); and (iii) Dr. Shashi Kumar Sinha (PW-3), has deposed that he heard the kidnappers take different names like Lalji Mishra, Bindeshwary Choudhary, Taiyab Ansari, Kalicharan etc., and also, Ramjee Prajapati and Abhay Kumar for money. He had also stated that the accused had told him that Santosh (who has been acquitted by the High Court) and Abhay Kumar had committed the occurrence.

We do not think that the aforesaid assertions when analyzed would meet and satisfy the standard of proof to connect Ramjee Prajapati and Abhay Kumar with the kidnapping of Dr. Shashi Kumar Sinha (PW-3). First two assertions are neutral and can well be read as evidence that shows Ramjee Prajapati and Abhay Kumar's concern for Dr. Shashi Kumar Sinha (PW-3). Once they had got in touch with the kidnappers on the telephone, the kidnappers knew their names. The third factum therefore is somewhat debatable. It is not the case of the prosecution that Ramjee Prajapati and Abhay Kumar were known or in touch with the kidnappers on or before 7th February 2006. There is not even an iota of evidence that any of the kidnappers were known beforehand to Ramjee Prajapati and Abhay Kumar. The calls were made to the mobile/telephone number of Dr. Shashi Kumar Sinha (PW-3) which Ramjee Prajapati obviously had. Telephone calls were not made to the kidnappers on their personal telephone numbers. Both of them were arrested on suspicion on 6 March, 2006. It is not the case of the police that Ramjee Prajapati and Abhay Kumar gave any lead or information with regard to the 'other' kidnappers. The family of Dr. Shashi Kumar Sinha (PW-3) had received ransom calls even after the arrest of Ramjee Prajapati and Abhay Kumar. It is only after Deepak Kumar was arrested that the location where Dr. Shashi Kumar Sinha (PW-3) after the abduction had been kept was ascertained. Therefore, Ramjee Prajapati and Abhay Kumar are also entitled to the benefit of doubt.

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- A 18. Accordingly, we dismiss the appeals and affirm the convictions and sentences of Desh Deepak Kumar Vihangam @ Deepak Kumar, Bimlesh Kumar Singh and Madan Prasad Thathera. The appeals preferred by Kanhaiya Lal, Ramjee Prajapati and Abhay Kumar @ Pappu are allowed, and their convictions under Section 364A and 120B of the Penal Code are set aside. Bail bonds of Kanhaiya Lal, Ramjee Prajapati and Abhay Kumar stand cancelled. Deepak Kumar, who is enlarged on bail, shall surrender to the concerned authorities within 10 days from today to serve the sentence of Imprisonment for life and pay the fine of Rs. 7,00,000/- (Rupees Seven Lakh Only) with stipulations for recovery. If he does not surrender, the police would take immediate steps to detain
C and arrest him as per law.

19. All pending applications stand disposed of.

Nidhi Jain
(Assisted by : Shivani Pundir, LCRA)

Appeals dismissed.