

# State Through Central Bureau Of ... vs Anup Kumr Srivastava on 4 August, 2017

**Author: R.K. Agrawal**

**Bench: R.K. Agrawal, A.K. Sikri**

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 1336 OF 2017  
(Arising out of Special Leave Petition (Crl.) No. 10249 OF 2014)

State through Central Bureau of Investigation	.... Appellant(s)
Versus	
Dr. Anup Kumar Srivastava	.... Respondent(s)

## JUDGMENT

R.K. Agrawal, J.

1) Leave granted.

2) This appeal is directed against the judgment and order dated 21.11.2013 passed by learned single Judge of the High Court of Delhi at New Delhi in Crl. M.C. No. 4360 of 2012 whereby the High Court allowed the petition filed by the respondent herein against the order dated 08.11.2012 passed by the Special Judge (CBI-01), New Delhi in C.C. No. 02/2012 wherein charges have been framed against the respondent herein.

Reason:

c) Brief facts:

(a) At the relevant time, Dr. Anup Kumar  
Srivastava-respondent herein was posted as the

Commissioner, Central Excise, Delhi-1 Commissionerate. On 02.01.2012, on the basis of source information, a case under Section 120-B of the Indian Penal Code, 1860 (in short 'the IPC') read with Sections 7, 8, 10, 12 and 13(2) read with 13(1)

(d) of the Prevention of Corruption Act, 1988 (in short 'the PC Act') was registered by the CBI, AC-1, New Delhi being RCAC 2012 A0001 against the respondent herein along with other officials of the Central Excise Department, Delhi for obtaining illegal gratification by corrupt and illegal means owing to their alleged role in a raid in Delhi.

(b) The chargesheet dated 29.02.2012 was filed in the Court of Special Judge, Patiala House Court, New Delhi for framing of charges wherein it was alleged that on 28.12.2011, a team of officials of Central Excise, Delhi-I, lead by Lallan Ojha, Superintendent, conducted an illegal raid at the premises of Dilip Aggarwal and Anand Aggarwal at Najafgarh Road, New Delhi. It was further alleged in the chargesheet that the respondent herein through one Hemant Gandhi (private person) negotiated with the owners of the premises for illegal gratification in lieu of not taking any action against them and finalized the bribe amount of Rs. 60 lakhs to be paid to the above named private person. The private person was in regular touch with the owners of the premises and received Rs. 20 lakhs in cash along with a cheque of Rs. 20 lakhs as security for the remaining amount from them. Further, the private person was in regular touch with the officials of the Excise Department as well and he actually negotiated with them including the respondent herein for some concession in the amount on behest of the owners. In the whole process, the private person worked as a middleman and conveyed the illegal gratification fixed to the respondent herein.

(c) The investigation further revealed that as per the intercepted conversation received from Special Unit, CBI, Delhi, the respondent herein was in regular contact with Hemant Gandhi through telephone and also through personal meetings who used to organize illegal searches under the directions and protection of the respondent herein through other officials of the Department.

(d) On 08.11.2012, an order was passed by the Court of Special Judge, (CBI-01), Patiala House Courts, New Delhi in C.C. No. 02/2012 wherein the respondent herein was charged with Section 120-B of the IPC and Sections 7, 12 and 13(2) read with Section 13(1)(d) of the PC Act.

(e) Aggrieved by the order framing charge dated 08/17.11.2012, the respondent herein preferred Crl. M.C.(M) No. 4360 of 2012 under Section 482 of the Code of Criminal Procedure, 1973 (in short 'the Code'). Learned single Judge of the High Court, vide judgment and order dated 21.11.2013, quashed the order dated 08/17.11.2012 qua the respondent herein.

(f) Aggrieved by the order dated 21.11.2013, the appellant-State through CBI has filed this appeal by way of special leave before this Court.

4) Heard Mr. P.K. Dey, learned counsel for the appellant-State and Mr. Joy Basu, learned senior counsel for the respondent.

Point for consideration:

5) The only point for consideration before this Court is whether in the present facts and circumstances of the case, the appellant-State has made out a case for setting aside the order passed by the High Court?

Rival contentions:

6) Learned counsel for the appellant-State contended that the duty casts upon the courts at the time of framing of charge is limited to the extent of examining the prima facie case against the accused and not to run a mini trial at the time of framing of charge. Learned counsel further contended that the Special Court rightly framed the charges against the respondent-accused. He further contended that the order passed by the High Court is based on assumption and hypothesis which ignores the crucial evidence in the form of intercepted telephonic conversation, viz., Call No. 51 wherein the amount of "Six Zero" was referred which clearly proves his involvement in the crime and the High Court erred in law in considering that vide Call No. 51 final bribe amount was conveyed to the respondent-accused.

7) Learned counsel further contended that apart from prima facie evidence, there were appropriate and sufficient evidence against the respondent-accused and in all likelihood the quashing of criminal proceeding qua the respondent-accused would severally affect the ongoing trial against other accused.

He further contended that the High Court completely lost sight of the fact that the respondent-accused was in constant touch with co-accused Hemant Gandhi who was updating him with every development during and after the raid through Lallan Ojha-Superintendent, which prima facie establishes his involvement in the entire conspiracy. Learned counsel finally contended that the evidence in the form of intercepted calls clearly indicating "Six Zero" and "Mission Successful", deposition of prosecution witnesses, involvement of a private person in the raid and recovery of bribe amount in cash and in cheque clearly prove the involvement of the respondent-accused and the High Court erred in law while quashing the charges against him. The power of quashing criminal proceedings, particularly, pursuant to charges framed is to be exercised very sparingly and with great circumspection and that too in rarest of rare case.

8) Per contra, learned senior counsel for the respondent submitted that there is no illegality in quashing of chargesheet against the respondent herein on the basis of examination of grounds taken by him. The High Court did not exercise revisional jurisdiction rather exercised powers under Section 482 of the Code while passing the order after considering the evidence on record in order to form a prima facie opinion in accordance with settled legal position.

9) Learned senior counsel further submitted that the statements under Section 164 of the Code do not implicate the respondent herein in the present case and the witnesses have resiled from the said statements that were obtained under threat of arrest and false implication in the case.

10) Learned senior counsel further submitted that Call No. 48 between Hemant Gandhi and Mahendra Kapoor completely belies the prosecution story about the alleged involvement of the respondent herein. He further submitted that Call No. 51 is also of no help as there is no material on record to suggest that respondent herein had agreed to demand the illegal gratification and there is no direct talk between respondent herein and Lallan Ojha or with any of the team members of the

alleged raiding team. Learned senior counsel finally contended that the judgment passed by the High Court was well within the parameters in terms of settled legal position for considering the matter at the stage of framing of charge or discharge of the accused and no interference is called for by this Court in this regard.

Discussion:

11) A final report was filed in the Special Court, Patiala House in the FIR being No. RCAC 2012 A0001 dated 29.02.2012 alleging that on 28.12.2011, the respondent herein, who was at the relevant time posted as the Commissioner, Central Excise, Delhi-I Commissionerate, along with other persons of the Department and with one Hemant Gandhi (private person), planned a fake raid at the premises of Mr. Dilip Aggarwal and Anand Aggarwal at Najafgarh Road, New Delhi in order to obtain illegal gratification by illegal and corrupt means through Hemant Gandhi.

12) It is the case of the prosecution that on 28.12.2011, a team of officials of the Central Excise Department led by Lallan Ojha, Superintendent, conducted an illegal raid at the premises of Dilip Aggarwal and Anand Aggarwal at 71/7, A-4, First Floor, Najafgarh Road Industrial Area, New Delhi. Further, Lallan Ojha, in conspiracy with respondent herein and Hemant Gandhi and others negotiated with the owners of the premises for illegal gratification in lieu of not taking any action against them and finalized the bribe amount of Rs. 60 lakhs to be paid by them through the private person. The factum of the said raid was telephonically conveyed by Lallan Ojha to the respondent herein through Hemant Gandhi. Hemant Gandhi was in regular touch with the owners of the premises and received a huge amount of Rs. 20 lakhs in cash along with a cheque signed by Anand Aggarwal for Rs. 20 lakhs as security for the remaining amount of illegal gratification. Hemant Gandhi also spoke to Lallan Ojha and the respondent herein for some concession in the amount.

13) The investigation further revealed that as per the intercepted conversations received from Special Unit, CBI, Delhi, the respondent herein was in regular touch with Hemant Gandhi over phone and also through personal meetings for the last 6-7 months and Hemant Gandhi got arranged illegal searches under the directions and protection of the respondent herein in order to collect illegal gratification from the parties so raided. The entire conversation shows that search was conducted with the sole motive of obtaining illegal gratification and the owner of the premises were pressurized to obtain illegal gratification and final settlement was arrived at for an amount of Rs. 60 lakhs. The investigation further revealed that Hemant Gandhi was acting as the middleman of the respondent herein for collection of illegal gratification by scouting for his known businessmen who could be raided and illegal gratification could be extracted from them. The fraudulent nature of the search as well as the entire motive for collection of illegal gratification is said to be established through intercepted conversations of Hemant Gandhi, Lallan Ojha and the respondent herein. The private person-Hemant Gandhi is said to have informed telephonically about the recoveries during the search, success of the mission and the settlement of Rs. 60 lakhs in a cryptic language by saying "mission successful" and "six zero" and the same was acknowledged by the respondent herein by saying "ok".

14) In view of the above, it can be easily gauged from the case of the CBI that the case solely rests upon 96 conversations recorded between 23.12.2011 to 02.01.2012 by the Special Unit (SU), CBI, New Delhi on the basis of the legal technical surveillance. In this regard, the appellant-State has heavily relied upon Call Nos. 48 and 51 and it is pertinent to mention here the details of above said calls which is as under:-

Call No. 48 dated 28.12.2011, Time at 13:33:08, Duration 205 Sec., file format 1.47 MB, Conversation between Mahender Kapoor (1123379010) and Hemant Gandhi (11-25225641) HG Hello Kapoor Hello HG Yes brother Kapoor Yes HG Mission Successful Kapoor Mission HG Successful Kapoor Very Good, Very Good HG Lallu is very fast, (Abusive Language) Kapoor He is fast HG Yes, Yes Kapoor He is not a fool.

HG Yes, I call him by the name of Lallu.  
Kapoor Then, at which time they went there  
HG They reached there at 7.30, (Abusive Language)  
Kapoor They reached at 7.30 and when they entered  
HG ... at Sharp 10.30  
Kapoor Ok, they are telling huge recovery.  
HG They have recovered the material of about four crore from inside  
Kapoor Now the work is fit.  
HG Yes, but it was not deserving, deal has been

made for six zeroes, this is the figure. Don't tell it to Bhai Sahab also, don't tell this to anyone.

Kapoor Ok HG No one should learn about this because only I know this figure and Lallu knows. Even that Muchhad (man with moustache) does not know.

Kapoor No, no we will not talk with them in this regard.

HG Yes, I mean his CHA also does not know the figure.

Kapoor Yes HG If it comes out immediately, deal has been made for sixty, will given tomorrow.

Kapoor Ok, Ok, Ok.

HG Then take.... I did not come in picture anywhere.  
Kapoor Yes.  
HG I did not come in picture  
Kapoor Very good, very good.  
HG They have made direct all the post deal.  
Kapoor Yes, it is good.  
HG He was talking with me continuously. I said you should do there.

Kapoor Yes, yes  
HG He was asking about guarantee, I said he will not annoy you dear.  
Kapoor Yes, yes

HG He is saying for tomorrow.... he is ill also, saying that will given tomorrow.  
Kapoor Yes, yes  
HG Should do, I said you can see.  
Kapoor Yes, then how it will be done.  
HG Yes, now how they will do. He was asking me

that how it will be done. I said you should not worry.

Kapoor Yes, Yes  
HG He was asking to come in the evening, I do

not know whom he is calling now, (Abusive Language).

Kapoor Ok, Ok, no he was calling thereafter.

HG In the morning when it was talked.  
Kapoor Ok.  
HG When it was under process.  
Kapoor Ok, Ok, Ok.  
HG I said..... I am busy in your work  
Kapoor Yes, yes.  
HG He is saying that ok, come in the evening.  
Kapoor It is alright, there is no harm in meeting.  
HG I do not know brother, now I fear in meeting with him.  
Kapoor Ok, then refuse him for today.  
HG Yes  
Kapoor Yes, ask him that I am busy somewhere.  
HG Yes  
Kapoor You may ask him that you are going somewhere for work.  
HG It is okay.  
Kapoor It is Okay.

Call No. 51 dated 2 dated 28.12.2011, Time at 16:12:06. Duration 68 Sec., file format 518 KB, Conversation 1.47 MB, Conversation between Mahender Kapoor (1123379010) and Hemant Gandhi (11-25225641) HG Hello Kapoo Hello r HG Yes

Please PA to A... Sir, Hemant Gandhi Ji is there.

AKS

HG Yes, Yes.  
PA to Sir, Commissioner sahib will talk.  
AKS  
Anoop Yes, Hemant.  
HG Sir, the mission is successful  
Anoop Yes, will you come to me.  
HG Sir, actually I had to take my father to a doctor,

I was trying to tell this to you in the morning also, but you had disconnected.

Anoop Ok, when will you come home.  
HG I will come tomorrow.  
Anoop At which time.  
HG Tomorrow in the afternoon at about 11-12  
noon.  
Anoop Ok then come.  
HG And Sir, that eight and fifteen.  
Anoop Yes, Ok.  
HG And they said that it was received.  
Anoop No, still did not meet  
HG A..... Six  
Anoop Chairman had come.  
HG Six Zero, is it ok.  
Anoop Ok  
HG Yes Sir.

Call No. 48 was made by Hemant Gandhi on 28.12.2011 after the completion of the alleged illegal raid. It is also evident from the call that Mahender Kapoor-Superintendent also had the knowledge of the alleged raid and Hemant Gandhi informed him that the raid was successful and that they have recovered a lot of goods worth about four crores from inside the premises. Further, during the call, Hemant Gandhi told Mahender Kapoor that this figure should not be disclosed to anyone as the same is known only to him and Lallan Ojha. Even Hemant Gandhi asked Mahender Kapoor to not to inform this thing to 'Muchhad' i.e., the respondent-herein to which Mahender Kapoor replied in affirmative and maintained that this should not even be shared with anyone. Hemant Gandhi also informed him that an amount of Rs. 60 lakhs has been fixed for the deal without him (Hemant Gandhi) being in picture. He further admits that this information about the premises was given by him only. It is also on record that for the first time the words 'mission

successful' and 'six zeroes' have been used in this call between the Mahender Kapoor and Hemant Gandhi.

15) A bare perusal of the above call, prima facie, shows that Mahender Kapoor was actually the man behind the raid who was guiding Hemant Gandhi about the manner in which Lallan Ojha should proceed for ensuring the payment of the agreed amount such as by preparing seizure memo etc. It is also clear from the above that after the raid Hemant Gandhi was afraid of the respondent-herein and does not want to meet him. In this view of the matter, we are of the opinion that Call No. 48 does not implicate respondent herein with regard to the settlement of illegal gratification in lieu of not taking action against the owners of the premises. In fact, this call, read with Call No. 64, proves the complicity and connivance of Mahender Kapoor and Hemant Gandhi apart from Lallan Ojha and Ashok Aggarwal wherein Hemant Gandhi is requesting Mahender Kapoor to get the money for him out of the alleged illegal gratification amount which shows that it was Mahender Kapoor who was receiving the alleged illegal gratification amount and distributing the same. In our considered opinion, Call No. 48 does not implicate the respondent herein in the commission of offence.

16) Call No. 51 was made by Hemant Gandhi to the respondent herein on 28.12.2011 wherein Hemant Gandhi informed the respondent herein that the mission was successful. It is the case of the prosecution that Hemant Gandhi informed about the alleged raid to the respondent herein that it was successful which fully implicates him in the offence. But on a careful scrutiny of the call, it cannot be inferred that the respondent herein had agreed to demand the illegal gratification and also there was no direct talk between Lallan Ojha and the respondent herein who was supposed to inform his senior officer on whose direction he was leading the raiding team. In the call, it was Hemant Gandhi who used the words 'mission successful'. In our opinion, the prosecution has wrongly connected the words "mission successful" in call No. 48 with that of in Call No. 51. In Call No. 48, it is very much clear that Mahender Kapoor and Hemant Gandhi were talking about the alleged raid and Hemant Gandhi himself accepted that he provided the information for the same. When the respondent herein was not at all in picture in Call No. 48 how can he be connected in Call No. 51 by showing the use of words 'mission successful' and 'six zero' that too when none of the members of the raiding team informed about the same to him. Further, during the alleged conversation in Call No. 51, it has also been noticed that Hemant Gandhi has used three more figures 'eight', 'fifteen' and 'six' which makes the conversation ambiguous and beyond any comprehension and it does not make out any logical understanding of the actual conversation between the parties making it. Hence, no adverse inference can be drawn against the respondent herein with regard to the same.

17) The statements under Section 164 of the Code also do not implicate the respondent herein in the present case as the witnesses have retracted from their



statements. Further, on the contrary, the said witnesses have deposed that the aforesaid statements under Sections 161 and 164 were obtained under threat of arrest and false implication in the case and therefore are not voluntary. Admittedly, the statements of Lallan Ojha as well as the respondent herein are not on record. Even from the statement made by Ms. Rekha Rani (PW-6)-PS to the respondent herein, it can be easily seen that Hemant Gandhi was a frequent visitor to the office of the respondent herein. Several times, PW-6 connected his call to the respondent herein but in her deposition she clearly mentioned that earlier he used to call on the landline number of the office but for the last 5-6 months he was meeting the respondent herein personally in his office. Though the said deposition proves the nearness of that particular private person with the respondent herein but it cannot be inferred that the private person was in constant touch with the respondent and was apprising him about every development before, during and after the alleged raid. The claim of his nearness to the respondent herein is baseless as he was working as the informer to the evasion wing and the alleged phone calls made by him to the respondent herein or meetings with the respondent herein cannot and will not be sufficient to implicate the respondent herein.

18) Framing of charge is the first major step in a criminal trial where the court is expected to apply its mind to the entire record and documents placed therewith before the court.

Taking cognizance of an offence has been stated to necessitate an application of mind by the court but framing of charge is a major event where the court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there exists no ground to proceed against the accused, the court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In such cases, the court may discharge him or quash the proceedings in exercise of its powers under the provisions.

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

prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do.

20) At this stage, it would be appropriate to quote a decision of this Court in Central Bureau of Investigation, Hyderabad vs. K. Narayana Rao (2012) 9 SCC 512 wherein it was held as under:-

“24. 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 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.”

21) Further, what constitutes illegal gratification is a question of law; whether on the evidence that crime has been committed is a question of fact. If, therefore, the evidence regarding the demand and acceptance of a bribe leaves room for doubt and does not displace wholly, the presumption of innocence, the charge cannot be said to have been established.

22) In P. Satyanarayana Murthy vs. District Inspector of Police, State of A.P. (2015) 10 SCC 152, this Court has held as under:-

22. In a recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(i) and (ii) of the Act, it is

contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act.

Such proof of acceptance of illegal gratification, it was emphasised, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder.

Hence, the proof of demand has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the PC Act which is absent in the case at hand.

23) It was contended by learned counsel for the appellant-State that the High Court exceeded its jurisdiction while quashing the order of charge passed by the Special Court, CBI Cases. The legal position is well settled that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the court is to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 of the Code seeking for the quashing of charge framed against him the court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. The court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case.

24) We have no doubt to hold that in Call No. 48, the respondent herein was not at all in picture and even in Call No. 51 he was talking to Hemant Gandhi but it is not proved that they were talking about the same raid as they have used certain other cryptic codes as mentioned above which makes the Call highly improbable for connecting the respondent herein in commissioning of the offence. Even otherwise, in Call No. 51, the benefit of doubt must go to the respondent herein where the

language of the call is dubious and no logical understanding of the actual conversation can be drawn. Further, in the absence of any details with regard to the amount of 'six zero', we are of the view that Call No. 48 categorically brings out that the respondent herein did not have any knowledge of the alleged criminal conspiracy and Call No. 51 is also unable to prove the complicity of the accused in the crime because of its out of the context conversation. In view of the above, we are of the considered opinion that Call Nos. 48 and 51, heavily relied upon by the prosecution, lack object and purpose to prove the complicity of the respondent herein in the crime.

Conclusion:

25) In view of the above, we are of the considered opinion that vide Call Nos. 48 and 51, the prosecution is not able to prove the guilt of the respondent herein in the alleged raid.

There is no material evidence on record in order to bring home the charge of conspiracy against the respondent. There is no direct or circumstantial evidence to prove that the respondent has demanded any illegal gratification and has accepted or obtained any such illegal gratification. Further, the premises that was alleged to be raided was neither a manufacturing unit nor packing or repacking activity was carried out there and hence no case of central excise could have been made out which could grant any jurisdiction to the respondent to do some favour or disfavor in the discharge of his official functions. The High Court was well within its powers while quashing the order framing charge as there was no material on record to connect the respondent with the offence in question.

26) In view of the foregoing discussion, the appeal filed by the CBI is liable to be dismissed and is, accordingly, dismissed. However, it is made clear that the present conclusion is confined only to the disposal of this appeal and the trial court is free to decide the case on merits with regard to other accused persons.

.....J. (A.K. SIKRI) .....J. (R.K. AGRAWAL) NEW  
DELHI;

AUGUST 4, 2017.