HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 5514/2021

Nimba Ram S/o Shri Kushala Ram, Aged About 50 Years, R/o New Colony, Panch Batti, Jaipur (Raj).

----Petitioner

Versus

1. State Of Rajasthan, Through Its Public Prosecutor.
2. Bajrang Singh, Addl. S.p Special Investigation Unit, Acb, Jaipur.

----Respondents

For Petitioner(s)	:	Mr. Manoj Choudhary & Mr. Mukesh Dudi on behalf of Mr. G.S. Gill
For Respondent(s)	:	Mr. Rajendra Yadav, AAG Mr. Arvind Kumar, P.P.

HON'BLE MR. JUSTICE FARJAND ALI

Order

RESERVED ON	**:::**	**27.02.2023**
PRONOUNCED ON	**:::**	**20.03.2023**

BY THE COURT:-

The instant criminal miscellaneous petition has been filed under Section 482 CrPC seeking quashing of FIR No. 229/2021 registered at Police Station CPS ACB, Jaipur, District ACB O.P. Siu Jaipur for offences under Sections 7A and 8 of the Prevention of Corruption (Amendment) Act, 2018 and Section 120-B of IPC and all consequential proceedings arising thereof.

This case has come up for hearing by virtue of being listed before this Court as per the directions of Hon’ble the Chief Justice.

The brief facts of the case are that a complaint came to be filed by the Additional Superintendent of Police, ACB (hereinafter referred to as ‘ASP’) at the Headquarter, ACB stating therein that an overview and analysis of a video clip which was being broadcasted on Zee Media Television Channel on 10.06.2021 revealed that there was a bill amount of Rs. 276 crores which was to be paid by Nagar Nigam Greater Jaipur to a company named BVG in exchange for their cleaning services. It is also stated by him that there is conversation between representatives of BVG company and Mr. Rajaram Gurjar, husband of the then suspended mayor (herein after referred to as the 'mayor'), Nagar Nigam Greater, Jaipur regarding payment of 10 percent of the pending bill amount, i.e. Rs. 20 crores, to Mr. Rajaram, in exchange of which he would get the pending bills cleared. It was felt by the ASP that a case of taking undue advantage by using his personal influence with a public servant was prima facie made out against Mr. Rajaram Gurjar. Upon filing of the said complaint, a preliminary enquiry No. 03/2021 was registered and the investigation was handed over to the Additional Superintendent of Police, Special Investigation Unit, ACB, Jaipur who had filed the complaint at the Headquarter in the first instance on 10.06.2021. On the same day, as per the FIR, the ASP received a SanDisk pendrive from reliable sources containing the audio-visual recording of the clip that was broadcasted on social media and television in which the representatives of BVG Company and Mr. Rajaram Gurjar are conversing regarding exchange of bribe in order to get the payment of pending bills cleared. When the audio

and video recording contained in the said pendrive was listened to and watched by the ASP in the computer of the department, it was found that the conversation so recorded fell in the category of corrupt behaviour. The pendrive was then kept safe with the ASP in an almirah. Thereafter, as the data recorded in the pendrive was related to the facts stated in the preliminary enquiry, the pendrive was seized by the ACB on 11.06.2021.

Photos of the persons present and identifiable in the recording were downloaded from the internet, stored in a CD-R and sent to FSL for testing. The second CD-R was also sealed in an envelope for the purpose of investigation. Thereafter, the transcript of the video/audio recording contained in the pendrive was made and photocopies of the related documents were procured. The pendrive as well as one of the CD-R(s) were sent to the FSL, Jaipur for opinion. The pendrive was further sent to FSL, Telangana, Hyderabad for testing of the audio contained in the pendrive post discussion with senior officials of the Bureau asking whether there is consistency in the audio saved in the pendrive and whether there is tampering, mixing or editing done in the said audio. Eventually, the investigation conducted in pursuance of the preliminary enquiry led to the lodging of FIR No. 229/2021 at police station CPS ACB, Jaipur on 28.06.2021 against the present petitioner as well as against Mr. Rajaram Gurjar, husband of the then suspended mayor of Jaipur, Nagar Nigam Greater, Jaipur and the two representatives of BVG Company, namely Mr. Omkar Sapre and Mr. Sandeep Kumar Choudhary.

Learned counsel for the petitioner submits that no offence as alleged is made out against the petitioner if the contents of the FIR are read with the evidence collected during the course of investigation. The pendrive was received by respondent No. 2 from a reliable source on 10.06.2021 but the same was seized by the ACB on 11.06.2021 and since there is no independent witness, the FIR deserves to be quashed. It is submitted that indisputably, any material stored in a pendrive is secondary evidence and without procurement of the primary evidence, the FIR should not have been registered. There is no complainant in this case from whom a bribe has been demanded. The fact that despite existence of Central Lab at Hyderabad, the department sent the voice samples to the State Lab at Hyderabad for testing raises suspicion over the conduct of the department and it seems that as the desired result could not be obtained from the test conducted at the State Lab of Rajasthan, the samples were sent to Telangana, Hyderabad.

The transcript of the video provided with the charge-sheet is not accurate and there are deliberate changes which may affect the Court to the prejudice of the petitioner.

The story of prosecution is tainted with malafide as the State Lab of Rajasthan refused to make any report about the audio clipping in absence of the original recording device and despite the fact that a report from State Lab, Telangana, Hyderabad was sought only with regard to audio clipping, its report contained opinion on video clipping. The report of State Lab, Rajasthan had

also found discontinuity in two of the three videos contained in the device sent for FSL.

There is no complaint, no complainant, no transaction, no original recording and instrument available with the investigating agency that could implicate the petitioner in any manner, thus, the FIR needs to be quashed and set aside.

Learned public prosecutor opposed the prayer made by learned counsel for the petitioner, furnished a factual report and submitted that prima facie sufficient evidence is available on record on the basis of which the petitioner was booked and he is liable to be forced to go through the rigour of trial. Shri Rajendra Yadav, learned GA-cum-AAG, vehemently and fervently submitted that the evidence collected so far by the agency in the form of electronic evidence is more reliable than the other verbal evidence. Due certification has been supplied with the electronic evidence and requisite examination by the FSL has also been conducted, according to which, as such, it can be said with utmost certainty that four persons, namely, Rajaram, Nimbaram, Omkar Sapre and Sandeep Kumar Choudhary met at a place and made conversation in which Omkar Sapre and Sandeep Choudhary begged for a favour for the purpose of realisation of the amount due with the corporation (Nagar Nigam, Jaipur). The mayor had been sitting on the files since long and the company was facing financial hardship and that is why they were agreeing to negotiate with the husband of the mayor so that the amount of the due bills could be released. On the other hand, the accused Rajaram, who happened to be the husband of the mayor, was engaging in

negotiations on his own behalf as well as on behalf of his mayor-wife for a certain amount of illegal gratification which was to be received for his personal gain towards the work pending with his wife. He was doing so on the basis of his status of being the husband of the mayor by virtue of which he could influence the mayor and get the due bill amount released in favour of the company. The presence of accused Nimbaram at the same scene is very much conspicuous. He was sitting in the discussion as a mediator or a middleman in whose presence the negotiation for fixing the amount of illegal gratification was supposed to be done. Therefore, in view of the availability of evidence on record, no case for quashing of the FIR is made out.

It is further pleaded that at this stage of hearing a plea under Section 482 of CrPC for quashing of the FIR and the entire criminal proceedings, the evidence brought on record is not required to be examined meticulously. Prima facie material is available on record and a perusal of the same discloses commission of a cognizable offence and complicity of the alleged accused persons in commission of crime, thus, the FIR filed in the current matter is not liable to be quashed.

The matter was heard at several occasions and arguments were finally concluded on 27.02.2023. Written arguments were also submitted on behalf of the respective parties.

Heard and considered the oral as well as the written submissions made by learned counsel for the parties. Perused the FIR impugned and the other material available on record.

When it comes to exercise of the inherent powers of High Court as provided in the statute, it is banal in criminal jurisprudence that though the discretion provided under Section 482 of CrPC is wide but the same is to be exercised carefully and sparingly and only when the same is justified by the tests laid down in the provision itself. The tests laid down in the provision of Section 482 CrPC are that the inherent powers of the High Court shall be exercised, as may be necessary, to:

a) give effect to any order under this Code.

b) to prevent abuse of the process of any Court.

c) to secure the ends of justice.

Quashing of FIR is considered improper only when serious triable allegations are apparent in the complaint which is not the case in the present matter. Due heed has to be paid while considering a petition under Section 482 CrPC. The courts cannot go into the details of the evidence or appreciate the evidence to the extent of conducting a mini-trial. If it appears that the court has dealt with the contents of the FIR and the charge sheet filed for the other two accused persons a little too much in detail, then the same has not been done with the intention of being a heterodox but rather to reach to the conclusion whether a cognizable offence is made out against the present petitioner or not and to prevent abuse of process of court as well as to secure the ends of justice while endeavouring to exercise discretion within the limits prescribed by the statute as well as the judicial pronouncements laid down by Hon'ble the Supreme Court.

The celebrated judgment passed by a Division Bench of Hon'ble the Apex Court in ***State of Haryana and Ors. Vs. Ch. Bhajan Lal*** reported in AIR 1992 SC 604 is an authoritative precedent on the inherent powers of High Court under Section 482 of CrPC and is relevant till date. Hon'ble the Supreme Court held therein that though no exhaustive list of the types of cases or set guidelines can be formulated, however, such illustrations were listed down after discussing the law enunciated in this context through judicial as well as statutory authorities which would require exercise of inherent jurisdiction by the High Court to secure the ends of justice or prevent abuse of the process of law/any court. The illustrations are as follows:

> "105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
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> 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
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> 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of

a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

106. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

The question that whether commission of a non-cognizable offence is prima facie disclosed in the FIR or not can be answered

only by analysing the ingredients/requirements of the offences alleged against the petitioner. The only test to be applied before exercising power under Section 482 CrPC is that the High court has to proceed on the basis of the allegations levelled in the complaint/FIR and the documents that have been presented therewith and at the juncture, it is not expected from the High Court to embark upon an enquiry to ascertain the truthfulness and genuineness of the allegations levelled in the complaint/FIR.

As per the FIR, it is alleged that offences under Sections 7A and 8 of the Act of 2018 and Section 120-B of IPC have been committed by four named persons, including the petitioner. Though investigation against the present petitioner and co-accused Sandeep was kept pending under Section 173(8) of CrPC but it has been purported in the factual report dated 27.02.2023 submitted before this Court that the investigation conducted till that point in time revealed that offences specified under Section 7A of the Act of 2018 and Section 120-B of IPC have been committed by the petitioner.

Section 7A was inserted into the Prevention of Corruption Act, 1988 by way of amendment Act passed in 2018. Section 7A is reproduced below for easy reference:

> **7A. Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.**—Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by

> another public servant, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

A plain reading of the above provision reflects that there are certain requirements that need to be fulfilled in order to impose the punishment prescribed in the provision. Firstly, there should be an acceptance or procurement or an attempt to accept or obtain any undue advantage by a person from another person. A person may obtain/accept or attempt to obtain/accept such an undue advantage either for himself or for another person. In the present matter, there is nothing available in the evidence produced before the Court that can show that the petitioner was trying to obtain or accept an undue advantage for himself or for the representatives of BVG. Even if the recording is considered to be sound evidence, which we may return to in the forthcoming paragraphs of this judgment, then too, it cannot be ascertained that the petitioner was seeking an undue advantage from other accused Mr. Rajaram for the representatives of the company or vice versa rather the company representatives and the husband of the mayor were discussing due payments, percentage payment of total pending amount etc.

Secondly, the undue advantage should have been sought/accepted/obtained through illegal or corrupt means or by exercise of personal influence. It is understandable that the petitioner and the mayor would have known each other by virtue of being active participants in working for public interest and being involved in politics. The petitioner may also be familiar with the

husband of the mayor through her, however, there is no concrete proof to support that petitioner exerted personal influence over the husband of the mayor or the mayor herself or used any illegal means.

Thirdly and most importantly, the purpose of obtaining undue advantage or attempting to obtain undue advantage through illegal/corrupt means needs to be performance or causing of performance of a public duty improperly or dishonestly or forbearance or causing of forbearance of such public duty by such public servant or by another public servant. In the matter at hand, looking from either viewpoints, it cannot be concluded that the parties were public servant. If it is presumed that the petitioner was trying to obtain undue advantage in order to get Mr. Rajaram to perform any public duty, then no offence under Section 7A can be comprehended as Mr. Rajaram was not a public servant. On the other hand, if it is presumed that the petitioner was trying to obtain undue advantage in order to get the representatives of BVG, namely co-accused Omkar Sapre and Sandeep Kumar Choudhary, to perform any public duty, then too, no offence under Section 7A can be comprehended as both the above named co-accused were private individuals and not public servants. A third scenario is also possible wherein it can be alleged that the petitioner was trying to obtain undue advantage through illegal/corrupt means on behalf of Mr. Rajaram to influence his wife, the mayor, who is a public servant but since the Call Data Record brought forth during investigation shows that the petitioner

had communication with the mayor and it can be presumed that since both of them are political figures, they may, in all common probability, know each other or know of each other, then it seems a bit illogical for the petitioner to go around to reach the mayor by making contact through her husband rather than directly dealing with her.

In a recent ruling passed by a constitutional bench of Hon'ble the Supreme Court in ***Neeraj Dutta Vs. State (Govt. of N.C.T. of Delhi)*** (Criminal Appeal No. 1669 of 2009, decoded on 15th December, 2022), it has been held that direct evidence is not sine qua non to establish an offence under Section 7 of the Act of 2018. In the absence of direct/primary, oral/documentary evidence, it has been held that "it is permissible to draw an inferential deduction of culpability/guilt of a public servant" under Section 7 based on other evidence adduced by the prosecution. The question regarding nature and quality of proof of evidence which is required to maintain a conviction under Section 7 of the Act of 2018 when primary evidence is unavailable was referred to the constitutional bench in the said appeal and while interpreting the ruling passed by the constitutional bench, it was held by the Division Bench of Hon'ble the Apex Court in ***Neeraj Dutta Vs. State (Govt. of N.C.T. of Delhi)*** vide judgement dated 17.03.2023 that the judgment passed in reference does not dilute the standard of proof required in a criminal proceeding. In absence of direct evidence, oral or documentary, circumstantial evidence can be looked into, however, such circumstantial

evidence needs to be proved beyond reasonable doubt and each and every circumstance that the prosecution intends the court to rely upon in order to reach the conclusion of guilt needs to be consistent with the single hypothesis that there was a demand made for illegal gratification by the accused person. If the essence of requirement of demand for gratification, as enunciated in ***Neeraj Dutta*** (supra), is considered in the context of Section 7A of the Act of 2018, then it can be safely inferred that in order to constitute an offence under Section 7A of the Act of 2018, it needs to be established prima facie by placing cogent material on the case diary, which during the course of the trial may be converted into a legally admissible evidence, and from the above, the fact can be proved beyond reasonable doubt that the person who is being accused of committing the offence has made a demand for gratification or has accepted illegal gratification, none of which is being established by the evidence brought on record by the prosecution in the matter at hand. It is the theory of criminal jurisprudence that even initial burden lies upon the prosecution and it cannot escape from producing any evidence from the perusal of which a strong prima facie case can be made out against the accused. The story of the prosecution is not consistent with the evidence, direct or circumstantial, as brought forth by the prosecution and thus, creates serious doubts on the case of the prosecution. Thus, the ingredients necessary to prove commission of offence under Section 7A are missing in the facts and circumstances prevalent in the instant case.

Before proceeding to discuss the ingredients required to constitute an offence under Section 8 of the Act of 2018, since recent pronouncements on the subject of corruption cases are being discussed, it is pertinent to mention the dictum of Hon'ble the Supreme Court passed in ***The State of Chattisgarh & Anr. Vs. Aman Kumar Singh & Ors.*** [Criminal Appeal; SLP (Crl.) No.s 1703-1705 of 2022] wherein High Courts have been cautioned to adopt a laissez faire approach in cases involving corruption and not quash the FIR in such matters at the stage of investigation. The relevant paragraph of the afore-said judgment is as follows:

> "74. Finally, following the above, what is of substantial importance is that if criminal prosecution is based upon adequate evidence and the same is otherwise justifiable, it does not become vitiated on account of significant political overtones and *mala fide* motives. We can say without fear of contradiction, it is not in all cases in our country that an individual, who is accused of acts of omission/commission punishable under the P.C. Act but has the blessings of the ruling dispensation, is booked by the police and made to face prosecution. If, indeed, in such a case (where a prosecution should have been but has not been launched) the succeeding political dispensation initiates steps for launching prosecution against such an accused but he/she is allowed to go scot-free, despite there being materials against him/her, merely on the ground that the action initiated by the current regime is *mala fide* in the sense that it is either to settle scores with the earlier regime or to wreak vengeance against the individual, in such an eventuality we are constrained to observe that it is criminal justice that would be the casualty. This is because, it is difficult to form an opinion conclusively at the stage of reading a first information report that the public servant is either in or not in possession of property disproportionate to the known sources of his/her income. It would all depend on what is ultimately unearthed after the investigation is complete. Needless to observe, the first information report in a disproportionate assets case must, as of necessity, *prima facie,*

> contain ingredients for the perception that there is fair enough reason to suspect commission of a cognizable offence relating to "criminal misconduct" punishable under the P.C. Act and to embark upon an investigation. Having regard to what we have observed above in paragraph 49 (supra) and to maintain probity in the system of governance as well as to ensure would be eminently desirable if the high courts maintain a hands-off approach and not quash a first information report pertaining to "corruption" cases, specially at the stage of investigation, even though certain elements of strong-arm tactics of the ruling dispensation might be discernible. The considerations that could apply to quashing of first information reports pertaining to offences punishable under general penal statutes *ex proprio vigore* may not be applicable to a P.C. Act offence. Majorly, the proper course for the high courts to follow, in cases under the P.C. Act, would be to permit the investigation to be taken to its logical conclusion and leave the aggrieved party to pursue the remedy made available by law at an appropriate stage. If at all interference in any case is considered necessary, the same should rest on the very special features of the case. Although what would constitute the special features has necessarily to depend on the peculiar facts of each case, interference could be made in exceptional cases where the records reveal absolutely no material to support even a reasonable suspicion of a public servant having intentionally enriched himself illicitly during the period of his service and nothing other than *mala fide* is the basis for subjecting such servant to an investigation. We quite appreciate that there could be cases of innocent public servants being entangled in investigations arising out of motivated complaints and the consequent mental agony, emotional pain and social stigma that they would have to encounter in the process, but this small price has to be paid if there is to be a society governed by the rule of law. While we do not intend to fetter the high courts from intervening in appropriate cases, it is only just and proper to remind the courts to be careful, circumspect and cautious in quashing first information reports resting on *mala fide* of the nature alleged herein."

This Court heeds to the caution expressed by Hon'ble the Supreme Court but in the present case, a huge amount of time has elapsed since commencement of investigation and a detailed

charge sheet has been filed against two other accused persons as well as a factual report has also been filed by the agency on the very date this judgment was reserved but no evidence that would stand steadfast against the test of legal proof has been collected by the agency. It is indeed correct that the considerations that are looked into before quashing of an FIR related to offences punishable under the Act of 2018 are different than the cases where the FIR pertains to offences punishable under general penal statutes but there are special features in this case and this court is not relying upon the fact of malafide or malice as a ground to quash the FIR filed against the petitioner. Though the court is cognizant of the caution opined by Hon'ble the Supreme Court but the present case has distinctive features which do not support continuance of investigation against the petitioner and do not warrant non-quashing of the FIR qua the petitioner.

Moving on to Section 8 of the Act of 2018, it is deemed relevant to reproduce the same for convenience:

> **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—
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> (*i*) to induce a public servant to perform improperly a public duty; or
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> (*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.

Illustration.—A person, 'P' gives a public servant, 'S' an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. 'P' is guilty of an offence under this sub-section.

Explanation.—It shall be immaterial whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or has performed, the public duty concerned, and, it shall also be immaterial whether such undue advantage is given or promised to be given by the person directly or through a third party.

(*2*) Nothing in sub-section (*1*) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the later.

After careful scanning of the charge sheet filed against other two accused in the present matter, it cannot be deduced that the petitioner gave or promised to give an undue advantage to any person. It is evident on the face of the record that neither did the petitioner induce a public servant nor did he reward any public servant for improper performance of public duty. In the factual report dated 27.02.2023, the agency has not found the offence under Section 8 to be proved against the petitioner, which further fortifies the fact that he is not guilty of committing such offence.

Section 120-B of IPC prescribes the punishment for the offence of criminal conspiracy. The offence of criminal conspiracy is defined under Section 120-A of IPC as an agreement according to which if two or more individuals agree to do or cause to be done an illegal act or an act which is not illegal but is done by employing the use of illegal means. Sections 120-A and 120-B of IPC are reproduced below for easy reference:

> **120A. Definition of criminal conspiracy.**—When two or more persons agree to do, or cause to be done,—
> (1) an illegal act, or
> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.
> Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.
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> **120B. Punishment of criminal conspiracy.**—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
> (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

If the facts and circumstances of the resent case are considered, existence of no agreement, implicit or explicit, is revealed by the material on record and the best case of the

prosecution can be that there may be an implicit agreement between the husband of the mayor and the representatives of the company as both these sides had motive to enter into such an agreement, however, no offence of conspiracy can be alleged against the petitioner by any stretch of imagination. In ***State of Kerala Vs. P. Sugathan and Ors***. reported in (2000) 8 SCC 203, it was held by Hon'ble the Supreme Court that unconnected bits and pieces scattered all over the place are not sufficient enough to connect the accused with the crime of criminal conspiracy. The relevant paragraphs of the afore-mentioned judgment are as follows:

> "12. We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is 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 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.
> 13. In Kehar Singh v. State, it was noticed that Section 120A and Section 120B IPC have brought the Law of Conspiracy in India in line with English Law by making an overt act inessential when the conspiracy is to commit any punishable offence. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In case where criminal conspiracy is alleged, the court must enquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not to be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whether any one of the conspirators does an act or series of acts, he would be held guilty under Section 120B of the Indian Penal Code."

It is not the case of the prosecution that the petitioner was making a plea on behalf of the husband of the mayor to the representatives of the company. It is also not the case of the prosecution that the petitioner was urging the husband of the mayor to cooperate with the representatives or accept some kind of offer which may fall under illegal/corrupt means. At best, it has been established that the petitioner was familiar with the husband of the mayor which, in isolation, does not make him part of any conspiracy to secure undue advantage through the means of bribe. He was a private individual who neither represented the

company nor the husband of the mayor or the mayor herself and obviously not the office of the mayor. There are no acts or series of acts done on part of the petitioner that would bring him under the scope of suspicion for commission of crime of conspiracy.

Moreover, it is not the case here that the investigation has not fully commenced. The agency has been investigating this matter from quite some time and a detailed charge-sheet has been presented against two other accused persons in the matter along with a factual report dated 27.02.2023. It seems that the investigation has reached a stumbling block because as such, no new facts and circumstances have been brought forth by the agency in the factual report submitted before the court given that charge-sheet was filed against two other accused way back on 27.08.2021. Thus, quashing of the FIR in the instant case will not cripple the process of investigation.

In ***State of West Bengal and Ors. Vs. Swapan Kumar Guha and Ors.*** reported in AIR 1982 SC 949, a three-judge bench of Hon'ble the Apex Court has held that if no offence is disclosed from the material available before the Court, investigation should not be permitted. The relevant paragraph of the said judgment is as follows:

> "69. In my opinion, the legal position is well-settled. The legal position appears to be that if an offence is disclosed, the Court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted.
> The observations of the Judicial Committee and the observations of this Court in the various

> decisions which I have earlier quoted, make this position abundantly clear. The prepositions enunciated by the Judicial Committee and this Court in the various decisions which I have earlier noted, are based on sound principles of justice.
> Once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result In unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing. The liberty and property of any individual are sacred and sacrosanct and the Court zealously guards them and protects them.
> .....
> .....As I have earlier observed this proposition is not only based on sound logic but is also based on fundamental principles of justice as a person against whom no offence is disclosed, cannot be put to any harassment by the process of investigation which is likely to put his personal liberty and also property which are considered sacred and sacrosanct into peril and jeopardy."

It is indeed true that the fundamental principles of justice mandate that a person cannot be harried by the process of investigation if no offence is disclosed against him/her/them. Liberty is considered to be a right which is fundamental to every human being and it is an inalienable right that is precious to the spirit of the constitution and has to be protected by the courts of law. The fundamental right to personal liberty is enshrined under Article 21 of Constitution of India which is the heart of all fundamental rights and provides that no person shall be deprived of his life or personal liberty except procedure established by law. The liberty provided by the constitution is not limited to bodily restraint but expands to include full conduct of an individual, including freedom of mind. There should be no unjustified

intrusions on any privileges that are available to a free man in common law and are considered necessary for pursuit of happiness provided that the individual does not hamper the liberty of another by his action/non-action or commit/omit any act which is barred by law. Certain paragraphs pertaining to liberty of an individual from an order passed by this Court in S.B. Criminal Miscellaneous II Bail Application No. 12906/2022 titled ***Suraj Vs. State of Rajasthan*** on 27.08.2022 are deemed appropriate to be reproduced below:

> "8. Life without liberty is like a body without soul. Freedom is the open window through which pours the sunlight of the human spirit and human dignity. Personal liberty of the accused is sacrosanct and quintessential to the very spirit and structure of a civilisation. Jeremy Bentham, the great English jurist, postulated that the greatest happiness of the greatest number is the end of law. The concept of civil liberty is embedded in individualism. This simply means that the purpose of the state is to help every individual in reaching their highest development and evolving into the best personality, thereby reaching a point where law and state are not required by the society. Thus, when personal liberty of an individual is threatened, his development is in peril which is a matter of great concern. Sir Wiiliam Blackstone has deftly observed on page 134 of the first volume of his book, 'Commentaries on the Laws of England' that,
>
> > "Personal liberty consists in the power of locomotion, of changing situation or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint unless by due process of law".
>
> .....
>
> One of the founding fathers and the Third President of the United States of America, Thomas Jefferson, has rightly said that,

> "Rightful liberty is unobstructed action, according to our will, within limits drawn around us by the equal rights of others."......
>
> .....Justice P.N. Bhagwati has embodied the spirit of the afore-mentioned observation in ***Maneka Gandhi Vs. Union of India (UOI) and Ors.*** reported in AIR 1978 SC 597 in the following words:
>
> > "The expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the status of distinct fundamental rights and given additional protection under Article 19."

The guilty should not escape and innocent should not be harassed or forced to face the rigour of trial. Pendency of a criminal proceeding against an individual certainly perturbs his mental condition and restricts his wilful function and therefore, the petitioner cannot be subjected to face the rigour of trial. It is deemed appropriate to borrow the famous words of Roscoe Pound which go as follows:

> "Law is experiences developed by reason and applied continually to further experience."

This Court is endeavouring to impart humane justice and is of the considered opinion that when there is no direct or indirect evidence that can establish commission of offences alleged against the petitioner, when the electronic evidence which forms the basis of filing of the enquiry, registration of the FIR and which forms the pillar on which the foundation of the case of prosecution stands is rendered inadmissible due to it being incongruent with the law governing admissibility of electronic evidence and the investigation

conducted by the agency is full of dents and riddled with blemishes with no conclusive material collected in a long span of time since launching of the preliminary enquiry on 10.06.2021, then no person of prudent mind can direct the investigation to continue and turn into a futile exercise which may waste the time and resources of the state.

There is no doubt that rule of law is the fundamental principle of governance employed in a democracy and that every individual is under the supremacy of law, having said that, it is also a given that the personal liberty of an individual, as guaranteed by Article 21 of Constitution of India, cannot be infringed.

The need to rely and consider electronic evidence emanates from wide access to technology and internet which is not restricted to government organisations or companies or huge corporations but is accessible to every individual at a click or a scroll. Any piece of evidence that is generated through electronic or mechanical process is called electronic evidence and electronic material is more susceptible to manual interferences in the present era, thus, with a view to adapt and cater to the changing atmosphere and development & widespread access of technology, the provision of Section 65-A and the mandate of Section 65-B were brought into existence by the legislation. There are several sites in which the original can be distorted by morphing, editing, photo-shopping and by using other methods and desired content can be generated. In order to avoid such manipulations and adulteration of evidence in electronic form and with the object of

maintaining the sanctity and the sterling worth of the evidence, the mandate of Section 65-B was inserted into Indian Evidence law and thus, this mandate cannot be ignored when someone is being accused on the sole basis of electronic evidence. Another reason for detailed deliberation upon requirements of Section 65-B is that it is a well-established principle that when a statute describes an offence and prescribes punishment for the same, then it should be strictly construed. Strict interpretation of a statute means that the language of the provision should be understood and glossed in such a manner that no case shall fall within its interpretation that would not come within reasonable interpretation of the statute. The rule adopted in ***Taylor Vs. Taylor*** [(1876) 1 Ch D 426] aeons ago has stood the test of time. The rule is that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. The judicature cannot rush in where even the legislature warily treads.

It is deemed appropriate to reproduce Sections 65A and 65B of the Indian Evidence Act for easy allusion:

> **65A. Special provisions as to evidence relating to electronic record.** –– The contents of electronic records may be proved in accordance with the provisions of section 65B.
>
> **65B. Admissibility of electronic records.** –– (*1*) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in

question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(*2*) The conditions referred to in sub-section (*1*) in respect of a computer output shall be the following, namely: ––

(*a*) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(*b*) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(*c*) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(*d*) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(*3*) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (*a*) of sub-section (*2*) was regularly performed by computers, whether––

(*a*) by a combination of computers operating over that period; or

(*b*) by different computers operating in succession over that period; or

(*c*) by different combinations of computers operating in succession over that period; or

(*d*) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(*4*) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, ––

(*a*) identifying the electronic record containing the statement and describing the manner in which it was produced;

(*b*) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(*c*) dealing with any of the matters to which the conditions mentioned in sub-section (*2*) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub- section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(*5*) For the purposes of this section, ––

(*a*) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(*b*) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those

> activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
>
> (*c*) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.
>
> *Explanation*. ––For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

There are multiple pieces of evidence on record in electronic format. We begin with the contents of the pendrive (hereinafter referred to as P1) submitted by one Mr. Rahul Borke to the agency on 03.07.2021. Mr Rahul is an Assistant Manager at BVG Company. As per the charge-sheet filed by the agency against two other accused in the present matter, it is reflecting that according to the information disclosed by co-accused Omkar Sapre regarding the location of the original copy of the viral recording, the officer reached the said location but Sapre retracted from his information and as a matter of fact, no pendrive or any material was collected from co-accused Omkar Sapre. It is thereafter claimed by the agency that one fine morning, Mr. Rahul Borke approached the Investigating Officer and handed over a pendrive to him claiming that he got the said pendrive from the bag of Omkar Sapre although no such bag was brought forth and it is not disclosed anywhere in the case diary where the bag was lying. The said Rahul Borke handed over the pendrive to the Investigating Officer on 03.07.2021. The story set out by the prosecution in the charge sheet is that after receiving the pendrive from Rahul Borke, the

officer viewed the contents of the pendrive in the laptop of the department and then prepared a seizure memo of the same.

It is further stated in the charge sheet that Mr. Rahul submitted a certificate under Section 65-B to the agency on 20.08.2021. It is stated in the statement of Mr. Rahul recorded under Section 161 CrPC that he secured the pendrive in question from the bag of co-accused Omkar Sapre but the same has not been verified by any corroborative evidence. The contents of pendrive P1 are claimed to be a copy of the original copy of the viral recording but the same has not been verified by any direct or indirect evidence and there is no basis to believe it to be a fact as it is a mere unproven and limping claim.

Section 65-A states that the contents of electronic records are to be proved as per Section 65-B which means that the certificate issued under Section 65-B is with regard to the contents of the sample sent for FSL and not the device that contains the said contents. It is nowhere stated by Mr. Rahul that he had watched/seen/listened to/went through the contents or the material contained in P1. He simply stated that he had obtained P1 from the bag of Sapre on 03.07.2021 and supplied the same to the I.O. immediately on the very same day. Since he did not go through the contents or the material that was stored in P1, the certificate supplied by him is no good as it cannot certify the authenticity of the contents or data inside the device rather it is a certification to the extent of existence of the physical device only and nothing else. Even the copy of the contents of P1 made

through the laptop of the department cannot be taken as copy of the original contents as the contents of P1 are claimed to be a copy of another copy of the original copy. In simpler words, the copy of P1 that was made by the agency was a copy of the copy of the copy which was claimed to be original. Another aspect to be taken note of is that the conditions mentioned in sub-clause (4) of Section 65-B are not fulfilled in the present case as neither can a certificate identifying the electronic record and describing the manner in which it was produced can be furnished by Mr. Rahul as he was not the owner of the laptop through which the copy contained in P1 was made and he did not have possession of the said laptop and nor can he provide the particulars of the device (the alleged laptop of co-accused Omkar Sapre) which was involved in the production of the electronic record contained in P1. Mr. Rahul was not a 'person occupying a responsible official position' in relation to the operations of the laptop as he neither owned or possessed the alleged laptop. It is appearing from the record that he just presented P1 to the agency without being involved in the process of production of the electronic content contained in P1 using a computer. Indisputably, after supply of the pendrive, the contents of the pendrive were watched in the office by the Investigating Officer on his official laptop so at the best, the investigating officer can be a responsible official as per the mandate of Sectuion 65-B but it is not comprehensible as to how Rahul Borke can be considered to occupy the responsible official position as the contents of the pendrive were not watched in his laptop/computer/any other device having the same purpose. Thus,

the contents of pendrive P1 supplied by Mr. Rahul have no evidentiary value. The certificate regarding admissibility of P1 was issued by Mr. Rahul under Section 65B of Evidence Act on 20.08.2021, much after supplying P1 to the Investigating Officer. The certificate cannot be taken to be a legal piece of evidence regarding the contents of pendrive when admittedly neither the undersigned opened/watched/listened to/went through the contents of P1 nor did he upload/download/transform/transfer/transmit or prepare P1. In fact, he didn't know what was contained in the pendrive. The mandate of certification under Section 65-B of Evidence Act is in respect of the electronic evidence which, in this case, is the content of P1 but not the physical thing, i.e. the pendrive P1, because that equipment/tool/device is not a piece of electronic evidence but it is the content stored therein. For ready reference, the relevant portion of Section 65-B (4) of the Evidence Act is reproduced below:

> (*4*) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, ––
>
> (*a*) identifying the electronic record containing the statement and describing the manner in which it was produced;
>
> (*b*) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
>
> (*c*) dealing with any of the matters to which the conditions mentioned in sub-section (*2*) relate,

> and purporting to be signed by a person occupying a **responsible official position** in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub- section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

Admittedly, Rahul Borke was not having such a responsible official position in relation to the operation of the relevant device, thus, his satisfaction cannot help the case of the prosecution and is a valueless piece of evidence.

Now, it is considered necessary to refer to the judicial pronouncements of Hon'ble the Supreme Court passed on the subject of admissibility of electronic evidence as envisaged under Section 65-B of the Indian Evidence Act.

The nature and manner of admission of electronic records was one of the key points decided in the climacteric judgment of ***Anvar P.V. Vs. P.K. Basheer*** reported in AIR 2015 SC 180 passed by the top court of the country. It is stated therein that **source and authenticity** are the two hallmarks that are to be taken into account when an electronic record is sought to be used as evidence. In order to use an electronic record as proof against an accused, it is necessary that the requirements of Section 65-B are complied with before oral evidence pertaining to electronic record can be considered. In paragraph 21 of the judgment, it is stated that it may be seen that it was a case where **a responsible official had duly certified the document at the time of production itself**. In the case at hand, the same has not been

done as the certificate under Section 65-B has not been supplied at the time of production of the pendrive P1 rather it was submitted after more than one and a half months, that too, without watching the contents of the pendrive.

Though Section 65-B safeguards authenticity of electronic evidence yet there is need to formulate law dealing with collection, procurement, storage and preservation of electronic data/evidence to ensure that the privacy, confidentiality and purity of evidence is protected at all costs. It is not wise in the opinion of this Court to pursue prosecution based on the electronic evidence that is on record as the language of Section 65-B of Evidence Act is clear and unambiguous and the electronic material does not stand its ground against the same. Admissibility assumes greater importance than relevancy in the context of electronic evidence owing to the non-obstante clause inserted in the very beginning of the provision of Section 65-B.

The case of ***Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Ors.*** reported in AIR 2020 SC 4908 is a very important precedent in development of point of law regarding admissibility of electronic evidence. The judgment passed in ***Anvar P.V.*** (supra) has been declared to be the law on section 65B of the Indian Evidence Act and admissibility takes precedence over relevancy when it comes to consideration of electronic evidence. The reasons for the acrimony behind Section 65B have been beautifully discussed therein. The relevant portions

of the judgment have been reproduced herein below in two sets for ease of reproduction:

I. "19. Section 65 differentiates between existence, condition and contents of a document. Whereas "existence" goes to "admissibility" of a document, "contents" of a document are to be proved after a document becomes admissible in evidence. Section 65A speaks of "contents" of electronic records being proved in accordance with the provisions of Section 65B. Section 65B speaks of "admissibility" of electronic records which deals with "existence" and "contents" of electronic records being proved once admissible into evidence. With these prefatory observations let us have a closer look at Sections 65A and 65B.
20. It will first be noticed that the subject matter of Sections 65A and 65B of the Evidence Act is proof of information contained in electronic records. The marginal note to Section 65A indicates that "special provisions" as to evidence relating to electronic records are laid down in this provision. The marginal note to Section 65B then refers to "admissibility of electronic records".
21. Section 65B(1) opens with a non-obstante clause, and makes it clear that any information that is contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document, and shall be admissible in any proceedings without further proof of production of the original, as evidence of the contents of the original or of any facts stated therein of which direct evidence would be admissible. The deeming fiction is for the reason that "document" as defined by Section 3 of the Evidence Act does not include electronic records."

II. "75. Documentary evidence, in contrast to oral evidence, is required to pass through certain check posts, such as (i) admissibility (ii) relevancy and (iii) proof, before it is allowed entry into the sanctum. Many times, it is difficult to identify which of these check posts is required to be passed first, which to be passed next and which to be passed later. Sometimes, at least in practice, the sequence in which evidence has to go through these

three check posts, changes. Generally and theoretically, admissibility depends on relevancy. Under Section 136 of the Evidence Act, relevancy must be established before admissibility can be dealt with. Therefore if we go by Section 136, a party should first show relevancy, making it the first check post and admissibility the second one. But some documents, such as those indicated in Section 68 of the Evidence Act, which pass the first check post of relevancy and the second check post of admissibility may be of no value unless the attesting witness is examined. Proof of execution of such documents, in a manner established by law, thus constitutes the third check post. Here again, proof of execution stands on a different footing than proof of contents.

76. It must also be noted that whatever is relevant may not always be admissible, if the law imposes certain conditions. For instance, a document, whose contents are relevant, may not be admissible, if it is a document requiring stamping and registration, but had not been duly stamped and registered. In other words, if admissibility is the cart, relevancy is the horse, under Section 136. But certain provisions of law place the cart before the horse and Section 65B appears to be one of them.

77. ....

78. ....

79. ....

80. ....

81. But Section 65B makes the admissibility of the information contained in the electronic record subject to certain conditions, including certification. The certification is for the purpose of proving that the information which constitutes the computer output was produced by a computer which was used regularly to store or process information and that the information so derived was regularly fed into the computer in the ordinary course of the said activities.

82. ….

83. But Section 65B(1) starts with a non-obstante Clause excluding the application of the other provisions and it makes the certification, a precondition for admissibility. While doing so, it does not talk about relevancy. In a way, Sections 65A and 65B, if read together, mix-up both proof and admissibility, but not talk about relevancy.

> Section 65A refers to the procedure prescribed in Section 65B, for the purpose of proving the contents of electronic records, but Section 65B speaks entirely about the preconditions for admissibility. As a result, Section 65B places admissibility as the first or the outermost check post, capable of turning away even at the border, any electronic evidence, without any enquiry, if the conditions stipulated therein are not fulfilled.
>
> 84. The placement by Section 65B, of admissibility as the first or the border check post, coupled with the fact that a number of 'computer systems' (as defined in Section 2(l) of the Information Technology Act, 2000) owned by different individuals, may get involved in the production of an electronic record, with the 'originator' (as defined in Section 2(za) of the Information Technology Act, 2000) being different from the recipients or the sharers, has created lot of acrimony behind Section 65B, which is evident from the judicial opinion swinging like a pendulum."

Next, we examine the electronic evidence marked Y and A-1 sent for FSL by the agency. The FSL report (FSL-10042/CYBER - 303/21) states that the pen drive sent to them contained three videos, out of which, there is discontinuity in two videos contained therein. Opinion on audio could not be provided by the state lab for want of software as well as requirement of original recording device which wasn't available to them. Thereafter, the samples were sent to state lab at Telangana for testing and the report stated that there was no trace of editing in the seven audio files as well as in the audio content of the three-audio-visual files. **There was no comment on the video content of the said recordings.** Looking at the reports submitted by the experts state lab cumulatively, it cannot be inferred that the recordings were not edited/morphed/tampered with or there was no discontinuity

as one of the reports does not provide comment/opinion on the video content of the recording and it is opined in the other one that there was discontinuity in two out of three videos contained in the pendrive sent for testing.

Moving on, another FSL report that has been placed on record pertains to the three phones and the respective SIMs that were sent for testing. It is reflecting from the perusal of the said report (FSL-11278/CYBER-361/21) that the mobile number of accused-petitioner was not saved in both the mobile phones belonging to co-accused Sapre and recovered at his instance. SMS messages related to the mobile number of petitioner have not been found stored in both the phones of Sapre. Chat messages exchanged on the social media application WhatsApp related to petitioner's mobile number have not been found stored in either of the phones of Sapre. Neither phone call logs nor WhatsApp call logs related to petitioner's number have been found in the second phone recovered at the instance of co-accused Sapre. The report further reveals that the number of the petitioner is saved by his name in the phone recovered at the instance of another accused Mr. Rajaram but no WhatsApp chat messages, SMS messages, phone call logs and WhatsApp call logs pertaining to petitioner's phone number have been found stored in the phone recovered at the instance of Mr. Rajaram. Since the phone number of the petitioner has not been found saved in the phone of one of the representatives of the company who has been accused of recording the alleged conversation, it is safe to infer that the two

were not chummy with each other or had regular conversations. Moreover, no record of call logs or messages exchanged between the petitioner and the co-accused Sapre and other accused Rajaram have been found stored in the three devices recovered from the latter two. As far as the fact of the number of petitioner being saved on the phone recovered from Rajaram is concerned, the reasonable probability that the two knew each other or might be knowing each other due to being part of the political circle of the state cannot be disregarded.

It was considered imperative to supply emphasis to the legality of electronic evidence and the admissibility of the same in the preceding paragraphs because if electronic evidence in this case is set aside or taken out of the picture, there remains no other concrete evidence, direct or indirect, that can help the case and cause of the prosecution as there is no complaint, no complainant/aggrieved party, no sting, no communication and no exchange that can be established from the facts and circumstances of this case. Neither any illegal gratification was given nor was it accepted by anyone in this case.

The menace of corruption is ubiquitous but courts have to be wise to the frivolous and fallacious litigation implicating a public figure. The burning question that whether the FIR prima facie discloses commission of offences as alleged has not been answered in the affirmative in light of the observations made above. Referring to the precedent of ***Bhajan Lal*** (supra), Hon'ble the Apex Court has held in ***Ramesh Chandra Gupta Vs. State***

of U.P. & Ors. (Criminal Appeal No. 2060 of 2022) vide judgment dated 28.11.2022 that the criminal proceedings, more specifically the complaint on the basis of which FIR came to be registered in the matter, shall be quashed in light of non-disclosure of participation of the accused in commission of crime. There is no demand or acceptance on part of the petitioner or any act done by him in furtherance of said demand or acceptance. The fact of tampering with evidence cannot be ruled out in the absence of original recording device and whatever electronic evidence has, in fact, been submitted also does not inspire the confidence of this Court.

It cannot be done that language of a provision is added to enlarge the scope of the complaint when the complaint itself does not disclose commission of an offence. This aspect has been observed in ***Wyeth Limited & Ors. Vs. State of Bihar & Anr.*** (Criminal Appeal No. 1224 of 2022) by Hon'ble the Supreme Court while quashing criminal proceedings against the appellants of the said case.

Though there remains no need to consider other aspects like whether the investigation was conducted properly or not given the discussion in the preceding paragraphs regarding inherent powers of the High Court to cancel investigation in a matter upon non-disclosure of commission of any offence qua the petitioner, fundamental right to liberty of an individual and the non-compliance of the mandate of Section 65-B, yet, with a view to satisfy itself from all viewpoints before passing a judgment

quashing the FIR qua the petitioner, this court has analysed the lacunae and the missteps that occurred in the process of investigation.

It is stated in the FIR that the photographs of the persons who are identifiable in the recording were downloaded from the internet and then seized in accordance with law and thereafter, sent for FSL. If the photographs were downloaded by the personnel at the ACB, then it is obvious that they would be in possession of those photographs and it seems strange that the agency has specifically mentioned about seizure of the said photographs in accordance with law. Similarly, the pendrive received by the ASP was kept in an almirah for almost a day and when the seizure of the pendrive was conducted on the next day, it was sealed in a white cloth bag, stamped and taken in safe custody in the presence of witnesses. After leaving the pendrive unsealed in an almirah, there was portrayal of a seizure conducted in a proper manner the next day in the presence of motbir witnesses who are none other than the constables working under the ASP. If the constables were to be taken as independent witnesses for the seizure, then the same could have been done on the very same day when the pendrive was received and there was no need to wait till the next day. It can be presumed that the agency has to maintain confidentiality & secrecy and thus, the source or the informant may not have been revealed, however, the pendrive ought to have been sealed at appropriate time on the very same day it was received by him. To convince this Court's conscience, the recording was played and heard and it was found

that there was significant distortion of the facts in the transcript and the words were written down differently in the transcript than the alleged original conversation as per the recording. The dishonest making of transcript is writ large as the audio-video clip stored in the pendrive presented to this Court was listened to and it can be made out that certain portions that could have been of relevance to the present matter have been either badly transcribed or been skipped altogether, thus, leading to submission of a distorted transcript. It is emanating from the record that the agency did not attempt to investigate from the news channel as to the source of the recording. More than a year has passed but the prosecution is mumchance about information regarding the original device, its location or any progress in tracing the same. Ideally, the electronic evidence available with the news channel should have been taken on record with due certification under Section 65-B of the Evidence Act as that would have been the most original, possible source of evidence in the factual scenario of the instant case. The investigation does not reveal any reasonable, possible motive of the petitioner for allegedly getting involved in the matter.

It is the clear case of the prosecution that certain amount owed to BVG Company was due with the corporation which was not being released by the mayor and therefore, the chairman of BVG Company met with mayor and upon his instruction and for the benefit of the company, two persons, namely Sapre and Sandeep, were making efforts to cool out things by making conversation with the husband of the then suspended mayor, thus,

one thing is very much clear that things were supposed to be done by the mayor or by the husband of the mayor while working with alleged instruction/nod/consent of the mayor for the company and the ultimate benefit of the chairman yet both the chairman and the mayor have not been made accused. Both these persons are out of the picture which is indicative of the notion that the prosecution is not genuine and honest.

This Court had passed order dated 22.02.2022 in the present petition (and in the tagged matter; S.B. Criminal Miscellaneous Petition No. 7923/2021) wherein time was sought and granted to convince this Court regarding the fact that the copy which was in the possession of the prosecution was a genuine and reliable piece of evidence as well as was admissible in light of the provision stipulated in Section 65-B(4) of the Evidence Act as the main evidence. The order dated 22.02.2022 passed by this Court has been reproduced below for ready reference:

> " Pursuant to the direction issued by this Court on 18.02.2022, the Investigating Officer present before this Court, and supplied a pen drive claiming to be containing copy of the recording of conversation exchanged in between the accused persons on the day of incident, on the basis of which the case has been registered. It is submitted on behalf of the agency that the recording of the conversation was made primarily in a spectacle escorted by accused Omkar Sapre. The Investigating Officer admits that the original source of recording is not available with the agency. The copy of the conversation was made available to them through a source information. After arrest of the accused Omkar Sapre it is alleged that he furnished an information under Section 27 of the Indian Evidence Act, 1872 disclosing the fact that he could provide a copy of recording of conversation, however, as a matter of fact no such recording of conversation was recovered at

the instance of accused Omkar Sapre for which it is claimed that he was the person who recorded the conversation exchanged in between the parties while in the meeting.

Charge-sheet in this matter has been submitted against the accused Omkar Sapre and Rajaram. A challenge has been made by accused Omkar Sapre by way of filing S.B. Criminal Miscellaneous Petition No. 1651/2022, wherein, the entire copy of the charge-sheet has been annexed.

Learned Senior Counsel Mr. V.R. Bajwa assisted by Mr. Manish Parmar, Advocate submits that the aforementioned miscellaneous petition be tagged with this case.

Mr. G.S. Rathore, learned Government Advocate cum Additional Advocate General along with Investigating Officer present in the Court seeks some time to convince this Court in relation to the availability of original source of recording as well as the device/gadget/laptop in which the recording was first transferred as well as to convince this Court that the copy which they have in their possession is a genuine and a reliable piece of evidence. It shall also be convinced that the pen drive available with them is an admissible piece of evidence in terms of Section 65B sub-clause (4) as the main evidence.

List on 28.03.2022 along with S.B. Criminal Miscellaneous Petition No. 1651/2022.

In the meantime and until further orders; no coercive action shall be taken against the petitioner. The pen drive provided by learned Government Advocate shall be a part of this petition."

It is the case of the prosecution that the scene was captured in a camera hidden in the spectacle sported by the other accused Omkar Sapre during the meeting period and as a matter of fact, the prosecution is silent as to the whereabouts of the spectacle using which the video was made. The order reproduced above was passed on 22.02.2022 and a year has passed post passing of this order yet no answers have been furnished to satisfy any of the queries. This matter has been listed on several occasions but it got

adjourned each time on one pretext or the other, more often than not upon the request of the state authorities seeking time to convince the Court regarding the afore-said. However, nothing new was done after 22.02.2022 and the facts remained the same as it was that there is cluelessness about the major pieces of evidence that the prosecution wishes to rely upon.

It is emerging from a perusal of the orders passed by the different co-ordinate benches as well as this Court pursuant to the said order dated 22.02.2022 that the case did not move forward for a period of one whole year and the investigating agency has still not furnished any satisfactory answers to the questions put upto them. The counsel for the parties have miserably failed to provide answers to the questions asked in the previous orders passed in this petition as well as on the three petitions tagged with this instant petition.

Every accused has right to raise legal objections available to them if loopholes and legal errors are made during investigation by the investigating agency. Learned AAG was speechless when the question with regard to the official capacity of Mr. Rahul was put up to him as to why the investigation was not conducted from the news channel, why no effort was made to take the original recording and device from the TV channel, why was the spectacle in which the conversation was allegedly recorded not taken on record, why the said device allegedly received by the ASP on 10th June, 2021 from his reliable source was not sealed and due certification was not procured/submitted on the very same day in the presence of independent witnesses and lastly, why the officer

kept the pendrive for a further period to invite legal objections. The pendrive submitted to this Court does not contain the entire electronic evidence as the FSL reports reveal that there were seven audio files, five picture files and three video files, however, the contents of the pendrive submitted to this Court comprise of a single video file of approximately 27-28 minutes.

Arguendo, if the conversation that allegedly took place between the parties is taken into account as it is available in the pendrive produced by the prosecution for perusal of this Court, vivid emanation of the following aspects is evident:

a) Petitioner was not a representative or agent for BVG, rather they were not well-known to each other. This facts gets fortification from the observation made in the FSL Report of the mobile phones recovered at the instance of Sapre as the phone number of the petitioner was not saved on both the sets. No record of SMS messages, chat messages, calls or calls made through social media applications is available, thus, they cannot be remotely connected to the accused-petitioner.

b) From no utterance does it seem that petitioner was soliciting/seeking support for the company by asking undue favour from the husband of the mayor in return of any illegal payment.

c) He was not aware of the dispute/problem of BVG company because as per the video recording and the transcript, the petitioner was being told about the predicament of the company right there and then and was responding more out of inquisitiveness rather than being assertive about any demand or favour.

d) He didn't offer anything on behalf of the company to the other party, i.e. the husband of the mayor.

e) He didn't claim/seek/demand anything on behalf of the husband of the mayor, from BVG, in order to favour them.

f) He didn't even know about the formation of the two sections of Jaipur Nagar Nigam, namely Greater and Heritage.

g) It was not known to him that any contract was given by the corporation to the said company. The nature of the contract, the amount that was due to the company, the controversy regarding pending bills, who was liable to pay, who was liable to be paid and the amount that would allegedly be paid in exchange of clearance of due bills.

h) He didn't act as a representative of Nagar Nigam as well.

The discussion regarding ingredients essential to constitute offences under Sections 7A and 8 of the Prevention of Corruption (Amendment) Act, 2018 and Section 120-B of IPC as well as regarding non-compliance of the provision of Section 65B of the Indian Evidence Act makes it abundantly evident that no case is made out against the petitioner. Even if the recording and the transcript available on record are considered to be true and unabridged, then also the ingredients of the offences alleged against the petitioner are not made out. There is clear infraction of the concept of justice in the present case and therefore, criminal proceedings initiated against the petitioner deserve to be quashed and set aside. If it is considered by employing the wildest of imagination that the evidence on record indeed proves that a demand and acceptance of bribe took place, then too, the

petitioner was not to be the beneficiary of the said transaction. Neither it is the case of the prosecution that the petitioner was acting as a middleman/mediator/broker between the company and the Nagar Nigam nor did the conversation recorded in the pendrive, the admissibility of which is under serious doubt, if taken on its face value, reveals any active or passive role played by the petitioner.

In this background, it can safely be held that no prima facie case is made out against the petitioner and the prosecution cannot be allowed to continue against him in the name of investigation.

As an upshot of the discussion made herein above, this Court is of the considered view that present is a fit case wherein the inherent jurisdiction vested in this Court to exercise the power of quashing of the FIR should be exercised and accordingly, the petition for quashing of the FIR and further proceedings initiated in pursuance of the FIR qua the petitioner are liable to be quashed and set aside so as to prevent abuse of the process of Court as well as to secure the ends of justice.

Needless to say, none of the observations made herein above shall influence the trial judge in any manner whatsoever so as to adversely affect the rights of either of the parties and are limited to the justifiable disposal of the instant petition. This disclaimer is in light of the fact that the merits of the other matters which were being heard together with this petition may not get adversely affected.

In the opinion of this Court, when the exercise of discretion is rooted in equitable and rational reasoning, then too much

circumspection may stifle the soul of justice. Being mindful of the same and in light of the observations made above, this Court deems it fit and proper to allow the instant miscellaneous petition.

Accordingly, the instant petition is allowed and FIR No. 229/2021 registered at Police Station CPS ACB, Jaipur, District ACB O.P. Siu Jaipur and all consequential proceedings arising thereof are quashed and set aside qua the petitioner - **Nimba Ram S/o Shri Kushala Ram.** The SHO concerned is directed to file a closure report with the concerned Judicial Magistrate within a period of one month from the date of receipt of a copy of this order.

Any pending applications, including stay application, are disposed of.

(FARJAND ALI),J

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