

# Jayalakshmi Jaitly vs Central Bureau Of Investigation on 30 July, 2020

**Author: Suresh Kumar Kait**

**Bench: Suresh Kumar Kait**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A.381/2020

JAYALAKSHMI JAITLEY

..... Appellant

Through

Mr. Mukul Rohtagi, Sr. Adv. and  
Mr.P.P.Malhotra, Sr. Adv. with  
Mr.Vineet Malhotra, Mr.Abhijat Bal,  
Mr.Aditya Vijay Kumar, Ms.Ayushi  
Kumar and Mr. Vishal Gohri, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through

Mr. Chetan Sharma, ASG with  
Mr.Nikhil Goel, SPP for CBI.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT  
ORDER

% 30.07.2020 The hearing has been conducted through video conferencing. Crl. M.A. 10248-49/2020 (Exemption)

1. Allowed, subject to all just exceptions.

2. Applications are disposed of.

3. Admit.

4. Digital Trial Court Record be requisitioned.

5. List in due course.

6. Vide the present application, applicant/appellant seeks suspension of sentence awarded by Trial Court vide judgment and order on sentence dated 21.07.2020 and 30.07.2020, respectively, whereby applicant has been sentenced to undergo RI for 4 years with fine of Rs.50,000/- for the offence punishable under Section 120-B IPC and in default of payment of fine, SI for a period of 4 months. She has further been sentenced to undergo RI for 4 years with fine of Rs.50,000/- for the offence punishable under Section 9 of Prevention of Corruption Act, 1988 and in default of payment

of fine, SI for a period of 4 months. Both the sentences shall run concurrently.

7. Notice issued.

8. Mr.Nikhil Goel, learned Special Public Prosecutor accepts notice on behalf of CBI.

9. With the consent of counsel for the parties, I hereby dispose of the present application.

10. The case of the applicant/appellant as narrated in the appeal is that in the year 2000, a media agency namely Tehelka, decided to do a "sting operation" ostensibly to expose defence corruption. To this end, they asked Mr. Matthew Samuel (PW -28) to conduct various interviews and secretly tape them. These tapes, 105 in all, were handed over to the Venkataswami Commission when it was set up. A meeting was sought with the appellant as she was President of the Samata Party, to which Mr. George Fernandes, the erst while Defence Minister belonged. Mr. Surendra Surekha,(PW-10) (approver) offered to arrange this meeting. He contacted Mr. Gopal Pacherwal, a party functionary, requesting only a meeting and nothing more. The agenda of the meeting was admittedly not apprised. Mr. Gopal Pacherwal informed Mr. Surendra Surekha (PW-10) that a meeting was fixed for 28.12.2000. Evidence as set out shows that PW-10 did not inform Mr. Gopal Pacherwal of the reason or the agenda for the meeting and consequently this could not have been informed to the Appellant either.

11. Further case of the appellant is that a meeting took place on 28.12.2000 at the residence of the then Defence Minister George Fernandes which was also being used to carry out the work of the Samata Party, and was recorded in two tapes being Tape No.73 (in the inner room with the Appellant) and Tape No.74 (in the outer room where the Appellant was not present) respectively.

12. Mr.P.P. Malhotra and Mr.Mukul Rohtagi, learned senior counsels submit that according to the prosecution, in the inner room, Mr.Matthew Samuel, Mr.Surendra Surekha, Gen. Murgai and Mr.Gopal Pacherwal were present. In the meeting, Mr. Matthew Samuel (PW -28) was introduced as a person dealing in "electronics" who would be "starting something in defence". The transcripts of the tapes would show that from the introductions, it was clear that the Appellant did not know the reason for the meeting or know that they had come to meet her for any pending work. At 13:55 of Tape 73, PW-28, in the meeting, told the Appellant that he had got something for the party. The Appellant requested PW-28 that it be sent "to Srinivas Prasad, who is organising a National Council meeting in Mysore". In response to this, PW-28 responded by saying "Okay Okay". Thereafter, according to PW-28 and the prosecution, a sum of Rs. 2,00,000/-was handed over to Mr.Gopal Pacherwal. At the time, the money was purportedly offered, there was absolutely no quid pro quo or a mention of any work which was to be done.

13. Further submitted that Tape No.73 records that after about 1 minute from purportedly making the offer for the party, Mr. Matthew Samuel (PW-

28), for the first time, broached the topic of being involved in making defence products. The primary contention of Mr. Matthew Samuel (PW-28) was that two companies had monopolised the defence

procurement work and that their company was not being treated fairly and were being discriminated against.

14. The Appellant stated that she had no idea of defence and further stated that in the national interest, everyone ought to be considered, provided the product and price was right. The Appellant stated that only if someone was being discriminated against or others favoured out of turn, she could request the office staff to convey that people should be treated fairly. In sum and substance, the Appellant had stated that no one should be treated unequally or with an element of favour.

15. Learned senior counsels submitted that Mr. Surendra Surekha (PW-

10) was the approver in the matter. His deposition is significant because, despite being the approver, he did not depose anything which was inculpatory. He deposed as under:

"a. He did not state that he had apprised Mr. Gopal Pachherwal of the reason for the meeting with the Appellant. He also did not state and could not have stated that the Appellant knew the reason of the meeting. He simply stated that a meeting had been fixed by Mr. Gopal Pachherwal pursuant to which they met on 28.12.2000. b. Mr. Surendra Surekha (PW-10) stated that he did not count the money which had been purportedly brought by Mr. Matthew Samuel(PW -28).

c. Mr. Surendra Surekha (PW-10) deposed that before the Commission he had stated on oath that no money was left in the inner room.

d. He further stated that there was no conversation between the Appellant and Mr. Gopal Pachherwal in the inner room. It is therefore submitted that there could never have been an instruction by the Appellant to Mr. Gopal Pachherwal to take the money."

16. Learned senior counsels further submitted that Mr.Venkataswarula (PW-27), the witness from APFSL who had allegedly examined Tape 73 and Tape 74 for edits and breaks and had come to a conclusion that there were no "material edits or breaks in the tapes", while at the same time finding that Mr.Gopal Pachherwal's voice and image samples could not be matched to the tape. Accordingly, he deposed as under:

"a. The forensic expert (PW-27) admitted that the breaks can occur on account of switching on and off and also deletion can occur by stopping the tape and over recording. Unfortunately, the number of breaks were not examined by the expert and neither was a list drawn up in this regard.

b. The witness only examined two categories of alteration that the witness examined was physical cutting and fixing of tapes and nothing more. It may be pertinent to note that alterations could have been made in 6 different ways and the tapes were not examined for this alteration. c. He further stated that even for the forensic

examination that he had conducted he did not maintain worksheets."

17. It is further submitted that Mr. Matthew Samuel (PW-28) in his examination in chief had deposed that he met the Appellant on 28.12.2000 and had sought to offer her a sum of Rs. 2,00,000/-. The Appellant instructed Mr. Gopal Pachherwal to take the money. In his examination in chief, he did not identify the portion of the tape where money was handed over. Thereafter, he broached the issue of his company making defence products and how their company was being discriminated. He also deposed that the Appellant had mentioned that all companies were to be considered on an equal footing, in national interest and without giving preferential treatment to anyone. However, during cross examination, Mr. Matthew Samuel (PW-28) admitted that he had not counted the money before going to the meeting on 28.12.2000 or put any identifiable mark on any notes or envelopes, nor counted the money himself or noted the serial numbers. During cross examination of Mr. Matthew Samuel (PW-28), the court observed that money is seen ostensibly on Mr. Matthew Samuel's (PW-28) lap while he was wrapping the money in a newspaper. Later, a yellow coloured envelope is given by Mr. Surendra Surekha (PW-10) to Mr. Matthew Samuel (PW-28) and money was transferred from the newspaper to the envelope. However, there is no evidence of money being re-transferred to a newspaper after this. Subsequently, there was no visual in Tape 73 of the yellow envelope in the inner room (where the meeting with the Appellant took place) or the fact that an envelope was handed over. Mr. Matthew Samuel (PW-28) stated that he did not make a contemporaneous transcript or voucher or keep any record daily or otherwise of the monies disbursed to him or the monies spent by him. Besides making contradictory statements that impeached his credibility, Mr. Matthew Samuel (PW-28) made statements in cross examination to show that he sought to implicate the Appellant, at any cost.

18. Moreover, Mr. K.Y. Guruprasad (PW-31) the investigating officer, deposed as under:

"h. The tapes were received from the Commission in an unsealed condition;

i. He had requested FSL to make transcripts but it did not make the transcripts of the tapes. He had seized the transcripts of Tehelka but did not file it with the chargesheet. He did not make the transcripts of the tapes himself.

J. From his deposition read with the deposition of Mr. Surendra Surekha (PW-10) it would be clear that Mr. Surendra Surekha (PW-10) was induced into being made an approver. This is more particularly set out in the grounds.

k. Significantly, the Investigation Officer did not produce the report of Mr. M.J. Cass, who was an expert appointed by the Commission to examine the tapes and had submitted a report. The report reflects that the tapes were materially edited. Similarly, he did not produce the 4 ½ hour tapes where Mr. Gopal Pachherwal was identified as Mr. Srinivas Prasad."

19. Finally, it is argued that the appellant was neither caught red-handed accepting the money nor the appellant is beneficiary of the money as alleged. Moreover, the appellant was not arrested and

faced the trial and continued to appear before the Trial Court as and when directed. In addition, during the present pandemic situation, the appeal is not likely to be heard, anytime soon, therefore, the sentence of the appellant may be suspended during pendency of the appeal.

20. Mr.Chetan Sharma, learned Solicitor General appearing on behalf of the CBI has submitted that it cannot be stated, at this stage, whether she is beneficiary or not, however, that will be taken into consideration at the time of disposal of the appeal.

21. Keeping in view the facts recorded above and the fact that appellant was not arrested in the present case, however, without commenting on the merits of the appeal, I am of the view that the appellant deserves suspension of sentence during the pendency of the appeal.

22. Accordingly, appellant shall be released on bail on her furnishing a personal bond of Rs.50,000/- with two sureties of the like amount to the satisfaction of the Trial Court/Duty Judge.

23. The appellant shall ensure her presence at the time of hearing of the appeal.

24. The application is, accordingly, allowed and disposed of.

25. Copy of this order be transmitted to the Jail Superintendent concerned and Trial Court for information and necessary compliance.

26. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

SURESH KUMAR KAIT, J JULY 30, 2020/ab