

Judgment Cbi vs Narayan Diwakar Etc. (Godrej Cghs) on 12 January, 2017

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Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS)

IN THE COURT OF SH. SANJAY KUMAR AGGARWAL,
SPECIAL JUDGE-III,
(PC ACT), CBI, ROHINI COURTS: DELHI.

CBI Case No. 29/2016
Name of Branch : CBI, ACB, NEW DELHI
FIR No. RC-DAI-2005-A-0071
u/s 120B IPC r/w Section 420/468/471 IPC
r/w Section 13(2) r/w Section 13(1)(d) of PC Act 1988
and Section 420/511 IPC & Section 468/471 IPC

CBI Vs Narayan Diwakar etc. (GODREJ CGHS)
(Details of accused persons)

1.

Sh. Narayan Diwakar S/o Late Sh. Chhati Lal R/o G-30, Masjid Moth, Greater Kailash Part-II,
New Delhi-48.

(Permanent: Village & PO Bairangnia, Distt. Sitamarhi, Bihar)

2. Sh. S.R. Goyal S/o Shri Ram Dhari R/o 56A, Suraj Nagar, Azadpur, Delhi-33.
(Expired)

3. Sh. R.B. Chauhan S/o Sh. K.S. Chauhan R/o H. No. 8, Panchmahal Apartment,
Plot No. 47, Patparganj, I.P. Extension, Delhi-92.

J u d g m e n t C B I V s N a r a y a n D i w a k a r e t c . (G O D R E J C G H S)
(P e r m a n e n t : V i l l a g e K a n d o l a , P a t i , P a n g a r s u a , P o s t S a l d a
Devprayag, District Pauri Garhwal, Uttaranchal)

4. Sh. Uday Shankar Bhatnagar, R/o Late S.S. Bhatnagar,
R/o 479, Type B, Timar Pur Delhi Admn. Flats, Delhi.

(Permanent: G-97, Sarojini Nagar, N.Delhi)

5. Sh. P.K. Thirwani S/o Late Sh. Moti Lal Thirwani R/o 348 - E, Pocket - II, Mayur Vihar, Phase - I,
New Delhi-91.

6. Sh. Gokul Chand Aggarwal S/o Late Sh. Jagadish Prasad, R/o A□
603, Ashoka Apartments, Sector□9, Rohini, Delhi.

Date of Institution	:	15.12.2006
Date on which reserved for judgment	:	17.12.2016
Date on which judgment announced	:	24.12.2016

J U D G M E N T

The case of the CBI, in brief, is that Godrej Staff Co□operative Group Housing Society (C G H S) was registered on 12.07.1971 vide registration no. 28 (H) with 251 members having its office at Mathura Road, New Delhi. The society was wound up during Judgment CBI Vs Narayan Diwakar etc. (G O D R E J C G H S) the year 1979 vide order dated 09.01.1979 of the then Dy. Registrar, Registrar Cooperative Societies, Delhi (hereinafter referred to as the 'RCS') for not fulfilling the terms and conditions of the Delhi Cooperative Societies Act (hereinafter referred to as the 'DCS Act') and also for not conducting audit and election of the society regularly. It was a defunct society which was lying idle for about 25 years. On 6.1.2004 accused Gokul Chand Aggarwal and signed as one 'Suraj Goyal' said to be the Secretary of the society and submitted application for revival of the society on the ground that the shortcomings on which the society was wound up had been removed and society was functioning from 20 / 36 , West Patel Nagar , New Delhi. In the application submitted to accused Narayan Diwakar, the then RCS, it was also requested to cancel the previous winding up order and for allowing the society to resume its normal functioning.

The application for revival of Godavari Apartment CGHS was received by accused S.R. Goyal (since deceased), the then AR (W) who marked it to accused R.B. Chauhan, LDC and the Dealing Assistant who was the custodian of the file, with direction to put up the file. Since, the old file concerned with the winding up of the Godavari Apartment CGHS (said to be the new name of Godrej Staff CGHS) was not available in the office of RCS, a new file was Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) reconstructed which was opened on receipt of the application. The application was on the letter head of Godrej Staff CGHS having registered office at 20/36, West Patel Nagar, New Delhi. The application was addressed to the Assistant Registrar (West) but it was received by accused Narayan Diwakar, the then RCS, who marked it to accused S.R. Goyal (since deceased), AR (W) and subsequently put up by accused R.B. Chauhan, LDC. Since, the old file of the society was not available, a circular was issued by accused S.R. Goyal (since deceased), the then AR (W) on the approval of accused Narayan Diwakar, the then RCS vide his order dated 15.1.2004, directing all the zones of the RCS for locating the file of the said society and to report to West zone, if the concerned file of the society was found.

Accused Narayan Diwakar also ordered to inspect the documents of the society in order to verify the status of the society.

Investigation revealed that without waiting for reply from various zones and without locating the missing old file, a proposal was made by accused R.B.Chauhan, the Dealing Assistant, to conduct inspection of the records of the society by suggesting the name of accused U.S. Bhatnagar. Since, all the files of Godrej Staff CGHS could not be located, accused S. R. Goyal (since deceased), the then AR (West) directed the society to submit the documents in its possession Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) in order to re-construct the office file. In pursuance of the above accused Gokul Chand Aggarwal by misrepresenting himself as an office bearer of the society submitted several documents viz attested copy of the bye-laws, registration certificate, winding up order, list of members etc all of which were available in the re-constructed file but no efforts were made to cross-check the addresses of the society which was shown at Mathura Road, New Delhi, whereas in the application a different address was given for which there was no intimation to any authority. The address mentioned in bye-laws and registration certificate was never mentioned in any correspondence with the RCS during the revival proceedings which appears to be an attempt to prevent detection of fraud if physically checked by the officials of the RCS at the time of revival.

On 03.02.2004 accused U S Bhatnagar submitted his inspection report of the society which was conducted by him mentioning that he visited 20/36, West Patel Nagar, New Delhi the registered office of the society and claiming having met Sh. Suraj Prakash Goyal, Secretary of the society who produced all the relevant records of the society. He further submitted that the society had shifted its office from E-9, Kalkaji, New Delhi to the present office at Patel Nagar and that in its CGM dated 29.6.2003 approved to change Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) the name of the society as Godavari Apartment CGHS Ltd from the earlier Godrej Staff CGHS. He also submitted that he had verified the accounts of the society and that the records of the society were under the safe custody of Suraj Prakash Goyal, Secretary of the society. However, during investigation it was found that accused Gokul Chand Aggarwal had forged the signature of Sh. Suraj Prakash Goyal. It was further found that the society was not functioning from the address mentioned in the report of accused U.S. Bhatnagar and also that the so called members mentioned in the report do not exist.

Accused U.S. Bhatnagar submitted his report to accused S.R. Goyal (since deceased), the then AR (West) who further submitted it to accused Narayan Diwakar, the then RCS. Accused Narayan Diwakar directed for issue of notice to Secretary/President of the society and on 12.2.2004 Ms. Neera Gupta, Advocate represented the society and as per the notings in the file, accused Narayan Diwakar directed accused S.R. Goyal (since deceased) to verify the records of the society pertaining to membership, audit and election and also to conduct verification of membership. Accused S.R. Goyal (since deceased) directed accused U.S. Bhatnagar to conduct physical verification of the members at random. Accused U.S. Bhatnagar again submitted his report that physical verification of the members of the Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) society were conducted by him at random during spot verification and also placed relevant documents taken from the members of the society. Thereafter, the file was put up by accused R.B. Chauhan on 23.2.2004 through accused S.R. Goyal (since deceased) which was finally forwarded to accused Narayan Diwakar recommending revival of the society. Accused Narayan Diwakar, the then RCS perused the file on 4.3.2004 in the hearing in which, case was reserved for orders on 9.3.2004. In the hearing one Ms. Neera Gupta, Advocate was shown having represented the society and pleaded for early hearing but during investigation Ms. Neera Gupta denied having participated in any of the hearings. No Vakalatnama was obtained from her during any of her representations by accused Narayan Diwakar. On 9.3.2004 accused Narayan Diwakar passed the revival order of the Godrej Staff CGHS by cancelling the previous winding up order and with the condition that pending audit be completed within 2 months and election of the society be also conducted within 2 months.

The audit of the society was conducted by accused P.K. Thirwani, auditor in the office of RCS. The auditor is required to visit the registered office of the society for conducting the audit unless instructed otherwise by the RCS. In this case no such specific order was issued but the audit of the society accounts was conducted and Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) submitted by accused P.K. Thirwani without mentioning anything about the registered office of the society. Since, no such society functioned from the address and also from the fact that it was accused Gokul Chand Aggarwal who signed the documents as 'Suraj Goyal', the report of accused P.K. Thirwani was found false and bogus during investigation and the same was prepared to justify the existence of the society.

After completing investigation, charge sheet was filed in the Court against the accused persons for committing various offences under Indian Penal Code 1860 (IPC) and Prevention of Corruption Act 1988 (PC Act).

Prima facie charges u/s 120B IPC r/w Section 420, 468, 471 IPC & Section 13 (2) r/w Section 13 (1) (d) of PC Act, 1988 were framed against accused Narayan Diwakar (A□), S.R. Goyal (A□

2) {since deceased}, R.B. Chauhan (A□3), Uday Shankar Bhatnagar (A□4), P.K. Thirwani (A□5) and (A□6) Gokul Chand Aggarwal. Further, charges u/s 15 r/w Section 13(1)(d) punishable u/s 13(2) of P. C. Act, 1988 were framed against accused Narayan Diwakar (A□), S.R. Goyal (A□2) {since deceased}, R.B. Chauhan (A□3), Uday Shankar Bhatnagar (A□4) & P.K. Thirwani (A□5). Charge u/s 420/511 IPC & u/s 419 IPC and u/s 468/471 IPC were also framed against accused Gokul Chand Aggarwal (A□6). All the accused persons did Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) not plead guilty and claimed trial.

In order to substantiate the charges, the prosecution examined 206 witnesses in all. Accused P.K. Thirwani examined DW□1/A□5 Sh. J.S. Sharma in his defence.

I have heard the ld. Sr. PP for the CBI Sh. N.P. Srivastava as well as ld. Counsel Sh. Abhishek Prasad, Advocate for accused Narayan Diwakar and accused Gokul Chand Aggarwal. I have also heard Sh. S.K. Bhatnagar, Advocate for accused R.B. Chauhan, U.S. Bhatnagar and P.K. Thirwani. I have also perused the record carefully.

Before advertng to the individual role played by different accused persons in this case, it would be appropriate to see as to whether the prosecution has been able to prove the original complaint filed before CBI, FIR and seizure of documents.

Prosecution has been able to examine IO/PW□206 Insp. Raja Chatterjee wherein he deposed before this court that the present case was registered on 26.12.2005 on the written complaint of SI D.Damodaran, CBI/BS&FC, New Delhi by Sh. Bhupender Kumar the then SP□CBI, ACB, New Delhi. The said Sh. D.Damodaran stated to Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) have submitted his complaint after completing preliminary enquiry PE.BDI/2005(E)/0003 to SP, CBI, ACB New Delhi. The IO/PW□206 Insp. Raja Chatterjee identified the signatures of D.Damodaran on the complaint Ex.PW206/A at point A. After registration of case, the present matter was stated to have been referred to Sh. Brijesh Kumar, the then Inspector, CBI, New Delhi.

Before proceeding further, this court would like to bring to light the second paragraph of the complaint Ex. PW 206 / A which describes the history which led to the registration of the present case. It has been mentioned that it was alleged in the preliminary enquiry (PE) that during 1970 to 1980 or thereafter, a number of group housing societies were registered with the office

of Registrar, Cooperative Societies, New Delhi and in due course, some of them became defunct due to various reasons which were mandatory requirements as per Delhi Cooperative Society Act, 1972. It was further alleged that a number of defunct group housing societies were revived by the RCS, NCT of Delhi on the basis of forged/false documents and such societies were recommended for allotment of land by RCS to Delhi Development Authority (DDA). It is further alleged that in pursuance to the order of High court of Delhi dt. 10.05.1991 in Civil Writ Petition no. 2885/90, DDA was required to maintain a seniority list of the group housing societies on the basis of Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) date of registration with the RCS and allot land to the eligible societies strictly as per seniority list. A number of societies registered during 1970-1980s became defunct and were wound up by RCS, as provided for in Section 63 of Delhi Cooperative Societies Act, 1972. Section 63(3) of said Act provides for the revival of defunct societies by the Registrar of Cooperative Societies. The builders exploited this provision in league with officials of RCS to cause undue gain for themselves/others.

With this background, the enquiry was also conducted for the society/Godavari Cooperative Group Housing Society bearing registration no. 28(GH) and it was revealed that society was registered on 12.07.1971 with its address at E-9, Kalkaji, Delhi and brought under liquidation on 09.01.1979. The preliminary enquiry, as per complaint Ex.PW206/A, also revealed that one 'Suraj Goyal' Secretary of the society submitted a request on 06.01.2004 for revival of the society. Preliminary Enquiry further revealed that accused Narayan Diwakar the then RCS; accused S.R. Goyal/AR(since deceased); R.B. Chauhan, U.S. Bhatnagar Inspectors Gr. II all officials working in the office of RCS NCT of Delhi were parties to criminal conspiracy along with private person Gokul Chand Aggarwal and other unknown persons during the year 2004 in the matter of revival Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) of said society.

In furtherance of the said criminal conspiracy, Sh. N. Diwakar got the file reconstructed by the dealing assistant on his report that the original file was not traceable. On the basis of information furnished by 'Suraj Goyal', Secretary of the society, the file of the society was reconstructed for the purpose of reviving the society. As per preliminary enquiry, in furtherance of criminal conspiracy, Sh. US Bhatnagar, Inspector Grade III was appointed as inspecting officer to conduct inquiry into the working of the society who submitted false verification and inspection report on 03.02.2004 in active connivance with Gokul Chand Aggarwal who was representing the society in the RCS office. The inspection report was dishonestly accepted by SR Goyal (since deceased) the then AR and N. Diwakar the then RCS for corrupt and illegal considerations in order to facilitate the revival of society despite the fact that the society was dormant for more than two decades. It also came up during preliminary enquiry that approval was made by N. Diwakar on 09.03.2004 for revival of society in spite of the fact that society did not exist at

the given address as many members of executive committee could not be traced at the given addresses.

The prosecution has been able to examine PW206 Insp.

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) Raja Chatterjee who deposed before this court that he had taken over the documents mentioned in seizure memo Ex.PW206/O on 12.01.2006, as contained in file D4. After seeing the file of Godavari CGHS (D18 file no. 47/28), he stated that vide the aforesaid seizure memo he had taken this file from Sh. D.Damodaran and exhibited the same again as Ex.PW206/P.

He also identified the handwriting and signatures of D.Damodaran at point B as he claimed that he had seen him writing and signing during the ordinary course of business. He also proved the signatures of D.Damodaran at point B on Ex.PW206/O. The said documents which were seized by D.Damodaran and later taken over by PW206 Insp. Raja Chatterjee vide Ex.PW206/O concerning the present case are as follows:

I. File pertaining to Godavari Cooperative Group Housing Delhi (Registration no. 28) containing Volume I comprising of pages 1/N to 23/N, 1/C to 391/C; Volume II comprising of pages 1/C to 375/C; Volume III comprising of pages 1/C to 251/C. II. One file pertaining to Godavari CGHS Ltd. Registration no.

28 containing re-verification notices (Page 1 to 276).

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) III. File/list of members of Godavari CGHS registration no. 28 maintained by DDA.

Certain more documents concerning Godavari CGHS were seized vide memo Ex.PW196/A and memo Ex.PW162/A. The PW196 Sh. Paras Nath also categorically deposed before this court that he had handed over the documents as contained in seizure memo Ex.PW196/A to the IO/PW206 Insp. Raja Chatterjee. On the same lines, PW162 Satya Prakash Sharma also deposed that he had handed over the audit file of Godavari Apartment Cooperative Group Housing Society to PW206 Insp. Raja Chatterjee Ex.PW162/B and other documents i.e. production cum receipt memo dt. 5.7.2006 (d12) vide memo Ex.PW162/A. After the seizures of documents, as discussed herein above, these documents were either handed over by D.Damodaran to PW206 Insp. Raja Chatterjee.

In view of the aforesaid discussion, since the preliminary enquiry was conducted pursuant to the orders of the Hon'ble High

Court of Delhi, as deposed by PW 206 Insp. Raja Chatterjee and since the documents, as aforementioned were seized by D.Damodaran during preliminary enquiry whose signatures have already been identified by PW 206 Insp. Raja Chatterjee, and since the receipt of the same has also been proved by PW 206 Insp. Raja Chatterjee, besides the other PWs like PW 162 Satya Prakash O/o R C S and PW Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) 196 Sh. Paras Nath from the O/o DDA have also corroborated the version of PW 206, the prosecution has been able to duly prove the seizure of documents.

Now this court will deal with individual and collective criminal liability allegedly fastened by CBI upon the accused persons and in terms of charges framed against them.

COMMON AND SPECIFIC CONTENTIONS REGARDING WANT OF SANCTION U/S 197 CrPC AND ALSO FOR SECTION 19 OF PREVENTION OF CORRUPTION ACT (HEREINAFTER CALLED P.C. ACT) FOR PROSECUTION OF THE ACCUSED NARAYAN DIWAKAR, R.B. CHAUHAN, P.K. THIRWANI & U.S BHATNAGAR AND CONSIDERATION THEREOF.

Ld. Counsels who were representing the accused persons who were public servants argued that the sanction u/s 197 IPC has not been obtained which was required because of the fact that all allegations against the accused pertains to official dealing. It has been urged that a consolidated sanction u/s 19 PC Act for offences relating to PC Act and IPC offences has been obtained which is defective in nature. It has also been highlighted that there is no application of mind while grant of sanction. It was further urged that the sanction for all the accused has been granted in a mechanical manner without application of mind.

The record reflects that earlier also the issue with respect to sanction u/s 197 CrPC was raised by two accused persons namely Narayan Diwakar and R.B. Chauhan by moving an application for dropping the proceedings before the Ld. Predecessor of this court. However, the said application was dismissed by Ld. Predecessor of this court before framing of charges vide its order dt. 22.04.2010. Now it has been pleaded by the ld. counsel for these accused persons that owing to the different interpretation of the sanction u/s 197 CrPC by Hon'ble Apex court (subsequent to the dismissal of the application for dropping the proceedings for want of sanction moved by accused Narayan Diwakar and R.B. Chauhan), the matter with respect to sanction needs to be reconsidered in view of the developments in a judgment

Professor N.K. Ganguly vs CBI 2015 (12) Scale 500. Id. Counsel for both these accused have also relied upon the judgment of Hon'ble Apex Court in P.K. Pradhan vs State of Sikkim (2001) 6 SCC 704 to assert that the question of sanction can be raised at any time even after conviction. Accordingly, in view of the law relied upon by the Id. Counsel for the accused Narayan Diwakar and R.B. Chauhan, the question with respect to sanction u/s 197 CrPC is Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) reconsidered by this court in the light of the judgment of Hon'ble Apex court in Ganguly case (supra) besides considering the issue with respect to sanction u/s 197 CrPC for the other accused.

Ld. Counsels for all the accused persons have also relied upon the judgment of Hon'ble Apex Court in R. Balakrishna Pillai Vs State of Kerala AIR 1996 SC 901 in order to substantiate the claim that the sanction for prosecution is sine qua non.

Ld. Sr. PP argued that sanction available on record is legal and valid and there is no justification in the arguments advanced by Ld. Defence Counsel. He also referred various judgments some of which were common to the defence and the prosecution.

The Ld. Predecessor of this court while dismissing the application for dropping the proceedings for want of sanction u/s 197 CrPC opined as under:

"7. A bare perusal of the record would show that the accused persons acted on the basis of forged and fabricated documents at the instance of impersonator. It is no duty of a public servant to act at the instance of an impersonator that too on the basis of forged documents submitted to him. Acting at the instance of an impersonator that too on the basis of false and fabricated documents does not fall within the duties of Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) a public servant. The society was revived after a gap of 25 years. The inspection report was not prepared correctly and the elections were not conducted as per procedure. The members have denied their membership in the society. Affidavits of bogus members were forged and all sort of illegalities were done for the revival of the society. Revival of society by the Registrar, Cooperative Societies on the basis of true documents is one thing and revival of society by the Registrar, cooperate societies on the basis of documents which are false, fabricated and bogus and have been filed by an impersonator is quite different thing. In the later category, the Registrar, cooperate societies is not

entitled to protection of Section 197 CrPC. The society was revived after a gap of around 25 years. As such, accused persons must have been more careful in scrutinizing the records but they did not do so it as they were acting in concert with impersonator Gokul Chand Aggarwal.

These acts of accused persons do not fall within the four corners of their official duties. These acts cannot be said to have been performed in the discharge of their official duties. I may add that application of accused RB Chauhan is catchy and vague Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) running into one page without any detail as to how the acts fall within the realm of his official duties. Similarly, the application of accused Narayan Diwakar contains only legal position without any reference to the facts of the case as to how a society was ordered to be revived after about 25 years on the basis of forged and fabricated documents at the instance of impersonator.

Since, the remaining accused other than the accused Narayan Diwakar and R.B. Chauhan have agitated the plea with respect to sanction u/s 197 CrPC for the first time and since ld. counsel for accused Narayan Diwakar and R.B. Chauhan want to get their case with respect to u/s 197 CrPC appreciated in view of the latest laws and dictums of Hon'ble Supreme Court of India and since it has been highlighted in the latest judgment of Hon'ble Supreme Court in Amal Kumar Jha vs State of Chattisgarh 2016 Law Suit (SC)382 that question of sanction can be appreciated at any stage during trial even on the basis of evidence adduced, it would be appropriate to deal with this issue accordingly.

The main issue before the Hon'ble Apex Court in the Ganguly case (supra) relied upon by the ld. counsel for the accused Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) person was as to whether offence u/s 120 B IPC is made out against the appellants and if so whether previous sanction of Central Government is required to prosecute them for the same? The second issue was as to whether the order of Ld. Special Judge taking cognizance of the offence against the appellant is legal and valid.

Hon'ble Apex Court in the said judgment in Ganguly case (supra) relied upon the judgment of Hon'ble Federal Court in Dr. Hori Ram Vs Emperor AIR 1939 FC 43 besides other catena of important judgments wherein it was observed by Hon'ble Federal court as under:

" I would observe at the outset that the question is substantially one of fact, to be determined with reference to the act complained of and the

attendant circumstances; it seems neither useful nor desirable to paraphrase the language of the section in attempting to lay down hard and fast tests."

It will also be appropriate to go through the other landmark judgments passed by Hon'ble Apex Court and Hon'ble High Courts with respect to sanction u/s 197 CrPC after the pronouncement of aforesaid judgment in Dr. Hori Ram Vs Emperor Case (supra) by Hon'ble Federal Court.

J u d g m e n t C B I V s N a r a y a n D i w a k a r e t c . (G O D R E J C G H S)
In a judgment titled Shreekantiah Ramayya Munipalli Vs State of Bombay MANU SC/0050/1954 and in another judgment Amreek Singh Vs State of Pepsu MANU/SC/0039/1955, the principle laid down were as under:

"It is not every offence committed by public servant that require sanction for prosecution u/s 197 CrPC nor even every act done by him while he is actually engaged in the performance of his official duties: but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, the sanction would be necessary.

The real question therefore is whether the acts complained of in the present case were directly concerned with the official duties of the public servants. As far as the offences of criminal conspiracy punishable u/s 120B r/w 409 IPC and also section 5(2) of the Prevention of Corruption Act are concerned, they can't be said to be of the nature mentioned in section 197 CrPC. To put it shortly, it is no part of the duty of the public servant while discharging his official duties to enter into a criminal conspiracy or to indulge into a criminal misconduct. Want of sanction u/s 197 CrPC is therefore, Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) no bar."

The Hon'ble Supreme Court of India in Matajog Dobey vs H.C. Bhari 1955 (2) SCR 925 has also considered the point as to when the sanction is mandatory in which it was held as under:

"The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution

evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case."

The same set of law is followed by Hon'ble Apex Court in Harihar Prasad Vs State of Bihar, 1972 Cr.L.J. 707.

In S.B. Saha Vs M.S. Kochar 1979 4 SCC 177 it was held as under:

"The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be.' In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution under the said provision."

In a judgment in Shambhu Nath Mishra Vs State of U.P. and others (1997) file SCC 326, the Hon'ble Apex court dealt with the subject in the following manner:

"5. the question is when the public servant is alleged Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) to have committed the offence of fabrication of record or misappropriation of public fund etc. can be said to have acted in discharge of his official duties? It is not the official duty of the public servant to fabricate the false record or misappropriate public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of same transaction, as was believed by Id. Judge. Under these circumstances, we are of opinion that the view expressed by the High Court as well as the trial court on the question of sanction is clearly illegal and cannot be sustained."

In an another judgment by Hon'ble Apex Court in State of Kerala vs Padmanabhan Nayyar 1999 (3)SCR 864 decided on 14.07.1999, the Hon'ble Court while following its earlier decisions in aforementioned Shreekantiah Ramayya Munipalli Vs State of Bombay and also Amreek Singh held as under:

"Ld. Single Judge of the High court declined to follow the aforementioned legal position (as discussed herein above) in the present court on the sole premise that Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) offence u/s 406 IPC has also been fastened against the accused beside section 409 of IPC. We are unable to discern the rationale in the distinguishment. Section 406 & 409 of IPC are cognate offences in which the common component is criminal breach of trust. When the offender in the offence u/s 406 IPC is a public servant (or holding anyone of the position listed in the section) the offence would escalate to Section 409 of Penal Code. When this court held that in regard to offences u/s 409 IPC r/w Section 120B IPC, it is no part of the duty of the public servant to enter into criminal conspiracy for criminal breach of trust, we find no sense in stating that if the offence is u/w 406 IPC r/w 120B IPC, it would make all the difference viz a viz section 197 of Code."

Thereafter, the Hon'ble Allahabad High Court in another case namely Neera Yadav vs CBI (Bharat Singh) decided on 25.01.2006 while dealing with the issue u/s 197 CrPC had held as under:

"165. Moreover, there is an apparent fallacy in the contention of ld. counsel for the petitioners that just because the petitioners have been charge sheeted under Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) Section 120B IPC, this itself is sufficient to attract Section 197 CrPC. The entire allegations against the petitioners constitute offence under various provisions of Act of 1988, which is a Special Act. Section 40 IPC clarifies that where conspiracy is an offence under the Special Act, Section 120B would be referable to the offence under the said Special Act. Section 120B IPC in the present case cannot be read in isolation and has to be read along with the provisions of the Special Act, i.e. the Act of 1988. Since the sanction under Section 19 of the Special Act has been obtained from the competent authority, in our view, Section 197 CrPC is not attracted, as Section 120B IPC is referable to the

offences committed under the Special Act.

166. In the present case, three charge sheets contain offence under Section 13(1)(d) and (2) of Act of 1988 read with Section 120B IPC and one charge sheet is only under Section 13(1)(d) & (2) of the Act of 1988. The offences under Act of 1988 as has been held by the Hon'ble Apex Court in Harihar Prasad (supra), Kalicharan Mahapatra (supra), which still holds field, does not come within the purview of the word "in discharge of the official duty". Thus, the offence of Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) criminal conspiracy under Section 120B IPC would also not be within the term "in discharge of official duty" and, therefore, Section 197 CrPC has no application at all.

169. In view of the aforesaid, answers to the aforesaid three questions are as follows:

(I) For prosecution under Prevention of Corruption Act, 1988, once sanction under Section 19 of the said Act is granted, there is no necessity for obtaining further sanction under Section 197 of the Code of Criminal Procedure.

(II) Where a public servant is sought to be prosecuted under the provisions of Prevention of Corruption Act read with Section 120B IPC, and sanction under Section 19 of Act of 1988 has been granted, it is not at all required to obtain sanction under Section 197 CrPC from the State Government or any other authority merely because the public servant is also charged under Section 120B IPC.

(III) The offences under the Prevention of Corruption Act, 1988 as well as charge of criminal conspiracy, cannot be said to constitute acts in discharge of official duty."

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) In another landmark judgment Rajib Ranjan and others Vs R.Vijay Kumar Crl. Appeal No. 729-732 of 2010, the Hon'ble Apex court while relying upon the judgment in Shreekantiah Ramayya Munipalli; Amreek Singh and Shambhu Nath Mishra held as under:

"14. The ratio of the aforesaid cases, which is clearly discernible, is that even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanor on his part is not to be treated as an act in

discharge of his official duties, and therefore, provisions of Section 197 of the Code will not be attracted. In fact, the High Court has dismissed the petitions filed by the appellant precisely with these observations namely the allegations pertain to fabricating the false records which cannot be treated a part of the appellants normal official duties. The High Court has, thus, correctly spelt out the proposition of law. The only question is as to whether on the facts of the present case, the same has been correctly applied. if one looks into the allegations made in the complaint as stand alone allegations, probably what the High Court has said may seem to be justified."

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) In its latest verdict in Amal Kumar Jha vs State of Chattisgarh 2016 Law Suit (SC)382 decided on 26.04.2016, the Hon'ble Supreme Court of India (relied upon by defence) while relying upon the aforementioned Hori Ram case, S.B.Saha case and other important judgments like in Baij Nath Vs State of MP 1966 AIR SC 220 had held as under:

" It is the quality of the act that is important and if fall within the scope and range of his official duties, the protection contemplated by Section 197 CrPC will be attracted. In sum, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission must be one which has been committed by the public servant either in his official capacity or under the color of the office held by him."

Hon'ble Apex Court after discussing various judgments had held that for the purpose of obtaining sanction from the appropriate government u/s 197 CrPC, it is imperative that the alleged offence is committed in discharge of the official duty by the accused. It was further held that it is important for the court to examine the allegations contained in the final report against the accused to decide Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) whether previous sanction is required to be obtained from the appropriate government before taking cognizance of the alleged offence by the ld. Special Judge against the accused.

From the very reading of the judgment in Ganguly case (supra) and the judgments discussed herein above, it can be inferred from the dictum that no objective criteria has been laid down in order to decide as to whether sanction u/s 197 CrPC is required or not, but it is only the subjective criteria which shall prevail and that the Special Judge should examine the allegations contained in the final report against the accused to decide whether previous sanction is required to be obtained from the appropriate government before taking cognizance of the alleged offence. Testing present controversy on the

anvil of aforesaid principles, I am disposed to think that in the present matter, contrary to what has been argued by the Id. Counsels, this court could not find anywhere in the judgment any absolute Rule that the sanction u/s 197 CrPC is must before taking cognizance of the offence against a public servant.

The Ld. Predecessor of this court in his order dt. 06.08.2009 have already considered the allegations individually against both the accused Narayan Diwakar and R.B. Chauhan and it is only after thorough examination of the final report the court had come to conclusion that the case of the accused persons namely Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) Narayan Diwakar and R.B. Chauhan was beyond the scope of section 197 CrPC. Accordingly, as far as the case of the accused Narayan Diwakar and R.B. Chauhan is concerned, there are no change in circumstances even after the pronouncement of the latest judgment in Ganguly's case (supra) by the Hon'ble Apex Court. Further, after the dismissal of the application moved by accused Narayan Diwakar and R.B. Chauhan on 22.04.2010, no appeal or revision has been preferred by both the accused against the said order passed by Ld. Predecessor of this court.

All the accused persons have been charged for the offences u/s 120B IPC r/w Section 420, 468, 471 IPC & Section 13 (2) r/w Section 13 (1)

(d) of PC Act, 1988. Further, charges u/s 15 r/w Section 13(1)(d) punishable u/s 13(2) of P. C. Act, 1988 were framed against A¹ to A⁵. Charge u/s 420/511 IPC & u/s 419 IPC and u/s 468/471 IPC were also framed against accused Gokul Chand Aggarwal (A⁶). In view of the settled law proposition of law laid down, it is now clear after examination of the final report and in view of the allegations contained therein that the act complained of in the charge sheet cannot be said to be in discharge of the duties of the public servants and the prosecution was under no obligation to take sanction u/s 197 CrPC for the offence complained of u/s 120^B IPC. In this regard, I may take assistance from Section 40 of the IPC which deals with the definition of offences and runs as under:

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) "[40. "Offence" Except in the ²[Chapters] and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code. In Chapter IV, ³[Chapter VA] and in the following sections, namely, sections, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined."

Chapter VA of IPC deals with 'criminal conspiracy.' Accordingly, Section 40 of the Indian Penal Code clarifies that where the conspiracy

is an offence under the special act, Section 120B would be referable to the offence under the said special act and it cannot be read in isolation and has to be read along with the provisions of special Act of 1988. Accordingly, in view of the judgment of Hon'ble Allahabad High Court in Neera Yadav's case (supra) since the sanction u/s 19 of the Special Act i.e. P.C. Act, 1988 has been obtained from the competent authority, Section 197 CrPC is not attracted as section 120B IPC is referable to the offences committed under the Special Act. As regarding the remaining sections like 420/468/471 IPC, taking corollary from the afore discussed dictum by Hon'ble Apex Court in State of Kerala vs Padmanabhan Nayyar (supra), it is clear like in this case also that it is not part of Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) the duty of the public servant to enter into criminal conspiracy for committing offences like u/s 420/468/471 IPC, hence in terms of mandate of this judgment, sanction u/s 197 CrPC may not be required.

Now coming to another issue with respect to sanction. It has been agitated by ld. arguing counsels for different accused persons that the sanction obtained by the CBI is stereotypical in nature and hence there is no application of mind and that the sanction was required even for the public servants who had retired in view of the judgment of the Hon'ble Apex Court in State of Punjab Vs Laabh Singh 2168/2010 dt. 17.12.2014. It was argued that the sanction for retired government servants have not been obtained and hence the proceedings are liable to be quashed.

In this respect, this court is to say that the law laid down by Hon'ble Apex Court relied upon by the defence counsels in Laabh Singh (supra) is not disputed that even for retired public servants, the sanction was required to be taken and also in view of the amendments in Section 197 CrPC by the legislature, but simultaneously we have to take into consideration the other aspects as already discussed in Ganguly case (supra) to deal with the issue as to whether the offence charged with was committed while discharging the public duties. It has already been decided by this court in the above noted paras that Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) the offence charged in this case was not done in discharge of public duties and hence the plea of Ld. Counsel for defence is not tenable.

Another plea of the ld. Counsel for the accused persons that the sanction order suffers from infirmity as there is no application of mind at all while granting sanction. The Ld. Counsel had pleaded that the sanctioning authority is required to apply its mind for generation of satisfaction whether

prosecution has to be sanctioned or not. The mind of the sanctioning authority, should not be under pressure from any quarter.

In order to substantiate claim, Ld. Counsel has relied upon the judgment of Hon'ble Supreme Court in AIR 1997 (SC) 3400 Mansukhlal Vithaldas Chauhan V. State of Gujarat & State through CBI Vs Ravinder Singh CrI. Rev. 45/93 DOD 12.01.1995 by Hon'ble High Court of Delhi. This court feels that these judgments with due respect are of no relevance as the bare perusal of the sanctions granted to the accused R.B. Chauhan, U.S. Bhatnagar and P.K. Thirwani u/s 19 (1)(c) of P C Act besides other offences categorically goes to suggest that detailed order after consideration of relevant facts have been passed by the competent authority. To arrive at this opinion, I have also taken guidance from the judgment passed by Hon'ble High Court of Delhi in Ashok Kumar Aggarwal Vs CBI and others C R 338/14 decided on 13.01.2014 relied upon by ld. Defence counsels for the aforementioned accused persons wherein Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) certain guidelines have been issued for the convenience of the subordinate Courts in para 69 of judgment which are as under:

"a) Grant of sanction is a sacrosanct act and is intended to provide safeguard to a public servant against frivolous and vexatious litigation.

b) The sanctioning authority after being apprised of all the facts, must be of an opinion that prima facie a case is made out against the public servant.

c) Thus, for a valid sanction the sanctioning authority must be apprised of all the relevant material and relevant facts in relation to the commission of the offence.

d) This application of mind by the sanctioning authority is a sine qua non for a valid sanction.

e) The ratio of the sanction order must speak for itself and should enunciate that the sanctioning authority has gone through the entire record of the investigation.

Thus, the sanction order must expressly show that the sanctioning authority has perused the material placed before it, and after considering the circumstances in the case against the public servant, has granted sanction.

f) If the application of mind by the sanctioning authority is not apparent from the sanction order itself then the

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burden of proving that the entire relevant record was placed before the sanctioning authority rests on the prosecution. The prosecution must establish and satisfy the court by leading evidence that the entire record of investigation was placed before the sanctioning authority."

C o n s i d e r i n g t h e c o n s p e c t u s o f c a s e s r e l i e d u p o n b y t h e l d .
Counsel for the defence and in view of the aforesaid guidelines laid down by Hon'ble High Court of Delhi in Ashok Kumar Aggarwal and after going through the sanctions issued for different accused persons, I do not find that the sanctions granted were not proper or irregular. Different orders of sanctions in this case apparently make it clear that authorities were aware of all the relevant facts and material and had applied its mind to all relevant material.

N o w I s h a l l c o m e t o t h e i s s u e r a i s e d b y t h e l d . d e f e n c e c o u n s e l t h a t
the sanction in this case has been granted to accused PK Thirwani, R.B. Chauhan and U.S. Bhatnagar by the worthy Chief Secretary, GNCT of Delhi; Directorate of Family Welfare, Government of NCT of Delhi and Director of Education, Government of NCT of Delhi respectively. It was asserted in this Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) case that sanction should have been granted by RCS and not by the worthy Chief Secretary or the other aforementioned worthy officers of Government of NCT of Delhi. In support of claim, ld. Defence Counsel has relied upon the judgment of Hon'ble Apex Court in AIR 1975 SC 1432 in Sita Ram Vs State of Rajasthan.

R e s p o n d i n g t o t h i s a r g u m e n t , t h e l d . S r . P P f o r t h e C B I h a d
categorically stated that since the public servant accused persons had been transferred to some other portfolio in some other departments during the investigation of this case, the sanctions have been granted by worthy Chief Secretary and other worthy Officer of Government of NCT of Delhi who were competent to remove the respective accused persons in terms of Section 19 of PC Act. He further explained that since at the time of c o n s i d e r a t i o n o f s a n c t i o n t h e R C S w a s n o t competent to remove these fellows and in case the RCS could have granted the sanction, the sanction itself would have been redundant.

H a v i n g h e a r d t h e a r g u m e n t s o f r i v a l p a r t i e s o n t h i s i s s u e , i n
terms of discussion already made herein before that the irregularity in the sanction, (if any) s h o u l d n o t c a u s e p r e j u d i c e d u r i n g t r i a l , t h i s court is not inclined to go deep into the issue considering the verdict delivered by Hon'ble Apex Court in State of Bihar Vs Rajmangal Ram Crl. Appeal no. 708/2014 date of decision 31.03.2014 in which it was held as under:

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) "8.

The above view also found reiteration in Prakash Singh Badal and Another vs. State of Punjab and Others [2] wherein it was, inter alia, held that mere omission, error or irregularity in sanction is not to be considered fatal unless it has resulted in failure of justice. In Prakash Singh Badal (supra) it was further held that Section 19(1) of the PC Act is a matter of procedure and does not go to the root of the jurisdiction. On the same line is the decision of this Court in R.Venkatkrishnan vs. Central Bureau of Investigation[3]. In fact, a three Judge Bench in State of Madhya Pradesh vs. Virender Kumar Tripathi [4] while considering an identical issue, namely, the validity of the grant of sanction by the Additional Secretary of the Department of Law and Legislative Affairs of the Government of Madhya Pradesh instead of the authority in parent department, this Court held that in view of the Section 19(3) of the PC Act, interdicting a criminal proceeding mid course on ground of invalidity of the sanction order will not be appropriate unless the court can also reach the conclusion that failure of justice had been occasioned by any such error, omission or irregularity in the sanction. It was further held that failure of justice can be established not at the stage of Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) framing of charge but only after the trial has commenced and evidence is led.

9. There is a contrary view of this Court in State of Goa vs. Babu Thomas [5] holding that an error in grant of sanction goes to the root of the prosecution. But the decision in Babu Thomas (supra) has to be necessarily understood in the facts thereof, namely, that the authority itself had admitted the invalidity of the initial sanction by issuing a second sanction with retrospective effect to validate the cognizance already taken on the basis of the initial sanction order. Even otherwise, the position has been clarified by the larger Bench in State of Madhya Pradesh Vs.Virender Kumar Tripathi (supra)."

In the judgment relied upon by the ld. defence counsel in Sita Ram's case (supra), the Hon'ble Apex Court had not laid down any ratio with respect to the issue regarding the competence of authority, but on the very peculiar facts of that case had declared that the sanction granted by RCS was valid in that case as he was competent to remove him in that case.

I may refer to the provisions of Prevention of Corruption Act in which Legislature has itself attempted to deal with the issue and a corollary can well be drawn from Section 19 (3) of the PC Act Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) which states that no finding sentence or order passed by Special Judge shall be reversed or altered by a court of appeal, confirmation or revision on the ground of absence of, or any error, omission or irregularity in the sanction required under PC Act unless in the opinion of the court a failure of justice has in fact been occasioned thereby. The Section 19(4) of PC Act explanation (a) categorically mentions that error includes competency of the authority to grant sanction. From the corollary drawn, it can be inferred that the court of Special Judge is also required to see that in case of any irregularity, omission, error in the sanction failure of justice should not have been caused. From the very set of circumstances, as herein above mentioned since it is not part of duty of public servant to enter into a criminal conspiracy or to indulge in a criminal misconduct, it can be inferred that any irregularity, omission or error (if any) in the sanction is hardly going to affect the case of the prosecution.

COMMON AND SPECIFIC CONTENTIONS OF ALL THE ACCUSED PERSONS EXCEPT ACCUSED GOKUL CHAND AGGARWAL w.r.t. INDEMNITY CLAUSE UNDER DELHI COOPERATIVE SOCIETY ACT, 1972 AND CONSIDERATION THEREOF.

The ld. Counsel for the accused person has drawn the Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) attention of this court towards Section 5 of IPC wherein it is mentioned that nothing in the code shall affect the provisions of any special or local law. As per their averments, since there is a special law with respect to the prosecution of the accused persons under the Delhi Cooperative Society Act, 1972 (hereinafter called 1972 Act), the provisions of IPC cannot be made applicable to the respective cases of the accused persons.

It has been agitated by ld. counsels for all the accused persons that the Registrar as well as his subordinates in the office of the RCS are immuned from any prosecution in view of Section 95 of the 1972 Act. It was urged that the RCS acts like a 'Judge' in the course of performance of his duties for the purposes of revival of societies under the 1972 Act, that all the accused persons are immuned from prosecution because the functions discharged by them are judicial and quasi judicial in nature, that even the provisions of appeal are there in Section 76 of 1972 Act if the parties is not satisfied with the said decision of the RCS office subordinates, that RCS and his subordinate officers enjoy protection while discharging the functions under the 1972 Act and can be deemed to be a 'Judge' within the meaning of Section 19 of IPC as the judgment of the RCS if not appealed against would be definitive and they are empowered

J u d g m e n t C B I V s N a r a y a n D i w a k a r e t c . (G O D R E J C G H S) by law to give judgment. It was elaborated that Section 63(3) of 1972 Act empowers the RCS to cancel an order for winding up of cooperative society at any time in any case where in his opinion the society should be revived and in case even if it is assumed for the sake of assumptions that the action of Registrar in cancellation of the winding up order and for revival of defunct society were taken by him on the basis of fabricated records, he passes the same in exercise of that power and such orders of cancellation of winding up of the societies and their subsequent revival are appealable within the ambit of Section 76 of 1972 Act. It has been asserted that since no appeal has been preferred and the order of revival of the society has not been challenged at any platform in terms of 1972 Act, the order has attained the status of definitive judgment within the meaning of Section 19 IPC and hence its legality and validity cannot be challenged in any other proceedings and cannot be subjected to any inquiry by any prosecution agency. It was further urged that the Registrar has powers of the Civil Court u/s 94 of 1972 Act and that u/s 93(3) it has been mentioned that no order, decision or award made under this Act shall be questioned in any court on any ground whatsoever and that the prosecution of the RCS and his subordinates in this case under PC Act and IPC have made the Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) law i.e. Section 93 & 95 of 1972 Act redundant and nugatory. It was further urged that the actions have been taken in good faith and hence the prosecution of the accused person is liable to be quashed.

H a v i n g h e a r d t h e a c c u s e d p e r s o n s a n d t h e i r c o u n s e l s on this issue, this court would first to refer to clause 95 of 1972 Act which was in force at the time of commission of offence which runs as under:

"95. Indemnity—No suit, prosecution or other legal proceedings shall lie against the Registrar or any person subordinate to his or acting on his authority in respect of anything in good faith done or purporting to have been done under this Act."

The bare perusal of this indemnity clause goes to suggest that action of the Registrar or his subordinates while conducting proceedings should have been in good faith. Now the question is what is good faith and what is bad faith and as to whether the RCS or his subordinates are entitled to protection u/s 95 given the facts of this case. To decide the same, this court is being guided by the judgment of Hon'ble High Court of Delhi in Narayan Diwakar Vs CBI 129 (2006) DLT 258 decided on 07th March, 2006 wherein it was Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) held as under:

"This court on a consideration of matter and more particularly having regard to the provisions of Delhi Cooperative Societies Act, 1972 and Judges (protection) Act, 1985, is of the considered opinion that the petitioner while exercising and discharging functions of the Act and more particularly the powers u/s 63 (3) of the Act, can't be deemed to be a Judge within the meaning of Section 2 of Judges (Protection) Act, 1985 and, consequently, he cannot claim any protection against prosecution or other legal proceedings. So far as the immunity available to the Registrar and other officers against prosecution etc. u/s 95 of the Act is concerned, suffice it would be to observe that use of expression "good faith" is the said section clearly brings out the mind of the legislature that the protection granted to the Registrar or other officers for the acts done by them in discharge of their duties is not absolute and not circumscribed by the condition that the action had been taken and power had been exercised by such officers in good faith. Converse of good faith is "bad faith" or malafide, therefore, if a question arises as to whether Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) the action taken by Registrar Cooperative Societies or any other officer was in bad faith, the immunity envisaged by Section 95 of the Act will not be available and the question can be gone into by any competent authority including any Statutory agency (s) like CBI. In the opinion of this court, the petitioner cannot be allowed to take refuge under the said provisions and to scuttle the investigation into cases having large ramification in the society."

Further, in another case titled Registered Society vs Union of India and others (1996) 6 SCC 530, the Hon'ble Apex Court has said as under:

"No public servant can say: "you may set aside an order on the ground of malafide but you cannot hold me personally liable". No public servant can arrogate in himself the power to act in a manner which is arbitrary."

I am also being enlightened by related judgment Delhi Development Authority vs Skipper Construction and another AIR 1996 SC 175 where the Hon'ble Apex Court held as under:

"A democratic government does not mean a lax government. The rules of procedure and/or principles of natural justice are

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) not meant to enable the guilty to delay and defeat the just retribution. The wheels of justice may appear to grind slowly but it is the duty of all of us to ensure that they do grind steadily and grind well and truly. The justice system cannot be allowed to become soft, supine and spineless."

The law therefore has been clearly settled in aforesaid judgment in Hon'ble High Court of Delhi in Narayan Diwakar's case and all the pleas with respect to indemnity clause u/s 95 and u/s 93 of 1972 Act raised by ld. Counsel for the accused persons as aforementioned stands decided accordingly in terms of the aforementioned dictum of the Hon'ble High Court of Delhi. Accordingly, the plea of Ld. Counsels for all public servants/accused in this case that they are entitled to immunity under DCS Act is rejected because the accused cannot be allowed to take refuge under the provisions of RCS Act to scuttle prosecution into cases having large ramifications in the society.

Arguments advanced on behalf of accused R.B. Chauhan, U.S. Bhatnagar.

For the accused R.B. Chauhan and U.S. Bhatnagar, the ld. Counsel continued with his arguments that there is no material on Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) record which may suggest that the accused was involved in entering into criminal conspiracy as they had simply drafted the notings under the order of his superiors, and thus have not violated any law. It has been asserted that no evidence has been produced to show the pecuniary benefit received by the accused or anyone else. Ld. Counsel stated that there is no person who has been cheated. By referring to Section 13(d) of PC Act, he submitted that the 'obtainment' which is prerequisite for attraction of section 13 PC Act is missing. He also stated that the provisions of section for which the accused has been charged under IPC could not be proved. The Ld. Counsel referred to the revival order dt. 04.03.2004 passed by accused N. Diwakar to highlight that the revival order was passed on the basis of the report of the concerned 'Zonal Assistant Registrar' and not the dealing clerk R.B. Chauhan and the said accused R.B. Chauhan was not even party to the meeting held on 04.03.2004. He submitted that by revival of the society no legal rights have been created in any one's favour. He further argued that unlike Section 21 of PC Act, there is no presumption for Section 13(1)(d) of PC Act. Ld. Counsel further stressed that the accused RB Chauhan was simply a Grade IV LDC and no duty chart has been filed by CBI to ascertain as to whether he went beyond his duties or not and there is no mensrea. He referred to the testimony of PW 117 V.K. Bansal and stated that nowhere it has been Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS)

said by him that accused R.B. Chauhan did something wrong. It was further stressed that the Secretary of the society filed resolution of GBM dt. 29.06.2003 D18 (Vol. I) wherein the change of address was highlighted along with change of name of the society. He again referred to Ex.PW48/A D18 Vol. I which was sent by the AR S.R. Goyal to all zones to trace the file within one week and stated that accused R.B. Chauhan had not mentioned anywhere in the notings that the same was to be traced within one week, accordingly it was the decision of S.R. Goyal (since deceased). It was urged that the accused R.B. Chauhan was not supposed to verify as to what inspection has been done, as to whether society was functioning at the given address or not, as to whether false affidavits were filed as his duty was simply to draft the notings on the directions of the superiors. It was highlighted that nothing has been crystallized against accused R.B. Chauhan.

On behalf of the accused U.S. Bhatnagar, it was argued that accused was appointed to conduct inspection u/s 54 of DCS Act and thereafter for verification of the members of the society. It was urged that there was no illegality in the inspection report as the accused has mentioned details of the society to the effect that no audit of the society was done from the very beginning. The accused was not provided with any blue prints or details regarding the agenda of Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) inspection by the office of RCS. It was argued that there is no omission or commission on the part of the accused to show criminality, and that there is no evidence to show that the report of the accused was not correct. It was argued that there is no statutory provision vide which it can be said that the report of the accused was required for revival of the society and that society has not been revived on the basis of the report of the accused but it was revived vide order dated 04.03.2004 on the basis of the fact that the liquidation order suffered from infirmities and the Dy. Registrar who had passed the liquidation order u/s 63 of DCS Act, 1972 was not competent to decide the matter u/s 63 of DCS Act and that proper procedure was not followed by the Dy. Registrar. It has been highlighted that the sanctioning authority has not applied its mind as PW188 Vijay Kumar has admitted in cross-examination that there is no reference of letter of CBI. It was also urged that it was not within the knowledge of accused U.S. Bhatnagar as to who forged the signatures of 'Suraj Goyal' and it was only IO who stated that report of U.S. Bhatnagar was false.

Regarding address of the society, it has been highlighted by the Ld. Defence Counsel that he has been unable to digest as to why the owner of the house where the society existed or its neighbour was not examined. He made me go through the testimonies of PW22 Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) Raj Kumar Sukhija, PW34 Vijay Kumar Chhabra & PW35 Manoj

Kumar Sukhija. He stated that there is no dishonest intention on the part of accused U.S. Bhatnagar. It was further stressed that inspection report was signed by him as well as 'Suraj Goyal' but signatures of 'Suraj Goyal' were not referred to GEQD by prosecution which itself suggests that CBI was bent upon to implicate accused U.S. Bhatnagar falsely, that there is no direct or circumstantial evidence, there is no land allotment etc. It was further stressed that there is no requirement of physical verification specifically in Section 54 and there is no DDA official was called by CBI to show that cheating was committed.

Arguments advanced on behalf of accused Narayan Diwakar.

Ld. Counsel for the accused Narayan Diwakar had vehemently argued that the accused is innocent as all the acts have been done in furtherance of the discharge of the official duties. It has been urged that no loss have been caused to any person and there is no malafide at all in doing the things which have been highlighted by the prosecution as conspiracy, that there is no cheating or dishonestly inducing the delivery of property, that there is no forgery for the purpose of cheating, that no documents were forged. It was highlighted that the revival order of the society was not challenged before any Tribunal and the society was revived in terms of Delhi Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) Cooperative Societies Rules, 1950.

Ld. Counsel asserted that during the ordinary course of business in official affairs, there may be certain non application of mind due to heavy work load but that does not tantamount to criminality on the part of accused persons more particularly when the accused persons were holding high public office like that of accused Narayan Diwakar who was an IAS officer. Ld. Counsel made me go through the various pages of cross examination of PW 206 IO/Insp. Raja Chatterjee and stated that the accused never got benefited by the acts alleged and that he never used any illegal or corrupt practices to obtain benefit within the meaning of Section 13(1)(d) of PC Act, 1988. He never abused his office and always worked in public interest.

Ld. Counsel also apprised this court about the Delhi Cooperative Society Rules in order to rebut the claim of the prosecution that the society was not revived as per rules.

Arguments advanced on behalf of accused P.K. Thirwani. Ld. Counsel Sh. S.K. Bhatnagar for accused P.K. Thirwani vehemently argued that this case should have been investigated by an Inspector of Police in terms of Section 17 of PC Act whereas the same has been investigated by police officer of the rank of Sub Inspector. He stated that though the permission has been sought by the CBI from Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) the concerned Special Judge, CBI, but as per the provisions of PC Act,

the same should have been sought from Ld. Metropolitan Magistrate in terms of provisions of Section 17 of PC Act, 1988.

He further stressed that the revival order of the society, as contained in file D□ 18 Vol.I shows the address of the society at 20/36, West Patel Nagar, Delhi.

The said revival order was required to be sent to the society u/s 63 (4) of DCS Act and no such letter which might have been sent under the said section was received back as unserved.

Further, letter 4/C which was sent by accused S.R. Goyal (since deceased) to U.S. Bhatnagar w.r.t. his appointment u/s 54 DCS Act as Inspection Officer to verify the records of the society was also sent to the President/Secretary of Godrej CGHS at the same address of the society, as mentioned herein above, but the same was also never returned. This, as per Ld. Counsel, would mean that the society was existing at the address 20/36, West Patel Nagar, Delhi. He stressed that the society was existing at the given address 20/36, West Patel Nagar, Delhi. He further stated that no search was made at the aforesaid address of society.

It has been mentioned by the Ld. Defence counsel that the audit report could be received by the RCS office only after sending the file to AR(Policy) by RCS office along with freeze list. It was explained that the revival order has nothing to do with the report of Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) the auditor.

He further urged that nowhere it has been mentioned that there was any fault in the audit report or that the accused P.K. Thirwani was having knowledge about any fraud being committed or played by anyone. Copy of the audit report was also taken by 'Suraj Goyal' from RCS office, but Ld. Defence counsel asked the Prosecutor as to who was this 'Suraj Goyal' as no GEQD opinion regarding his signatures about receipt of copy has been obtained by the CBI. Arguments advanced by accused Gokul Chand Aggarwal.

Ld. Counsel for accused Gokul Chand Aggarwal argued the and stated that the accused had not got the affidavits attested and no stamps etc. of the Notary were seized, no Munshi etc. was examined. He further stated that no orders were taken from the Court u/s 311 A CrPC before taking specimen signatures/handwritings. He further urged that he was not engaged in the c o n s p i r a c y n e i t h e r w a s a n y beneficiary, he was not a member of the society and had not deposited any amount towards subscription of the society.

Ld. Counsel for accused Gokul Chand Aggarwal further argued that the said GEQD opinion / report filed by the CBI is an inadmissible evidence and faulty and not reliable as the same is not

based on any scientific approach. These papers were prepared just on the advice of CBI.

The specimen handwriting / signature were taken without the orders of the Courts because the CBI had no right to take Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) any handwriting of the accused during the period of investigation of the case, that the opinion of GEQD has to be ignored and rejected as it is in blatant violation of Section 311A CrPC. It has been argued that this provision of law has been confirmed by full bench judgment passed by Hon'ble High Court of Delhi in the case of Sapan Haldar & Anr. Vs State, Crl. A. 804 / 2001, 191 (2012) DLT 225 (FB), dt. 25.05.2012 amended dated 23.06.2006 and u/s 311A CrPC. Thus, as per the Ld. Counsel for accused Gokul Chand Aggarwal, this evidence cannot be said to be incriminating against accused persons and that it is an admitted fact that no such permission was taken for obtaining the specimen handwriting of accused person. In support of his contention, Ld. Counsel for accused Gokul Chand Aggarwal has relied upon judgments State of Andhra Pradesh through CBI Vs. M.Durga Prasad & Ors. Crl. Appeal No. 199/2006 DOD 03.02.2011 (SC); Raj Kumar vs State, Crl. A. 582/2012 decided by the Hon'ble High Court of Delhi on 20.04.2015; Parkash Chand Vs State Crl. A. 342/1999 decided by the Hon'ble High Court of Delhi on 18.03.2014; Sanjay @ Vicky Vs State Crl. A. 1151/2010 decided by the Hon'ble High Court of Delhi on 24.11.2014 and Bharat Aneja @ Buntty Vs State of NCT of Delhi Crl. A 652/2011 decided by the Hon'ble High Court of Delhi on 20.03.2015. It was stressed that in view of these judgments, no reliance can be placed on Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) judgment Rabindra Kumar Pal @ Dara Singh Vs Republic of India, AIR 2011 SC 1436, relied upon by Ld. Sr. PP for CBI.

In support of his submissions, Ld. Counsel for accused Gokul Chand Aggarwal has also relied upon the judgments Kanchan Singh Dholak Singh Thakur vs State of Gujarat, AIR 1979 SC 1011 decided on dt. 09.02.1979; Chanderkant Chimanlal Desai Vs State of Gujarat, 1992(1) SCC 473 decided on dt. 12.12.1991; Shashi Kumar Banerjee & Ors. Vs Subodh Kumar Banerjee, AIR 1964 SC 529; Magan Bihari Lal Vs State of Punjab AIR 1977 SC 1091 on the point that it is not safe to rely upon the opinion of handwriting expert unless corroborated in material particulars. He has vehemently contended that IO/PW 206 Insp. Raja Chatterjee had by exercise of undue influence and by way of manipulations obtained antedated concocted reports favourable to CBI. Ld. Counsel also relied upon some other judgments Ishwari Prasad Mishra Vs Mohd. Isa, AIR 1963 SC 1728; Sashi Kumar Banerjee & Ors. Vs Subodh Kumar, Civil Appeal 295 of 1960 DOD 13.09.1963 (SC) and Bhargaw Pundalik Salunkhe Vs State of Maharashtra 1996 Crl. L.J. 1228 Bombay High Court on the point that evidence given by handwriting expert can never be

conclusive. He further argued that he never frequented RCS office and never met any RCS official.

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Arguments advanced by ld. Sr. PP for CBI.

Ld. Sr. PP for CBI during the course of arguments made this court go through the contents of charge sheet, documents and record as well as their relevance with respect to the evidence produced by the CBI to prove its case against all the accused persons. It was elaborated that all the accused persons with prior meeting of minds entered into conspiracy for the purposes of cheating, forgery of documents, for getting valuable things etc. and in order to give shape to the said conspiracy did various acts and omissions. He argued that the evidence of conspiracy can never be made available directly as the same are hatched in closed chambers. He urged that the evidence with respect to conspiracy can be extracted only by implication.

Ld. Sr. PP for CBI argued that in total the prosecution has examined 206 witnesses. He stated that there was a cartel of accused in the RCS office who used to manipulate the things in such a way that they managed to revive the dead societies which were already wound up by earlier orders by misrepresenting the facts etc. He stated that in the present case also no efforts were made by the accused persons who were RCS officials to trace the previous file in which the winding order was passed by the then Dy. Registrar, no responsibility was fixed as to why the file was lost, no FIR was registered for lost file etc. He further urged that matter was sent by Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) RCS office to DDA without verifying elections of the society which were one of the pre conditions of revival order.

Regarding the accused R.B. Chauhan, Ld. Sr. PP explained that he suppressed the old lost file and had made this court to go through various documents in order to establish criminality on his part and also how he manipulated the things in connivance and in furtherance of common designs and was party to a criminal conspiracy to commit the offences, as charged. He also did not file about the change of address and name and wrote various notings himself for the purposes of getting the society revived which can be termed to be in furtherance of criminal conspiracy. He stated that nothing has been mentioned in the notings of the RCS office w.r.t. change of name of society and the name and address of the society has been ordered to be changed abruptly.

Regarding accused U.S. Bhatnagar, Ld. Sr. PP elaborated that inspection reports was found to be bogus and it was only on the basis of the bogus reports, the RCS acted in furtherance of criminal conspiracy. He has cited the

testimonies of various witnesses who deposed that they were either not the members of the society or they were not found residents at the addresses mentioned against their names in the records of the society.

Regarding accused PK Thirwani, Ld. Sr. PP submitted that Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) he furnished forged audit report without getting the actual audit done.

He also drawn the attention of this court that this accused is also engaged in other criminal cases of similar type and has also been convicted by this court in another matter for the same offence. He stated that audit is shown to have been conducted at a place which was found to be a bogus address.

Regarding accused Narayan Diwakar, Ld. Sr. PP submits that being public servant he was required to proceed in the best interest of public and not against the public interest. He highlighted that it is no part of the duty of the public servant to enter into any conspiracy or to obtain benefits against public interest. He further explained that he being a public servant in this case committed criminal misconduct also by abusing office.

Regarding accused Gokul Chand Aggarwal, Ld. Sr. PP submitted that he furnished false and forged documents and he was non public servant member who was the kingpin for the entire episode, who in furtherance of criminal conspiracy was able to get the society revived by fraudulent and forged means, that his specimen signatures tallied with the documents on which he had signed posing himself to be as "Suraj Goyal". Ld. Sr. PP explained that in fact accused Gokul Chand Aggarwal impersonated himself to be "Suraj Goyal" and initiated the action by moving an application for change of Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) name of the society as well as for the revival of the society. He stated that "Suraj Goyal" is a non existent person in the entire episode and accused Gokul Chand Aggarwal signed the documents in the name of "Suraj Goyal".

He also was surprised as to how the RCS passed the order dt. 04.03.2004 without calling for the records as he himself was hand in glove with the other accused who are RCS officials as well as accused Gokul Chand Aggarwal who is not a public servant.

First of all, I shall deal with the case of the private person/accused Gokul Chand Aggarwal and the evidence brought forth by the prosecution for accused Gokul Chand Aggarwal and consideration thereof.

The specific allegation against him as per charge sheet are that on 06.01.2004, an application was moved in the office of RCS Delhi on behalf of Godavari Apartment CGHS Ltd. by accused Gokul Chand Aggarwal in the name of "Suraj Goyal" on the grounds that the

shortcomings on which the society was wound up had been removed and was functioning from 20/36, West Patel Nagar, Delhi. Thereafter, after receipt of the said letter by the co-accused Narayan Diwakar, the letter changed several hands of different accused persons and finally vide note dt. 28.01.2004 of Sh. S.R. Goyal (since deceased) the then AR (West), the society was ordered to submit the original records along with copies of registration certificate, copy of Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) bye laws and other relevant documents for the purpose of reconstruction of the file of the society.

Accordingly, letter dt. 06.02.2004 was issued under the signatures of the Reader to RCS Narayan Diwakar and dispatched to President/Secretary of Godrej Staff Cooperative Society Ltd.

In response to the letter, the accused/private person Gokul Chand Aggarwal sent the photocopies of registration certificate (22/C Ex.PW117/J); photocopy of bye laws (21/C Ex.PW117/H) and photocopy of winding up order dt. 09.01.1979 (24/C Ex.PW117/K) which were signed by the accused Gokul Chand Aggarwal as 'Suraj Goyal' with the stamp of Godrej Staff CGHS Ltd. Accordingly, the following is the summary of allegations against accused Gokul Chand Aggarwal :

1. He moved the application under a fictitious name impersonating himself as 'Suraj Goyal' before the RCS.
2. The aforesaid application was moved to cancel the winding up order dt. 09.01.1979 and to allow the society to function.
3. The address of the society at 20/36, West Patel Nagar, New Delhi was fake.
4. The documents like photocopies of registration certificate (22/C Ex.PW117/J) & photocopy of bye laws (21/C Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) Ex.PW117/H) of the society were fake and were certified by accused Gokul Chand Aggarwal impersonating himself as 'Suraj Goyal'.
5. The accused Gokul Chand Aggarwal purchased non judicial stamp papers from the stamp vendor in the name of different members of the society and also in the fictitious name of one 'Suraj Goyal' on which he manipulated/forged the signatures of members for submitting the same before the RCS or signed the same impersonating himself in the name of 'Suraj Goyal'.
6. The list of the members of the society was furnished by the accused Gokul Chand Aggarwal which contained the fake

members as the addresses of the said members were either found non existent or in case address was correct, the members were non-existent.

7. The accused Gokul Chand Aggarwal engaged advocate Neera Gupta for purpose of attending the cases before the RCS for revival of the society.

Not only for the aforementioned allegations, but the prosecution was required to lead evidence against the private person/accused Gokul Chand Aggarwal to prove conspiracy of accused Gokul Chand Aggarwal with the accused Narayan Diwakar Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) the then Registrar, Cooperative Societies; accused S.R. Goyal (since deceased but in order to complete the chain and sequence of events), accused R.B. Chauhan, accused U.S. Bhatnagar and accused P.K. Thirwani the then Sr. Auditor, who all belonged to the office of RCS.

In the letter dt. 06.01.2004 Mark 34/X, it has been mentioned that the Godrej Staff Cooperative Group Housing society Ltd. was registered at Register no. 38(H) with the department for the object to acquire land and construction of flats for its members. The same was wound up by the order of Dy. Registrar (GH), Cooperative Societies vide No. F 47/28/78/H/Coop/140 dt. 09.01.1979 on certain grounds. It was highlighted in the said letter that the election of the managing committee of the society had been conducted on 29.06.2003 strictly in accordance with the Schedule of Rule 58 and the managing committee resolution, copies of the notice, copies of the proof of service of notice, report of election officer, proceeding of GBM shall be produced as and when called for along with fresh list of members. It was requested in the said letter Mark 34/X that the society may be revived after cancellation of the winding up order in terms of the rules.

In this respect, the prosecution produced the PW 17 Sh. V.K. Bansal wherein he deposed before this court that during the Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) period from 31.01.2004 to 31.05.2008 he was posted as Asstt. Registrar in the office of RCS. After seeing Ex.PW117/A, he proved the corresponding pages of notings 24/C (wrongly written as 21/C in the deposition) as Ex.PW117/A which is the winding up order passed by Sh. Ashok Bakshi, the then Dy. Registrar on 09.01.1979. The said letter bearing no. F 47/28/78/H/Coop/140 dt. 09.01.1979 placed in file D 18 Vol. I is regarding winding up of Godrej CGHS.

PW 125 Sh. Ashok Bakshi who was the author of this winding up order also categorically deposed that he was delegated with the powers of RCS under notification signed by the then Secretary (Cooperation) Sh. Ganga Dass and was directed to work

under the supervision of RCS. He deposed that since the society was non functional and hence after adopting the prescribed procedure under the Act & Rules, the society was liquidated. He proved his signatures on the photocopy of the winding up order Ex.PW117/A. Accordingly, it stands proved that the winding up order dt. 09.01.1979 was passed by PW 125 Sh. Ashok Bakshi, the then Dy. Registrar.

Now the question is as to whether in fact this letter dt. 06.01.2004 was written by some person "Suraj Goyal" or it was written by the accused Gokul Chand Aggarwal after impersonating himself as 'Suraj Goyal'. Unfortunately, the prosecution has failed to Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) send the said letter containing the signatures of 'Suraj Goyal' for GEQD opinion from Government Examiner. The opinion of the GEQD was must to decide as to whether in fact the accused Gokul Chand Aggarwal had signed this letter dt. 06.01.2004 Mark 34/X (2/C D 18 Vol. I) in the name of 'Suraj Goyal'. This is a lapse on the part of the prosecution.

During investigation, the specimen handwriting/signatures of accused Gokul Chand Aggarwal were taken by the PW 206/IO Insp. Raja Chatterjee in the presence of PW 199 Kamal Kishore which were Ex.PW199/A (colly.), Ex. P W 1 9 9 / B colly., Ex. P W 1 9 9 / C colly., Ex.PW199/D colly. and Ex.PW199/E colly.; in the presence of PW 200 Satpal Singh Ex.PW200/A, Ex.PW200/B, Ex.PW200/C, Ex.PW200/D, Ex.PW200/E, Ex.PW200/F, Ex.PW200/G, Ex.PW200/H, Ex.PW200/J, Ex.PW200/K, Ex.PW200/L, Ex.PW200/M and Ex.PW200/N & in the presence of PW 202 Prem Prakash which were Ex.PW202/A (colly.), Ex.PW202/A 1 (colly.), Ex.PW202/A2 colly., Ex.PW202/A 3 colly., Ex.PW202/A 4 colly., Ex.PW202/A 5 colly., Ex.PW202/A 6 colly. And Ex.PW202/A 7 colly. calling him upon to write different names and words. The IO/PW 206 Insp. Raja Chatterjee deposed before this court that the aforementioned specimen sheets (sheets on which specimen of accused Gokul Chand Aggarwal were taken) carries the handwriting and signatures of accused Gokul Chand Aggarwal which Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) were marked as S 1 to S 114 respectively which were taken in the presence of witnesses namely PW 199 Kamal Kishore, P W 2 0 0 Satpal Singh and P W 2 0 2 Prem Prakash. He identified his signatures on the aforesaid exhibits at points D on all the sheets. He also identified the handwriting of accused Gokul Chand Aggarwal on points E on each sheet. He categorically deposed that the specimen handwriting/signatures of accused Gokul Chand Aggarwal were taken in the presence of independent witnesses. This witness IO/PW 206 Insp. Raja Chatterjee was also offered to the accused Gokul Chand Aggarwal for cross examination wherein though he cross examined him at length, but during cross examination no questions with respect to taking of the specimen signatures/handwritings were put to PW 206 by accused Gokul Chand Aggarwal except certain questions the

answers to which were given to the effect that the witness had not taken any orders from the Court to obtain specimen handwritings of the accused and that no Q Number was mentioned on the application for revival moved by the Secretary of the society. Further, the said specimens were taken by the IO in the presence of PW□99 Sh. Kamal Kishore who while in witness box, categorically stated after seeing document D□9 containing specimen S□ to S□47 Ex.PW199/A (colly.); S□52 & S□53 (Ex.Pw199/B colly.); S□60 & S□61 (Ex.PW199/C colly.); S□69 to S□74 (Ex.PW199/D colly.) and S□87 to S□92 (Ex.PW199/E Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) colly.) that these were the specimen documents on which accused Gokul Chand Aggarwal had given his specimen signatures/writings on all the above sheets. It was stated that accused Gokul Chand Aggarwal had given specimen writings/signatures voluntarily and that the PW□199 Sh. Kamal Kishore had witnessed the proceedings. He proved his signatures at points A on all the sheets. Accordingly, it stands proved that the specimens signatures/handwritings from S□1 to S□47 Ex.PW199/A (colly.); S□52 & S□53 (Ex.Pw199/B colly.); S□60 & S□61 (Ex.PW199/C colly.); S□69 to S□74 (Ex.PW199/D colly.) and S□87 to S□92 (Ex.PW199/E colly.) were taken in the presence of this independent witness by the IO.

The prosecution has produced another PW□200 Sh. Satpal Singh before whom the specimen signatures were taken by the IO. The said witness while in witness box, categorically stated after seeing document D□9 containing specimen S□68 Ex.PW200/A ; S□85 (Ex.PW200/B); S□86 (Ex.PW200/C); S□93 (Ex.PW200/D) and S□94(Ex.PW200/E); S□99 (Ex.PW200/F); S□103 (Ex.PW200/G); S□104 (Ex.PW200/H); S□109 (Ex.PW200/J); S□110 (Ex.PW200/K); S□113 (Ex.PW200/L) and S□114 (Ex.PW200/M) and S□100 (Ex.PW200/N) that these were the specimen documents on which accused Gokul Chand Aggarwal had given his specimen signatures/writings on all the above sheets. It was stated that accused Gokul Chand Aggarwal had given specimen writings/signatures voluntarily and that the PW□200 Satpal Singh had witnessed the proceedings. He proved his signatures at points B on all the sheets. Accordingly, it stands proved that the specimens signatures/handwritings from S□68 Ex.PW200/A ; S□85 (Ex.Pw200/B); S□86 (Ex.PW200/C); S□93 (Ex.PW200/D) and S□94(Ex.PW200/E); S□99 (Ex.PW200/F); S□103 (Ex.PW200/G); S□104 (Ex.PW200/H); S□109 (Ex.PW200/J); S□110 (Ex.PW200/K); S□113 (Ex.PW200/L) and S□114 (Ex.PW200/M) and S□100 (Ex.PW200/N) were taken in the presence of this independent witness by the IO.

The prosecution has produced another PW□202 Sh. Prem Prakash before whom the specimen signatures were taken by the IO. The said witness while in witness box, categorically stated after seeing document D□9 containing specimen S□48 to S□51 Ex.PW202/A (colly.) ; S□54 to S□59 (Ex.PW202/A□ colly.); S□62 to S□67 (Ex.PW202/A2 colly.); S□75 to S□84 (Ex.PW202/A□3 colly.) S□95 to S□98 (Ex.PW202/A□4 colly.); S□101 to S□102 (Ex.PW202/A□5 colly.); S□105 to S□

108 (Ex.PW202/A□6 colly.); S□11 to S□12 (Ex.PW202/A□7 colly.) that these were the specimen documents on which accused Gokul Chand Aggarwal had given his specimen signatures/writings on all the above sheets. It was stated that accused Gokul Chand Aggarwal had given specimen writings/signatures voluntarily and that the PW□202 Prem Prakash had witnessed the proceedings. He proved Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) his signatures at points A on all the sheets. Accordingly, it stands proved that the specimens signatures/handwritings from S□48 to S□51 Ex.PW202/A (colly.) ; S□54 to S□59 (Ex.PW202/A□1 colly.); S□62 to S□67 (Ex.PW202/A2 colly.); S□75 to S□84 (Ex.PW202/A□3 colly.) S□95 to S□98 (Ex.PW202/A□4 colly.); S□01 to S□02 (Ex.PW202/A□5 colly.); S□05 to S□08 (Ex.PW202/A□6 colly.); S□111 to S□112 (Ex.PW202/A□7 colly.) were taken in the presence of this independent witness by the IO.

After collecting the specimen signatures/handwriting, the same were sent to Government Examiner of Questioned Documents (GEQD) for comparison with questioned signatures/handwritings. The said questioned and specimen signatures/handwritings were examined in detail by the GEQD Sh. VGS Bhatnagar. The PW□205 Sh. S.Saha□Dy. Director & Scientist 'D', CFSL Kolkatta proved the signatures of Sh. VGS Bhatnagar at point A on the opinion/report DXC□303/2006 Ex.PW205/B□2 and his own signatures at point B on the same report wherein the following report was furnished:

" 2 . The person who wrote the blue enclosed writings stamped and marked S1 to S114 also wrote the red enclosed writings similarly stamped and marked Q16, Q39 to Q43 and Q68 to Q163.

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3. It has not been possible to express any opinion on rest of the items on the basis of material at hand."

The prosecution produced GEQD PW□205 Sh. S.Saha to prove the report who accordingly proved the same. In the cross examination, he termed it to be incorrect that he had given report at the instance of CBI or that he had not applied proper procedure for comparison of specimen writings with questioned writings. He also termed it to be incorrect that the manner of various characters and combinations is not characteristically similar in both sets of writings. It was also termed to be incorrect that specimen writings were not written by same person related questioned items. To another question, the PW□205 did not agree with the Ld. Defence counsel to his views that even the standards has not been taken as per the principles of handwriting identification.

Accordingly, from the aforesaid report of GEQD PW 205 Sh. S.Saha, it is clear that the questioned signatures on the documents Ex.PW199/A (colly.), Ex.PW199/B colly., Ex.PW199/C colly., Ex.PW199/D colly. and Ex.PW199/E colly.; Ex.PW200/A, Ex.PW200/B, Ex.PW200/C, Ex.PW200/D, Ex.PW200/E, Ex.PW200/F, Ex.PW200/G, Ex.PW200/H, Ex.PW200/J, Ex.PW200/K, Ex.PW200/L, Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) Ex.PW200/M and Ex.PW200/N & Ex.PW202/A (colly.), Ex.PW202/A 1 (colly.), Ex.PW202/A2 colly., Ex.PW202/A 3 colly., Ex.PW202/A 4 colly., Ex.PW202/A 5 colly., Ex.PW202/A 6 colly. and Ex.PW202/A 7 colly. was signed by accused Gokul Chand Aggarwal in the name of "Suraj Goyal" as the questioned signatures as well as the specimen signatures matched with each other in terms of the report Ex.PW205/B. Though, the accused Gokul Chand Aggarwal have tried to challenge this report in his cross examination, but nothing substantial could be brought to light to counter the opinion given in the report.

Even otherwise, the report of GEQD is admissible in evidence u/s 293 CrPC wherein it is mentioned that "any document purporting to be report under the hand of a government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceedings under the code may be used as an evidence in any inquiry, trial or other proceeding under the said code."

Now I shall consider the arguments advanced by accused Gokul Chand Aggarwal with respect to GEQD opinion. As per Section 67 of Indian Evidence Act, 1872, if a document is alleged to be signed or to have been signed wholly or in Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting. It is only to fulfill this obligation of CBI that specimen signatures and handwriting of the accused Gokul Chand Aggarwal were taken and were sent to GEQD for opinion. The Section 73 of Indian Evidence Act also deals with comparison of signatures etc. and states that in order to ascertain whether a signatures, writing or seal is that of a person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or the seal has not been produced or proved for any other purpose. It further explains that the court may direct any person present in the court to write any words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figure alleged to have been written by such person.

Section 311A CrPC was introduced vide Amendment Act 25 of 2005 which came into force wef 23.06.2006. It mandates that if a Magistrate of the First

class is satisfied for the purposes of any investigation or proceedings under this court it is expedient to direct any person, including an accused person, to give specimen signatures Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signature or handwriting.

In the case in hand, it is clear from the record that it was only before Section 311A CrPC came into effect that the specimen signatures and handwriting of the accused Gokul Chand Aggarwal had already been obtained by CBI and therefore the provisions of Section 311A CrPC (which was not applicable retrospectively) cannot be applied for the case of accused Gokul Chand Aggarwal. Accordingly, now I shall deal with the issue pertaining to the handwriting and signatures with respect to accused Gokul Chand Aggarwal in terms of the law laid down by Hon'ble Apex Court as well as Hon'ble High Courts. Though, the number of important judgments on this issue delivered by Hon'ble Superior Courts have been cited, but I recall a judgment of Hon'ble Apex Court which was delivered by 11□Judge Bench in State of Bombay Vs Kathi Kalu Oghad and others (1962) 3 SCR, AIR 1961 SC 1808 on the issue in hand. In the said judgment, Larger Bench of 11□Hon'ble Judges was constituted in order to re□examine some of the proposition of law laid down by Hon'ble Apex Court in its earlier verdict in M.P. Sharma and others Vs Satish Chandra, District Magistrate, Delhi (1954) SCR 1077. The main Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) issue in that case was that when the handwriting/signatures of the accused is obtained during investigation, can the report of the expert be used as evidence against the accused? After adverting to various factual aspects, the larger Bench in aforementioned Kathi Kalu Oghad case held as under:

"2..... On these facts, the only questions of constitutional importance that this Bench has to determine are; (1)Whether by the production of the specimen handwritings□Exs. 27, 28 and 29□the accused could be said to have been 'a witness against himself' within the meaning of Article 20(3)of the Constitution; and (2) Whether the mere fact that when those specimen handwritings had been given, the accused person was in police custody could, by itself, amount to compulsion, apart from any other circumstances which could be urged as vitiating the consent of the accused in giving those specimen handwritings.....

4..... The main question which arises for determination in this appeal is whether a direction given by a Court to an accused person present in Court to give his specimen writing

and signature for the purpose of comparison under the provisions of Section Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) 73 of the Indian Evidence Act infringes the fundamental right enshrined in Article 20(3) of the Constitution.

The following conclusion/answers are relevant:

10..... Furnishing evidence" in the latter sense could not have been within the contemplation of the Constitution makers for the simple reason that though they may have intended to protect an accused person from the hazards of self-incrimination, in the light of the English Law on the subject they could not have intended to put obstacles in the way of efficient and effective investigation into crime and of bringing criminals to justice. The taking of impressions or parts of the body of an accused person very often becomes necessary to help the investigation of a crime. It is as much necessary to protect an accused person against being compelled to incriminate himself, as to arm the agents of law and the law courts with legitimate powers to bring offenders to justice.....

11.....When an accused person is called upon by the Court or any other authority holding an investigation to give his finger impression or signature or a specimen Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) of his handwriting, he is not giving any testimony of the nature of a 'personal testimony'. The giving of a 'personal testimony' must depend upon his volition. He can make any kind of statement or may refuse to make any statement. But his finger impressions or his handwriting, in spite of efforts at concealing the true nature of it by dissimulation cannot change their intrinsic character. Thus, the giving of finger impressions or of specimen writing or of signatures by an accused person, though it may amount to furnishing evidence in the larger sense, is not included within the expression 'to be a witness.'

12..... A specimen handwriting or signature or finger impressions by themselves are no testimony at all, being wholly innocuous because they are unchangeable except in rare cases where the ridges of fingers or the style of writing have been tampered with.

They are only materials for comparison in order to lend assurance to the Court that its inference based on other pieces of evidence is reliable. They are neither oral nor documentary evidence but belong to the third category of material evidence which is outside the limit of 'testimony'.

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16. In view of these considerations, we have come to the following conclusions: □(1) An accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more. In other words, the mere fact of being in police custody at the time when the statement in question was made would not, by itself, as a proposition of law, lend itself to the inference that the accused was compelled to make the statement, though that fact, in conjunction with other circumstances disclosed in evidence in a particular case, would be relevant consideration in an enquiry whether or not the accused person had been compelled to make the impugned statement.

(2) The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not 'compulsion'.

(3) 'To be a witness' is not equivalent to 'furnishing evidence' in its widest significance; that is to say, as including not merely making of oral or written statements but also production of documents or giving materials which may be relevant at a trial to determine the guilt innocence of the accused.

(4) Giving thumb impression or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression 'to be a witness.' (5) 'To be a witness' means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in Court or otherwise.

(6) 'To be a witness' in its ordinary grammatical sense means giving oral testimony in Court. Case law has gone beyond this strict literal interpretation of the expression which may now bear a wider meaning, namely, bearing testimony in Court or out of Court by a person accused of an offence, orally or in writing. (7) To bring the statement in question within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made. In view of the above Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) principles, the procedure adopted by the investigating agency, analyzed and approved by the trial Court and confirmed by the High Court, cannot be faulted with. "

All the judgments relied upon by the accused Gokul Chand Aggarwal on the issue with due respect are 2, 3 or 5 Hon'ble Judges Bench, but the law laid down in Kathi Kalu Oghad case (supra) being 11 Hon'ble Judges Bench decision shall prevail in terms of law of precedents. Given the circumstances of this case, even if no permission was obtained by the CBI from the Magistrate for taking specimen signatures/handwriting of the accused Gokul Chand Aggarwal, it does not affect the case of the CBI with respect to collection of handwriting/signatures during investigation in this case.

Now I shall deal with another argument of the Ld. Counsel for accused Gokul Chand Aggarwal as well as arguments of the other Ld. Counsel for defence who are affected by the aforementioned report of the GEQD to the effect that the report of the GEQD is not admissible in evidence owing to the fact that it has not been corroborated by any other evidence on all material particulars. To deal with this issue, I may refer to provisions of Section 45 of Indian Evidence Act, 1972 vide which expert are being made relevant which Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) states that when the court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting (or finger impressions), the opinions upon that point of persons specially skilled in such foreign law, science or art, (or in questions as to identity of handwriting) (or finger impressions) are relevant facts and such persons are called experts. It is only by virtue of the provisions contained in section 45 coupled with Section 67 of Indian Evidence Act that the prosecution has examined PW205/GEQD Sh. S.Saha. This court is cognizant of the fact that as a rule of prudence also the opinion of expert can be obtained and the opinion of handwriting expert even in evidence is no less fallible than any other expert opinion adduced in evidence. Such evidence has to be read with great care and caution as held in AIR 1973 SC 2200. Section 46 of the Indian Evidence Act further clarifies the picture by stating that facts not otherwise relevant, are relevant if they support or are inconsistent with the opinion of experts, when such opinions are relevant. In the present case if we go by the evidence, no inconsistent facts pertaining to handwriting and signatures of accused Gokul Chand Aggarwal could be brought to light and hence there is no other fact which is relevant to reflect doubt on the report of the expert PW205/GEQD Sh. S.Saha.

Moreover, under Indian Evidence Act, wherever the Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) legislature thought it fit that a particular type of witness required corroboration, the legislature in its wisdom has put a word of caution in the act

itself. For e.g. illustration (b), illustration Section 114 Indian Evidence Act entitles to the court to assume that accomplice is unworthy of credit unless is corroborated in material particulars. Hence, unlike illustration (b) to section 114 Indian Evidence Act, it would not be justifiable to presume that the handwriting expert's opinion is unworthy of credit unless corroborated.

As held in Murari Lal Vs State of Madhya Pradesh:

1980 AIR 531 SCR(2) 249, there can be no hard and fast rule, but nothing will justify the rejection of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. It was further explained in the cited judgment as under: □
"We will first consider the argument, a stale argument often heard, particularly in criminal courts, that the opinion □ evidence of a handwriting expert should not be acted upon without substantial corroboration. We shall presently point out how the argument cannot be justified on principle or precedent. We begin with observation that the expert is no accomplice. There is no justification for condemning his opinion □ evidence to the same class of evidence as that of an accomplice and insist upon corroboration. True, it has occasionally been Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) said on very high authority that it would be hazardous to base a conviction solely on the opinion of a handwriting expert. But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable witnesses □ the quality of credibility or incredibility being one which an expert shares with all other witnesses □, but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of finger □ prints has attained near perfection and the risk of an incorrect opinion is practically non □ existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. But that is a far cry from doubting the opinion of a handwriting expert as an invariable rule and insisting upon substantial corroboration in every case, howsoever

the opinion may be backed by the soundest of reasons. It is hardly fair to an expert to view his opinion with an initial suspicion and to treat him as an inferior sort of witness. His opinion has to be tested by the acceptability of the reasons given by him. An expert deposes and not decides. His duty is to furnish the judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the judge to form his own independent judgment by the application of these criteria to the facts proved in evidence.'(vide Lord President Cooper in *Dacie V. Edinbeagh Magistrate*: 1953 S.C. 34 quoted by Professor Cross in his *Evidence*). We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystalized into a rule of law, that opinion evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach, as we indicated earlier, should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. We have said so much because this is an argument frequently met with in subordinate courts and sentences torn out of context from the judgments of this Court are often flaunted."

Further, Section 3 of the Indian Evidence Act describes that a fact is said to be proved when after considering the matter before it, the court either believe it to exist or consider its existence so probable that a prudent man ought under the circumstances of a particular case act upon the supposition that it exists. Accordingly, prosecution has been able to prove that there is no material on record vide which the report of the expert may be seen with suspicious eyes. The plea of the accused Gokul Chand Aggarwal as well as other accused persons that the report of the expert is not liable to be read in evidence as it is not corroborated stands rejected.

From the aforesaid evidence as discussed, the handwriting and signatures of accused Gokul Chand Aggarwal on different documents Ex.PW199/A (colly.), Ex.PW199/B colly., Ex.PW199/C Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) colly., Ex.PW199/D colly. and Ex . P W 1 9 9 / E c o l l y . ; Ex . P W 2 0 0 / A , Ex.PW200/B, Ex.PW200/C, Ex.PW200/D, Ex.PW200/E, Ex.PW200/F, Ex.PW200/G, Ex.PW200/H, Ex.PW200/J, Ex.PW200/K, Ex.PW200/L, Ex.PW200/M and Ex.PW200/N & Ex.PW202/A (colly.), Ex.PW202/A□1 (colly.), Ex.PW202/A2 colly., Ex.PW202/A□3 colly., Ex.PW202/A□4 colly., Ex.PW202/A□5 colly., Ex.PW202/A□6 colly. and Ex.PW202/A□7 colly. matched with his specimen, it is clear that these documents were forged by accused Gokul Chand Aggarwal by signing in the name of 'Suraj Goyal'. Further, the list of 251 members submitted by the accused Gokul Chand Aggarwal before the office of RCS was also found to be forged as he had himself attested the same impersonating himself as "Suraj Goyal" which has been confirmed by the GEQD PW□205 vide his depositions. The prosecution has also proved that the freeze list of the aforementioned 251 members also bears the signature of "Suraj Goyal" has also been forged by accused Gokul Chand Aggarwal by impersonating himself as 'Suraj Goyal'.

The P W □128 Satveer was called by CBI as a stamp vendor. Now coming to the evidence of the stamp vendor P W □128 Sh. Satveer who had sold the stamp papers. After perusing the file D □18 Vol. III (Ex.Pw128/A colly.) in which affidavits were annexed from page 1/C to 251/C Ex.PW128/B□1 to Ex.PW128/B□251 and after seeing the file no. 47 Ex.PW48/A (D□18 page 370□373) he deposed that these stamp Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) papers were purchased by accused Gokul Chand Aggarwal or his representative. He proved the stamp papers as Ex.PW128/B□250 to Ex.PW128/B□255. He identified his seal on the back of the stamp papers and stated that these were issued by him. He also identified accused Gokul Chand Aggarwal in the court and stated that he used to come to him for purchase of stamp papers or sometimes sent persons to him for purchase of stamp papers whenever those persons told that the same were required by accused Gokul Chand Aggarwal. In the cross□examination it has been mentioned that different employees of accused Gokul Chand Aggarwal came to collect the stamp papers but did not remember their names. He also termed it to be correct that accused Gokul Chand Aggarwal came to him for purchase of stamp papers. He also termed it to be correct that he had told 6000 stamp papers to accused Gokul Chand Aggarwal. He had also stated that he had taken signatures of the persons to whom he had sold stamp papers.

The plea of accused Gokul Chand Aggarwal citing the cross□examination that witness failed to identify the signatures of accused Gokul Chand Aggarwal and also failed to remember as to who purchased the stamp papers and hence accused Gokul Chand Aggarwal is innocent does not sound to be tenable in view of the evidence that in the midst of cross examination of P W □128 Satvir

J u d g m e n t C B I V s N a r a y a n D i w a k a r e t c . (G O D R E J C G H S) wherein the witness had deposed that accused Gokul Chand Aggarwal had purchased more than 2 0 0 0 stamp papers from him and had visited him twice for purchasing NJS paper in bulk. Surprisingly, the accused Gokul Chand Aggarwal himself had put a suggestion to witness to which he answered "It is correct that I had sold 6000 stamp papers to Gokul Chand Aggarwal." Accordingly, it is clear that the prosecution has been duly proved the fact that non judicial stamp papers lying on record were purchased by accused Gokul Chand Aggarwal only and none else.

Further, the evidence adduced by CBI categorically goes to suggest that at both the address furnished by accused Gokul Chand Aggarwal of the society was not found functioning. The PW□22 Raj Kumar Sukhija deposed before this court that he was having a shop at ground floor of flat no. 20/36, West Patel Nagar, Delhi. The address of the said shop is '20/36A'. The PW□22 Raj Kumar Sukhija was residing at the back side of 20/36A. Thereafter, government constructed that flat on the first floor of shop no. 20/36A and number to that flat was allotted as 20/36 and since then PW□22 Raj Kumar Sukhija was residing at the said floor. It has been mentioned by PW□22 Raj Kumar Sukhija that neither he nor any of his family members including his brothers and father were ever a member in the Godrej (Godavari) CGHS and he also deposed that no office of the said Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) society was running from either his shop at 20/36A or his flat at 20/36. It was further stated that he or his family permitted any person to use the office address of the society or any purpose whatsoever. He submitted that his neighbourhood property was owned by Vijay Kumar Chhabra and he was also not a member of Godrej (Godavari) CGHS.

PW□22 Raj Kumar Sukhija further explained in his cross□ examination that property at 20/36, West Patel Nagar, New Delhi was owned by Hans Raj Chhabra. In the year 2003, this property was having ground, first and second floor.

On a specific question as to who was occupying the ground floor at 20/36 in the year 2003, it was explained by PW□22 that it was lying closed in the year 2003 and Hans Raj Chhabra was the owner of the said premises. On another question as to whether there was a shop at the ground floor of 20/36 in the year 2003, it was answered that shop was not there in the year 2003 as the same was converted by Hans Raj Chhabra into residential accommodation which was lying closed.

PW□34 Vijay Kumar Chhabra was also produced by the prosecution. He stated that H . N o . 2 0 / 3 6 West Patel Nagar is at ground floor and above it is constructed a first floor. The number of first floor is 20/35 however both houses are in same building. He also stated that neither he nor any of his family member became member

J u d g m e n t C B I V s N a r a y a n D i w a k a r e t c . (G O D R E J C G H S) of Godrej CGHS and there was no office of Godrej CGHS running from 20/36 West Patel Nagar, New Delhi. It was also deposed that no communication/letter either from office of RCS or from any memebre of society including Godrej C G H S was ever received at the said address and no society was found functioning from the said address at 20/36 West Patel Nagar.

It was also made clear in the cross□examination that no meeting of any s o c i e t y i n c l u d e d G o d r e j C G H S was ever held at 20/36 West Patel Nagar. On a specific question, PW□34 denied having any meeting be convened on 29.06.2003 at the aforesaid address. After perusing the file D□18, page 247□248 it was deposed that the address mentioned 20/36 West Patel Nagar was allotted to the father of PW□34 and no society was ever functioning and no audit was ever conducted at this address by any RCS official including accused P.K. Thirwani and that no meetings were held at the aforesaid address.

PW□35 Manoj Kumar Sukhija was the neighbourer of the address at 20/36 West Patel Nagar. H e d e p o s e d t h a t H a n s R a j C h h a b r a used to reside at 20/36 West Patel Nagar. The said house was allotted to Des Raj Chhabra who was brother of Hans Raj. He explained that no society including Godrej CGHS ever functioned from 20/36 West Patel Nagar since his birth till the date of his deposition. He had never seen any meeting held at 20/36 West Patel Nagar.

J u d g m e n t C B I V s N a r a y a n D i w a k a r e t c . (G O D R E J C G H S) During cross□examination he stated that at 20/36 West Patel Nagar, Delhi, Sh. Hans Raj Chhabra was residing with his three daughters and there is no office at his residence. However, P W □ 3 5 was not aware of the mails/draft Mr. Hans Raj Chhabra used to receive.

From the consolidated reading of the aforesaid testimonies of PW□22 Raj Kumar Sukhija, PW□34 V i j a y K u m a r C h h a b r a , P W □ 3 5 Manoj Kumar Sukhija it is clear that the society Godrej (Godavari) CGHS was not found functioning at the given at 20/36 West Patel Nagar. Though, Ld. Counsel for the defence have tried to explain that there was confusion of number, but the testimonies of all these three witnesses w.r.t. the office of the society at the given address has to be read as a whole and not torn out from the context. All these three witnesses were habitants of the building where the society was shown to have its address or either putting up at its neighbourhood. In the cross examination also no adverse interest of these three witnesses could be brought to light which may force them to depose falsely before this court. Moreover, all these three PWs were residing at the given property for the last many decades and hence there remains no confusion of any sort at all. None of these witnesses were member of the society and there was no clash of interest between them and the society and hence there was

n o r e a s o n a s t o w h y t h e s e w i t n e s s e s won't speak truth. Accordingly, credibility of these witnesses is not at Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) all in doubt and prosecution has been able to establish that in fact the address of the society at 20/36 West Patel Nagar was a fake address.

Regarding the other address of the society at E□9, Kalkaji, Delhi, the prosecution produced PW□15 Sushma Chopra who was residing at the neighbourhood of the said property. She deposed before this court that the property at E□10, Kalkaji Delhi was purchased by his father in law in the year ostensibly 1954. No society including Godrej CGHS was functioning at E□9 Kalkaji Delhi which was near to her house nor she or any of her family member were members of the said society. In addition to this witness, the prosecution produced PW□20 Suresh Kumar who stated that property at E□9, Kalkaji, Delhi was purchased by him in the year 1986 and building was duly constructed by them in the year 1992 upto three floors. The said property was purchased from one Ms. Motia Dhawan and all the floors were sold to different parties in the year 1991 to 1993. He deposed that he had never heard any society in the name of Godrej Staff Cooperative Society nor had given permission to any person/society to use his house at E□9, Kalkaji, Delhi. He explained that no society including Godrej CGHS was functioning at E□9, Kalkaji, Delhi and he or any of his family member were not a member of the said society. Accordingly, from these testimonies, it is also clear that address of the society at E□9, Kalkaji, Delhi was also fake.

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) During investigation, the prosecution also verified the names and addresses of the so called members in the list furnished by the accused Gokul Chand Aggarwal before the RCS office. It was revealed that either the members were not found residing at the given address or the address was not found existing and some were not even the members of the society. The PW□, PW□21, PW□26, PW□27, PW□36, PW□37, PW□38, PW□39, PW□40, PW□41, PW□98, PW□99, PW□101, PW□102, PW□104 to PW□109, PW□111 to PW□114, PW□116, PW□119, PW□130, PW□131, PW□135, PW□136, PW□142, PW□144 to PW□146, PW□149, PW□150, PW□156, PW□167, PW□168, PW□170, PW□171, PW□173 to PW□177, PW□182, PW□183, PW□190, PW□193 were the custodian of their respective properties in which the members are shown to have been residing in the records of the society which was furnished before the O/o R C S . A l l t h e s e P W s d e p o s e d t h a t t h e respective members who specifically named by the prosecution before each witness was not putting up at the given addresses of their respective properties. Their testimonies are not explained here in detail as all of them have almost deposed on the same lines and testified that the members shown to have been residing in their properties were not in fact residing in the said properties.

The prosecution also produced various postmen/Postal Assistants/Head Postmen viz. PW□2 Ajay Nath; PW□3 Jeet Ram; PW□4 Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) V.K.

Malik; PW□5 Ramesh Chand; PW□6 Fateh Singh; PW□7 Sushil Kumar Verma; PW□8 Satnarayan Kaushik; PW□9 Ravinder Kumar; PW□10 Satya Narayan; PW□11 Ashok Kumar Barua; PW□12 Rajender Prasad; PW□13 Rajesh Kumar; PW□14 Muvlesh Kumar; PW□15 Om Prakash; PW□16 Suresh Chand; PW□17 Jagdish Chand Sharma; PW□18 Shamsher Singh; PW□19 Jagdish Prasad Yadav; PW□20 Brij Kishore Shah; PW□23 Ishwar Chand; PW□24 Chandan Singh; PW□25 Brahm Prakash; PW□28 Jiv Nath; PW□29 Roop Lal; PW□30 Sunil Kumar Tiwari; PW□31 Rambir Singh; PW□32 Hari Singh Bhandari; PW□33 Gyan Chand; PW□42 Babulal; PW□43 Baijnath; PW□44 Bharat Bhushan; PW□45 Brahm Dass; PW□47 Dharmender Kumar; PW□48 Ghanshyam Dass; PW□49 to PW□97; PW□100; PW□110; PW□122; PW□123; PW□127; PW□133; PW□134; PW□137 to PW□141; PW□143; PW□148; PW□151 to PW□153; PW□158 to PW□161; PW□172; PW□178 to PW□181; PW□187; PW□191 & PW□192 who deposed before this court that the letters/speed post were handed over to them for delivering the same on respective addresses. At the time of delivery of the same, they found that either "no such persons" ever resided at the said addresses or "no such addresses" ever existed in the said areas or those were "incomplete addresses".

The arguments of the accused Gokul Chand Aggarwal as well as the arguments of ld. Counsel for the other accused persons Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) that the society office at the aforementioned addresses were not searched finds of no relevance as so many witnesses from the neighbourhood have already deposed against the plea of the accused persons. They all have denied that society was existing at both the aforesaid addresses. It appears to this court that given the circumstances no prudent investigating officer would like to search premises belonging to someone not connected with society when there is ample evidence in hand that no such society carried on business from both the aforesaid addresses.

CBI has been able to prove through the GEQD opinion that out of 251 affidavits of members sent to GEQD for examining the same in the specimen handwriting of accused Gokul Chand Aggarwal, the GEQD could give opinion only on two affidavits□one purportedly of Suraj Prakash Goyal Ex.PW128/B□29 sent as 'Q□39' and other of Om Prakash Ex.PW128/B□49 sent as 'Q□16'. On both these affidavits, the GEQD has opined that the questioned signatures Q□39 and Q□16 on both these affidavits matched with the specimen signatures of accused Gokul Chand Aggarwal. The said affidavits are stated to have been attested by one Arun Kumar Gupta□Notary Public, but during investigation, it was revealed to the CBI that even the said Notary Public Arun Kumar Gupta had already expired before the day on which he is shown to have attested the said affidavits. The stamp Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) papers of the affidavits Ex . P W 1 2 8 / B □ 2 9 and Ex . P W 1 2 8 / B □ 4 9 were purchased on 20.02.2004, but the said Sh. Arun Kumar Gupta□Notary Public had already expired on 15.01.2002. In this connection, prosecution produced PW□129 O.Venkateshworlu who was working as Assistant/Dy. Legal

A d v i s o r i n S h a s t r i B h a w a n w h o d e p o s e d b e f o r e this court that "Arun Kumar Gupta was appointed on 21.04.1997 to practice at Delhi for a period of three years and subsequently extended for a period of five years, the said Arun Kumar Gupta had expired on 15.01.2002.

After perusing the file Ex.PW128/A containing affidavits of different persons Ex.PW128/B□1 to Ex.PW128/B251 and after seeing the file Ex.PW48/A containing four affidavits at page no. 370□373 colly. Ex.PW128/B□252 to Ex.PW128/B□255, the PW□129 deposed that the seal embossed on these affidavits "Attested Notary Public" at point B on each affidavit were not issued by the Office of Department of Legal Affairs, Shastri Bhawan. From the testimony of this PW□29, it is clear that attestation on all the affidavits, more particularly Ex.PW128/B□29 and Ex.PW128/B□49 seized by the CBI during investigation was also forged one as the attesting Notary Public had already expired and the seal was also a forged seal which was not issued by department.

Hence, it has been proved that accused Gokul Chand Judgment CBI Vs Narayan Diwakar etc. (G O D R E J C G H S) Aggarwal has been able to manipulate the signatures of Notary Late Arun Kumar Gupta on the affidavits recovered during investigation and all affidavits contained fake attestation.

Now the question is as to whether the revival order 09.03.2004 D18 Vol. I 381/C to 379 / C p a s s e d b y R C S o n t h e representation of accused Gokul Chand Aggarwal or the freeze list of members sent by the office of RCS to DDA is a 'property' for the purposes of attracting the provisions of Section 420 IPC. In this context, this court may refer the judgment of Hon'ble Apex Court in Abhaynand Mishra Vs State of Bihar date of judgment 24.04.1961 1962 SCR (2) 241 wherein while dealing with the issue regarding issuance of admit card to the appellant on the inducement of the appellant, the Hon'ble Apex Court held that the admit card is a property. It was explained as under:

"We do not accept the contentions of the appellant that the admission card has no pecuniary value and is therefore not 'property'. The admission card as such has no pecuniary value, but it has immense value to the candidate for examination. Without it he cannot secure the admission to the examination hall and consequently cannot appear at the examination."

In the earlier judgments of the British time in Queen Judgment CBI Vs Narayan Diwakar etc. (G O D R E J C G H S) Empress vs Appa Swami (1899) ILR 12 MADRAS 151 it was held that the ticket entitling the accused to enter the examination room and be there examined for the matriculation test of the University was 'property.' In another landmark judgment of the British time in Queen Empress vs Soshi Bhushan (1893) ILR 15 ALLAHABAD 210 it

was held that the term 'property' in Section 463 Indian Penal Code include the written certificate to the effect that accused had attended during a certain period a course of law lectures and had paid up his fees.

From the aforesaid decisions, this court is able to say that the revival order dt. 09.03.2004 (D□ 18 Vol. I) and the freeze list of members sent by RCS to DDA, both were 'property' within the meaning of Section 420 IPC.

Now I shall come to the arguments of all the accused as to who was cheated and who was induced or deceived.

Repeatedly, the plea has been taken by accused Gokul Chand Aggarwal as well as other accused persons that no witness has been examined to say that he was cheated or any one else was cheated. It was elaborated that no witness from DDA or RCS has been examined to say that they were cheated. It was highlighted that when there is no one who was cheated, how come it is possible that the offence u/s 420 IPC is attracted.

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) In this context, this court may refer to the broad prospective of the Constitution of India wherein the preamble states that we, the people of India who have given the Constitution to ourself. It means that the people in our country are supreme and none else. It is the people who have appointed different functionaries of the State. The RCS or the DDA etc. are nothing but being run by representatives and servants of the public or in other words, the public servants. For these reasons only, the word 'servant' has been used after the word 'public'. Meaning thereby every government servant is serving the public at large and ultimately conclusion can be drawn that it is the public or the State which has been 'cheated' in the given scenario and it appears that the CBI was under no obligation to examine official of RCS or DDA to prove as to 'who' was cheated.

Regarding the word 'deceiving or deception' as contained in Section 420 IPC, the definition of cheating prescribed in Section 415 IPC in its explanation clause clearly mentions that a dishonest concealment of fact is a deception within the meaning of cheating. Regarding delivery of property, as contained in Section 420 IPC, it appears to me that the word 'delivery' does not always mean physical delivery but if the purpose for which the cheating has been done is accomplished i.e. for reviving the society and for sending the freeze list to DDA is served, this automatically fulfills the requirement of Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) Section w.r.t. the word 'delivery.' Accordingly, it is clear that by making the office of RCS to revive the winding up order and sending the same to DDA with freeze list, the accused Gokul Chand Aggarwal has cheated the State and

thus the prosecution has proved charges u/s 420 IPC r/w Section 511 IPC against him.

Regarding Section 419 IPC, Ld. Counsel Sh. Abhishek Prasad for accused Gokul Chand Aggarwal has made this court to go through the provisions of Section 3 w.r.t. the definition 'of fact' and Section 59 w.r.t. proof of facts by oral evidence of the Indian Evidence Act, 1872 and stated that not even a single witness has deposed before this court that the officials of RCS had seen him approaching the office of RCS for the purposes of revival of society or any proceedings consequent thereto and hence there is no question of impersonation. He further highlighted that impersonation can only by physical means and not by indirect means through documentary evidence. Per contra, Ld. Sr. PP for CBI rebutted by saying that it is not the prerequisite of Section 419 IPC that impersonation can always be by physical misrepresentation. He stated that even the same can be proved by documentary evidence. Ld. Sr. PP has made me go through the provisions of Section 419 IPC wherein it is mentioned that "whoever cheats by impersonation" and explained that the same Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) does not require physical impersonation. He stated that the accused Gokul Chand Aggarwal pretending himself to be some other person i.e. 'Suraj Goyal' knowingly and substituted and representing that he was in fact 'Suraj Goyal', though by documentary means and hence he can very well be said to have impersonated himself within the meaning of Section 416 & Section 419 of IPC.

After hearing the rival parties at length and after perusal of the record, it has come to light that the application purportedly signed by accused Gokul Chand Aggarwal impersonating himself to be as 'Suraj Goyal' was not sent to the GEQD for opinion, however, the signatures 'Suraj Goyal' appended on subsequent documents which were required by the note sheet matched with the specimen signatures of accused Gokul Chand Aggarwal. As discussed herein above, two affidavits containing the signatures of 'Suraj Goyal' and 'Om Prakash' also matched with the specimen signatures of accused Gokul Chand Aggarwal. From these conspectus of facts coupled with the positive report of the GEQD w.r.t. two affidavits and other documents like balance sheet of Godrej Staff CGHS, receipt and payment account of Godrej Staff CGHS, list of managing committee members, list of members of Godavari CGHS etc. were all forged by accused Gokul Chand Aggarwal as signatures of 'Suraj Goyal' appended on all these documents matched with the specimen signatures of accused Gokul Chand Aggarwal. Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) Chand Aggarwal, the overall study of the case goes to suggest that it is based on documentary as well as circumstantial evidence. All the documents have been filed under the signatures of one 'Suraj Goyal' purportedly by accused Gokul Chand Aggarwal. Even though the signatures on the application which was filed before the office of RCS for revival of the society was not sent for GEQD opinion and further even though the signatures

' Suraj Goyal ' as appended on the proceeding sheet towards the receipt was not sent to GEQD by the CBI, but still one cannot loose the sight of the fact that the documents submitted later on pursuant to further proceedings by the office of RCS bears the signatures of 'Suraj Goyal' which were sent to GEQD. The said signatures matched with the specimen signatures of accused Gokul Chand Aggarwal. Accordingly, the plea of the Ld. Defence Counsel that the signatures 'Suraj Goyal', a appended on the application for revival and on notes of the office of RCS were not sent to GEQD and hence accused Gokul Chand Aggarwal is innocent is rejected as the said application and the signatures 'Suraj Goyal' on proceeding sheets appears to be part of the same transaction.

The plea of the Ld. Counsel for the defence regarding the fact that the photocopies of the documents were sent for GEQD opinion and the CBI has not cared to collect the original one and hence the report of the GEQD cannot be relied upon is also rejected as Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) the plea of Ld. Sr. PP for CBI appears to be forceful that in case the original documents are not recovered during investigation despite best efforts, it does not mean that the entire evidence available can be thrown to dustbin.

In view of aforementioned discussions, it stands proved against accused Gokul Chand Aggarwal as he impersonated himself as "Suraj Goyal" and signed various documents in the name of ' Suraj Goyal' which has been confirmed by GEQD. This is because as per the definition of Section 416 IPC a person is said to 'cheat' by 'personation' if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is. The charges were framed against him for the offence u/s 419/420/511 IPC and in view of the aforesaid discussions, the same stands proved against him.

The explanation clause clearly explains that offence is committed whether the individual personated is a real or imaginary.

With respect to the charges u/s 468 & 471 IPC, ample evidence as discussed herein above have already come on record which proves the fact that the forged documents were used for the purpose of cheating and the same were fraudulently and used as genuine which the accused Gokul Chand Aggarwal knew and had Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) reason to believe to be forged one. Accordingly, the prosecution has also proved the charges u/s 468/471 IPC against accused Gokul Chand Aggarwal.

Official notings vis a vis contentions U/s 120 B IPC r/w Section 13(1)(d) r/w Section 13(2) of PC Act and also Section 15 of PC Act of public servants/accused Narayan Diwakar, R.B. Chauhan, and U.S. Bhatnagar consideration thereof.

It would be appropriate to first see to it as to whether the official notings upon receipt of the letter Mark 34/X were duly proved or not.

First of all, I may refer to the provisions of Section 114 Indian Evidence Act, 1872 which deals with the presumption regarding existence of certain facts. It prescribes that the court may presume the existence of any fact which it thinks likely to have happened, regard being had to common course of natural events, human conduct and public and private business, in relation to facts of a particular case. Various illustrations mentioned after the said Section 114 also guides us to deal with different presumptions. One such Illustration (e) to Section 114 states that the court may presume that all the judicial and official acts have been regularly performed. For the official notings on the files of the RCS under consideration by this court, as contained in file Ex. PW48/A (file D-18 Vol. I) which are also individually exhibited as Ex.PW186/A to Ex.PW186/C and Ex.PW117/G it can be presumed by applying aforesaid illustration that all these as contained in Ex.PW48/A (file D-18 Vol. I) were regularly made in the course of official business. Hence, to rebut the presumption as contained in Section 114 of Indian Evidence Act, the burden of proof that the aforementioned notings were not regularly made shifted to the accused persons. However, as an abundant precaution, the prosecution has also sought to prove the aforementioned notings independently irrespective of the provisions of Section 114 Indian Evidence Act. Accordingly, the CBI produced PW-17 V.K. Bansal the then AR and PW-86 Ms. Asha Batra the then UDC in the Office of RCS. The PW-17 V.K. Bansal proved the signatures of accused Narayan Diwakar the then RCS at point A on note sheet 1/N, 5/N, 6/N & 22/N in file D-18 Ex.PW48/A. He also identified the signatures of accused Narayan Diwakar on revival order dt. 09.03.2004 Mark 34/X-1 at point A. Before appreciating the testimony of PW-17, it would be appropriate to discuss about the note sheets which were proved by the prosecution.

Immediately upon receipt of the letter dt. 06.01.2004 written by 'Suraj Goyal' to AR(West), the RCS office machinery came into action and the letter changed several hands. On 15.01.2004, the Dealing Clerk/accused R.B. Chauhan prepared the note sheet dt. 15.01.2004. His signatures were proved by PW-186 Ms. Asha Batra at point C on the note sheet 1/N. In the notings, it was mentioned that PUC received from Secretary of society regarding cancellation of winding up order of Godrej CGHS 20/36, West Patel Nagar, the society vide PUC requested that they had removed all the shortcomings on which the wind up order was issued and therefore the society can be revived. It was submitted in the notesheet that the "main file of the society is not available in this zone. If agreed, we may issue circular to all zones in this regard and in the meantime we may also initiate inspection u/s 54 of DCS Act, 1972 to verify the present status of the society." The said noting was considered by accused S.R. Goyal the then AR (since deceased) and his signatures

were proved by PW□186 Ms. Asha Batra at point B wherein he sent the notings to RCS for year marked A in the notings. The RCS accused Narayan Diwakar approved the same vide his signatures at point A on the said notings dt. 15.01.2004. The circular was also prepared and was placed for signatures and it was mentioned in the note sheet dt. 19.01.2014 which was proved by the then AR (West) accused S.R. Goyal (since deceased) that accused U.S. Bhatnagar, Gr. III (NW) may be appointed as inspection officer to verify the records of the society Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) and submit his report within 15 days.

Again on 24.02.2004, note sheet was prepared by accused R.B. Chauhan (signatures proved at point C by PW□186 Ms. Asha Batra) in which it was mentioned that the circular dt. 19.01.2004 was issued to all zones to search their zones for the main file of the society but no response was received from any zone and accordingly proposal was made for asking the society to submit the original records along with copy of bye laws and other relevant documents of the society for reconstruction of the file.

The said noting was approved by accused S.R. Goyal (since deceased)□the then AR(W) and whose signatures were proved at point B by PW□186 Ms. Asha Batra. Thereafter, on 06.02.2004, vide another noting which was prepared after receipt of report u/s 54 of DCS Act, accused U.S. Bhatnagar, it was proposed that file may be forwarded to the RCS for consideration for the request of revival of the society. The signatures of accused R.B. Chauhan were proved by PW□186 Ms. Asha Batra at point C on the said notings 4/N who stated the Ex.PW117/G (note sheet 3/N & 4/N were signed by R.B.Chauhan at point C and by S.R. Goyal (since deceased) at point B).

The file was sent to the Reader to RCS. On 06.02.2004, the RCS directed for issuance of notice u/s 63(3) of DCS Act & Rules to the President/Secretary of the society on 12.02.2004 in the court of Worthy RCS.

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) On 12.02.2004, one Ms. Neera Gupta, Adv. appeared and the RCS appended his signatures at point A which were proved by PW□186 Ms. Asha Batra and RCS directed that the file may be sent to concerned zone for verification of records pertaining to membership, audit and election. Besides concerned AR was also directed to conduct spot verification of membership and to submit his report on the next date of hearing.

Instead of conducting the inspection by self, the then AR (W) accused S.R.Goyal (since deceased) appointed US Bhatnagar□Grade III.

Thereafter, the report was filed in which it was mentioned that inspection u/s 54 of DCS Act was conducted before initiating quasi judicial proceedings u/s 63(3) of DCS Act and the crux of the report was also detailed down in the note sheet.

Vide this noting, it was proposed that the society may be revived, freeze list of 251 members may be approved and the name of the society may be changed from Godrej Staff Cooperative Housing Society Ltd. to Godavari Apartment Cooperative Group Housing Society. The signatures of AR(W) were proved at point A and that of R.B. Chauhan at point C on all the pages of this note sheet by PW□86 Ms. Asha Batra. Finally, on 04.03.2004 a revival order with the signatures of RCS at point A was passed by the accused Narayan Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) Diwakar.

To appreciate the notings on the file vis a vis Section 13(1)

(d) r/w Section 15 of PC Act, it would be appropriate to first deal with the provisions of Section 13(1)(d) of PC Act, 1988 which reads as under:

"A public servant is said to commit the offence of criminal misconduct if he,□

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest."

A new offence i.e. the aforementioned 13(1)(d)(III) was introduced in 1988 after making amendments to the earlier 1947 Act. The word 'public interest' has not been defined anywhere in the PC Act, 1988 or IPC, but one may find the definition of "public duty" for getting assistance as to what we may mean as 'public interest' for the purposes of giving effect to the provisions of PC Act 1988. Section 2

(b) of Prevention of Corruption Act states that "public duty" means a Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) duty in discharge of which the State, the public or the community at large has an interest. Meaning thereby, the public interest for the purposes of PC Act may mean that it is directly related to public duty, as defined in the Act.

Likewise, one may also get the definition of 'good faith' from Section 52 of the IPC which means nothing is said to be done or believed in 'good faith' which is done or believed without due care and caution. Accordingly, we have to see as to whether the public duty which directly affects the public interest was done in good faith or not in order to ascertain as to whether the provisions of Section 13 (1)(d)(III) are attracted given the evidence on record.

Regarding the valuable thing, as contained in Section 13(1)(d) PC Act, Ld. Sr. PP argued that when a document which comes within the definition of valuable security within the meaning of Section 30 of IPC, the same document can very well be said to be a valuable thing as legal right has been created by virtue of the said document. He submitted that by revival order passed by accused Narayan Diwakar on the basis of forged reports certainly is a valuable thing which all public servants in this case were able to obtain for the any other person/accused Gokul Chand Aggarwal. The matter pertaining to Section 13(1)(d) PC Act was widely dealt with by our own Hon'ble High Court of Delhi in Runu Ghosh Vs CBI D.OD 21.12.2011 Cr. A. 536/2002 wherein guidelines Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) have been given with respect to as to whether a mens rea is required for attracting the offence u/s 13(1)(d)(III) or not. Hon'ble High Court in the said judgment has mentioned that the inclusion of 'public interest' tips the scale in favour of construction which does not required proof of mens rea.

The argument advanced by ld. Counsels for different the public servants/accused in this case to the effect that there may be many acts of public servants which may result in pecuniary advantage obtaining valuable thing to someone else were also dealt with in the said judgment in Runu Ghosh case as under:

"there can be many acts of public servants which result in the pecuniary advantage or obtaining of a valuable thing to someone else; typically these may relate to payment of royalty, grant of license or concession, issuance of permit, authoriztion etc. Yet such grants, concession or other forms of advantage to third party would not criminilize the public servant's actions so long as they have an element of public interest."

Accordingly, this plea of ld. Counsel for defence with respect to getting advantage to third party has already been dealt with in the aforesaid case. It was further held in the aforesaid judgment in Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) Runu Ghosh case (supra) that a public servant act without public interest, when his decisions or actions is so unreasonable that no reasonable man, having regard to entirety of circumstances would have so acted; it may also be that while deciding or acting as he does, he may not intend the consequences which ensues or is likely to ensue, but would surely have reasonable foresight that it is a likely one, and should be avoided. This interpretation of the public interest by Hon'ble High Court of Delhi clearly and directly relates to the public duty as defined in Section 2(b) of PC Act, 1988.

Now the question is what is 'valuable thing' in terms of provisions of Section 13(1)(d) PC Act, 1988. Since the word 'pecuniary advantage' has been given an alternative by mentioning 'or' after the word 'valuable thing' in Section 13(ii) (d) of PC Act, the interpretation of the said word 'valuable thing' has to be in harmony with the word 'pecuniary advantage'. As per the Webster's dictionary, 'pecuniary advantage' means interest/gain relating to or connected with money. Accordingly, the word 'valuable thing' has also to be read in the same connotation.

The word 'valuable thing' cannot be read as 'property' within the meaning of Section 464 IPC or a valuable security within the meaning of Section 30 of IPC as it has to be read as ancillary to the meaning of the word pecuniary advantage.

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS)
In the light of the judgment in Runu Ghosh Vs CBI, (also relied upon by the ld. Defence counsel), now this court shall deal with the facts of the case concerning the misconduct of the public servants/accused persons in present matter.

In an office while conducting proceedings, the notings/order sheets always remains the controller. From the official notings and documents inferences can be drawn as to whether the acts of the public servants were performed in the interest of public or not. Though, the CBI has not filed the duty chart of the public servants, yet judicial notice can be taken with respect to the duties on the basis of the past experiences, the cadre of the office public servant is holding as well as the precedents prevailing in the office. Here in the present case, as already discussed, the notings concerning the revival of the society are already been proved. The testimony of PW□ 117 Sh. V.K. Bansal in this regard has already been discussed in detail in earlier paras.

Now this court shall deal with the individual notings to ascertain as to whether the acts were done in public interest or not.

Immediately upon receipt of letter Mark 34/X from the Secretary of the society shown as 'Suraj Goyal', accused R.B. Chauhan Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) prepared a note contained in the note sheets Ex . P W 1 8 6 / A (c o l l y .) mentioning therein that the Secretary of society has sent a PUC for cancellation of winding up order besides certain other facts. The relevant part of the note sheet is as under:

" May kindly see the PUC received from the Secretary of the society regarding cancellation of wind□up order of the Godrej Staff CGHS Ltd., 20/36 West Patel Nagar, N.Delhi. The society vide PUC requested that they already removed all the shortcomings on which the wind□up order was

issued & therefore the society may be revived.

It is submitted here that the main file of the society is not available in this zone. If agreed, we may issue circular to all zones in this regard & in the meantime, we may also initiate inspection u/s 54 of the DCS Act, 1972 to verify the present status of the society."

The said accused R.B. Chauhan again prepared note dt. 19.01.2004 which was approved by AR(West) S.R.Goyal (since deceased). The said note is reproduced as under:

"As approved above, circular is placed opposite for signature pl. Further as regard to inspection u/s 54 of the DCS Act, 1972 is concerned, if agreed, we may appoint Sh. U.S. Bhatnagar, Gr. III(NW) as an Inspection Officer to verify the records of the society Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) & submit his report within 15 days."

The accused R.B. Chauhan did what he was required to do in terms of his cadre as a Dealing Assistant. The said nothing was approved by S.R. Goyal (since deceased) the then AR(W). Again on 28.01.2004 another note was approved by AR(W) S.R. Goyal (since deceased) which is reproduced as under:

"May kindly see a circular dt. 19/1/04 (P□3/C) was issued to all zones after getting approval from competent authority at 1/N to search their zones and returned the main file of the society, if formed, within a week, since the main file of the society was not available, but till date, no reference is received from any zone in this connection.

In view of the aforesaid & as per approval of the competent authority dtd 15□□ 04 (P □ 1 / N), if agreed, we may go ahead accordingly & the society may be asked to furnish/submit the original records along with copy of Bye□laws, registration certificate & other relevant documents of the society for the reconstruction of the file of the society. Fair letter accordingly is also placed opposite for approval/sign. pl."

The society was asked accordingly by accused S.R. Goyal□ Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) the then AR(W) (since deceased) to furnish the copy of registration certificate, bye laws and membership register and other relevant documents for reconstruction of the file of the society.

Thereafter, the report Ex.PW206/M was filed by accused U.S. Bhatnagar Insp. Gr.III which was made part of subsequent notings dt. 04.02.2004. The accused U.S. Bhatnagar furnished his report dt. 03.02.2004 Ex.PW206/M (colly.) some contents of the same are reproduced here with corresponding evidence evidence produced by the CBI in bold mode w.r.t the falsity of the report filed by accused U.S. Bhatnagar.

1. That he visited at the office of society at 20/36, West Patel Nagar and there he met Sh.Suraj Prakash Goyal, Secretary of the society. :□The evidence has been produced by CBI to the effect that Mr. Gokul Chand Aggarwal impersonated himself as Suraj Prakash Goyal and also signed the documents in the said name and no such office of the society existed at the aforementioned address.

2. That Sh. Suraj Prakash Goyal Secretary of the society produced all the relevant records of the society and informed that 251 members are existing in the society and list of members have not yet been approved by RCS office. :□Evidence has been produced by CBI to the effect that the address of the members mentioned in the list are either not existing or otherwise the members were not found residing at the given address.

3. As per records of the society has shifted its address from E□9, Kalkaji Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) Delhi□19 to 20/36 West Patel Nagar, New Delhi.

:□Evidence has been produced by CBI to the effect that no such society ever worked either at E□9, Kalkaji Delhi□19 or at 20/36 West Patel Nagar, New Delhi.

So from the aforesaid evidence and the evidence discussed hereinabove, it is clear that accused U.S. Bhatnagar has furnished false and self concocted report. He had shown that he visited the office of the society at 20/36 West Patel Nagar, Delhi whereas evidence has been brought that society was never having its office at the aforesaid addresses.

Upto this stage of the proceedings, as highlighted in the notings, it can be drawn that:

1. The report of accused U.S. Bhatnagar was false.
2. Non efforts on the part of public servants to trace the file from the zonal records as only the same has been mentioned in the papers.

As contained in the notings dt. 04.02.2004 Ex.PW117/G, Secretary of the society filed the bye□l a w s a n d o t h e r d o c u m e n t s . T h e contents of report of Insp. U.S. Bhatnagar filed by him u/s 54 of DCS Act were also mentioned in the notings dt. 04.02.2004. At the end of the notings 21/N, it was mentioned by accused S.R. Goyal□the then

AR(W) (since deceased) as under:

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS)
"Keeping in view the aforesaid note, if agreed the file may be forwarded to worthy Registrar, Cooperative Societies u/s 63 of DCS Act, 1972 and initiation of quasi-judicial proceedings in this regard."

This note dt. 04.02.2004 was approved by the then AR(W) accused S.R. Goyal (since deceased). This note was sent to the Reader to accused Narayan Diwakar the then RCS wherein the RCS vide order dt. 05.02.2004 after mentioning the provisions of Section 63(3) of DCS Act and after mentioning the fact that no response was received from the zones regarding the original file who were sent with circulars to trace the file and after mentioning about the inspection report u/s 54 of DCS Act, ordered for issuing notice to the President/Secretary of the society for initial hearing on 12.02.2004 in the Court of accused Narayan Diwakar the then RCS. Thereafter, on 12.02.2004 the following order was passed:

"12.02.2004 Mrs. Neeru Gupta, Adv. Representing the society present.

Reader is directed to send the file to the concerned zone for verification of records pertaining to membership, audit and election. Besides concerned AR is also directed to conduct a spot verification of membership and submit its report on the next date of hearing.

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS)
In view of the above proceedings adjourned for 26.02.2004."

Accordingly, from this noting, it is clear that the accused Narayan Diwakar had not only tried to get the records verified again pertaining to membership, audit and election despite the fact that a report u/s 54 of DC Act, 1972 was already filed by accused U.S. Bhatnagar in this regard. The accused Narayan Diwakar had also taken another precaution by directing the concerned AR to conduct the spot verification of membership and to submit his report on the next date of hearing.

The concerned AR instead of getting the spot verification done personally again deputed U.S. Bhatnagar Grade II, as is apparent from his endorsement dt. 16.02.2004 which is shown just below the order sheet dt. 12.02.2004 passed by accused Narayan Diwakar the then RCS. Again, a detailed note sheet was prepared in which details about the address of society, record pertaining to membership of the society, the inspection report of accused

U.S. Bhatnagar, details of members etc. were mentioned. It was proposed vide note sheet dt. 23.02.2004 as under:

"In view of above, we may request the competent authority to consider the following:

a. Request for revival of the society u/s 63(3) of DC Act, 1972. b. Approval of the freeze list of 251 members (placed at P□25/C to P□32/C) for allotment of land.

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) c. Approval of amendment in the change of name from "Godrej Staff Cooperative Group Housing Society Ltd." to "Godawari Apartment Cooperative Group Housing Society Ltd."

This endorsement was made ignoring the bounden duty of the accused SR Goyal (since deceased)□ the then AR(West) to see as to why the original file of the society could not be located in his office or in the zonal record. He was working as a responsible officer at the post of Assistant Registrar. As already said, we can take judicial notice about the nature of duties on the basis of the cadres. A senior officer holding public office is not expected to always run its business and administration on the basis of the notings of a dealing assistant or clerk. He remains always under obligation to apply his mind to form a broader view and should not act as a rubber stamp. Judicial notice can also be taken of the fact that the higher the post of a public servant, the broader should be the spectrum to consider each and every aspect of the matter to deal with situation. It is also common knowledge that a subordinate officer last in rank while conducting a given proceedings i.e. the drafting of notings etc. always do so at the general or special instructions of his superiors and hence whenever a letter is received by him, he prepares the notings on the basis of general or specific instructions mentioning the contents of letter etc. like in this case. Here in this case, it is clear from different notings Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) contained in evidence on record, the accused R.B. Chauhan has presented whatever was available with him as per record and has simply produced the same to the higher officers. Unlike the accused RB Chauhan, it was expected of the accused accused SR Goyal□ the then AR(West) (since deceased) who was holding the post of Assistant Registrar to over see the things and to direct some other actions required before sending the file to RCS for revival of proceedings u/s 63 of DCS Act. Unfortunately, nothing has been mentioned in the different notings signed by accused SR Goyal□ the then AR(West) (since deceased) as to fate of original record or society in RCS office or with respect to tracing of the file of the society in the zonal office. The file has been sent directly to RCS without caring for these things. As already mentioned in terms of Section 52 of IPC, this action on his part cannot be believed to be done in "good faith" as it was not done with care and caution and hence the doubt about his actions commences from this stage.

Finally, vide order dt. 04.03.2004, the accused N.Diwakar has mentioned as under:

"Mrs. Neera Gupta, Adv. representing the Society present. The concerned zonal AR is also present and stated that an inspection u/s 54 of the DCS Act, 1972 was done by an Inspector of the Department who has given his favourable Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) report. He further stated that he has checked up and verified each and every paper submitted by the Society. The Society has also submitted list of members as on date. The documents regarding holding of election are also scrutinized and found the same in order and as per DCS Act and Rules. He further stated that the Society has prepared its books of accounts and submitted unaudited accounts till 31.03.2003. The concerned Zonal officer finally recommended the case for the revival of the Society.

The winding up order passed by the then Dy. Registrar shows that proper procedure was not followed while winding up the Society as the reasons given were not adequate for initiating such an extreme step for winding up the Society. If there was any mismanagement in the Society, it was appropriate to initiate action u/s 32 for setting the right working of the Society and then restoring the cooperative management. Such orders for winding up without proper application of mind is not conducive for revitalization and strengthening of the cooperative movement in Delhi.

During the course of arguments, the counsel of the Society Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) also mentioned that Dy. Registrar who had passed order u/s 63 of DCS Act, 1972 was not competent to decide the matter u/s 63.

There is nothing on record that such powers u/s 63 exercisable by Registrar were delegated to the Dy. Registrar by the competent authority. It appears that during the time order was passed, large number of societies were wound up without any valid and convenient reasons. It also appears that the Society was not given sufficient opportunity either to reply to the SCN issued or to rectify the shortcomings mentioned in the notice issued by the RCS.

In view of the above, case is reserved for orders.

(N.DIWAKAR) R.C.S."

The aforementioned revival order dt. 04.03.2004 vide which the society was revived u/s 63 DCS Act by the accused Narayan Diwakar categorically goes to suggest that the same was revived on the basis of report of the Assistant Registrar S.R. Goyal (since deceased) to the effect that accused S.R. Goyal (since deceased) had checked up and verified each and every paper submitted by the society and also on the basis whatever was stated by concerned zonal AR. The accused S.R. Goyal (since deceased) was present in the Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) meeting dt. 04.03.2004 at the time of hearing as is apparent from the said noting. It has also been mentioned that concerned zonal AR has recommended the case for the revival of the society.

Judicial notice can be taken of the fact that the public servant holding high office cannot be expected to examine each and every aspect concerning the affairs of the office meticulously owing to the heavy office business as well as the burden of the administration to run the office. He is however expected to control and supervise the affairs and to see that the actions of the subordinates are well within legal frameworks and not against public interest. The officers and ministerial staff of subordinate rank being provided in the government machinery are there to assist the officer holding high public office. The intentions of the accused Narayan Diwakar RCS appears to be clear from the earlier notings in which he had directed the Assistant Registrar to conduct spot verification and also from this order dt. 04.03.2004 in which he had specifically mentioned that the concerned zonal officer has recommended the case for revival of the society. While conducting the proceedings, the public servant holding the high office always remains dependent upon the reports of the subordinates and for the purposes to run his ordinary course of business smoothly, he also reposes faith in his subordinates. But in certain circumstances he become helpless when the said faith reposed by him in others Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) stands shattered by the actions of the subordinates with some ulterior motives.

Though he is required to be due diligent in handling such situations, but sometimes one may not expect or foresee the same in good faith.

The final revival order was passed by accused Narayan Diwakar on the basis of report of accused S.R. Goyal (since deceased) and he has categorically mentioned the presence of accused S.R. Goyal (since deceased) in the revival order dt. 09.03.2004. Accused Narayan Diwakar has also mentioned that the said S.R. Goyal has stated to him that he had checked up and verified each and every paper submitted by the society. Here again, the Section 52 of IPC comes into picture that a thing can be said to be believed in good faith which is done or believed with due care and caution. Accordingly, from the aforesaid discussions, it is clear on the basis of evidence that

CBI has not been able to prove the charges beyond reasonable doubt against the accused Narayan Diwakar.

The plea of ld. Sr. PP for CBI that since so many cases of similar nature are pending trial against all the accused in different courts of law and hence presumption can be drawn that they are guilty is unwarranted. This is because as per the Indian Criminal Jurisprudence the accused facing trial in a criminal case before the court of law is presumed to be innocent from the very beginning and burden of proof lies upon the prosecution to prove that he is guilty.

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) This court is of view that merely because some other cases are pending, adverse inference against the accused cannot be drawn and the prosecution remains under bounden obligation to prove each case against the accused individually.

Now I shall deal with the evidence adduced by the prosecution for the accused P.K. Thirwani who was appointed auditor by the office of RCS.

The prosecution produced PW 162 Satya Prakash Sharma wherein he deposed that he had handed over the file Ex.PW162/B collectively containing pages 1 to 188 to CBI Insp. PW 206 Raja Chatterjee on 05.07.2006. He proved the production cum receipt memo dt. 05.07.2006 (D 12) Ex.PW162/A and stated that vide this receipt memo, he had handed over original audit report from 1971-72 to 2002-2003 of Godavari Apartment Cooperative Group Housing Society Ltd. Containing pages 1 to 188. Accordingly, it is clear that the said audit file as well as receipt memo was recovered by the IO from the office of RCS which was handed over to him by PW 162 Satya Prakash Sharma. This file Ex.PW162/B colly. Pages 1 to 188 contains the entire audit report including the balance sheets of different years purportedly signed by one 'Suraj Goyal', list of members purportedly signed by 'Suraj Goyal' and appointment letter Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) of accused P.K. Thirwani. These documents were annexed by the accused P.K. Thirwani along with his audit report. It has also come to light from the testimony of DW 1/A 5 who was also Assistant Registrar (Audit Administration) from January 2001 from April 2004 in the O/o of RCS and who was called by the accused P.K. Thirwani in his defence that with the approval of RCS accused P.K. Thirwani was appointed as an auditor to conduct the pending audit of the society and the letter Ex.DW 1/A 5/DA was signed by DW 1/A 5 at point A. The option cum appointment letter was submitted and accused P.K. Thirwani had signed the said form at point B for having accepted to conduct the pending audit of the society. It has also been mentioned that the document contains the address of the society at 20/36, West Patel Nagar, Delhi. It was also deposed by the said DW that after completing the audit, the audit report was submitted in the audit office of RCS and an official of audit branch was deputed to check the

audit report in the prescribed proforma.

From the testimonies of the aforesaid various officials of the office of RCS including the defence witness, it is clear that it has been established and also admitted in terms of the testimony of DW1/A5 brought by defence that audit of the society in fact was conducted by accused P.K. Thirwani and after conducting the same, he had filed the audit report before the society. The appointment Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) form Ex.DW1/A5 / D A though was not proved by the prosecution, but the defence itself had brought to witness box the DW1/A5 Sh. J.S. Sharma who proved the same.

Now, I shall deal with the audit report filed by accused P.K. Thirwani.

It has already been highlighted by PW62 that the original audit report from 197172 to 20022003 of Godavari Apartment Cooperative Group housing society Ltd. was handed over by him to the IO of this case. The audit report submitted by accused P.K. Thirwani which purportedly contains signatures of 'Suraj Goyal' on various documents was not sent for GEQD opinion by the CBI for comparing the signatures ' ' S u r a j G o y a l ' ' a p p e n d e d o n v a r i o u s documents with the specimen signatures/handwriting of the accused Gokul Chand Aggarwal. However, it was revealed during investigation that the accused Gokul Chand Aggarwal had filed another but same set of documents containing signatures 'Suraj Goyal' before RCS office purport to the demand of RCS office which came up during proceedings for revival of society. The said same set containing signatures 'Suraj Goyal' contained the balance sheets of different years from 1972 onwards, list of members etc. The plea of the Ld. Counsel that the original documents filed by the accused P.K. Thirwani purportedly signed by accused Gokul Chand Aggarwal were Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) not sent for GEQD opinion and hence accused P. K. Thirwani is innocent does not appear to be sound enough owing to the fact that the CBI had taken care to send the same set of all these documents containing 188 pages which carried signatures 'Suraj Goyal' on them and some other documents to GEQD for opinion on the signatures of 'Suraj Goyal' which were recovered by the IO from the office of RCS. The opinion given on the signatures ' ' S u r a j G o y a l ' ' o n a l l t h e documents like balance sheets from 1972 onwards, list of members etc. confirmed that it matched with the specimen signatures and handwritings of accused Gokul Chand Aggarwal in terms of the report of GEQD Ex.PW205/B1 & B2 respectively. The mere comparison of the documents filed by accused P.K. Thirwani along with its audit report, as contained in file D12 Ex.PW162/B (colly.) with the documents recovered by IO from the Office of RCS file D19 Ex.PW205/C (colly.) page 143 to 206 (which are all balance sheets for different years) goes to suggest that the contents of the balance sheets of different years filed by accused P.K. Thirwani were same as

the contents of the balance sheets of different years filed by accused Gokul Chand Aggarwal before the RCS which were recovered by the IO from the office of RCS. Accordingly, there remains no reasons or confusions and hence necessary inference can be drawn after comparing both sets of documents that even if the CBI has failed to Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) send the documents of the auditor for GEQD opinion and in the given circumstances when the other set of same documents recovered from the office of RCS by IO found containing forged signatures of 'Suraj Goyal', the signatures 'Suraj Goyal' on the documents furnished by accused P.K. Thirwani were also forged. It has already been established that it was accused Gokul Chand Aggarwal who had forged signatures 'Suraj Goyal' on various documents as his specimen matched with questioned signatures. Accordingly, one can firmly believe that even the accused P.K. Thirwani was actively involved in giving shapes to conspiracy and for that purpose he filed report containing wrong facts. More so, he claimed that he visited office of society at 20/36, West Patel Nagar, Delhi but the said address was also bogus address.

The ld. Sr. PP for the CBI was asked to respond specifically to this arguments of the ld. Counsel for the defence that the revival order passed in this case by RCS was not based on the audit report of accused P.K. Thirwani as the revival order is dated 04.03.2004 whereas the accused P.K. Thirwani was appointed as auditor vide orders of AR (Audit) Sh. J.S. Sharma on 11.03.2004 and also to the effect that as per report of accused P.K. Thirwani, the audit of society commenced on 12.03.2004 and completed on 13.03.2004.

Ld. Sr. PP for CBI stated that no doubt the revival order Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) was not based on the audit report, but the report of the auditor is required only after the society is revived. The report as per Sr. PP is required for the purposes of sending the list of freezed members by AR (Policy) to DDA for which the report of the auditor is required.

After hearing on the issue, it appears to this court that the arguments of the ld. Counsel for accused P.K. Thirwani have been well responded to by the ld. Sr. PP for CBI on the basis of the documents proven on record. The revival order is self explanatory and does not speak of any auditor report and hence it is clear that the same was not based on the report of the auditor/accused P.K. Thirwani. The revival order simply mentions that it was based on the report of the accused AR S.R. Goyal (since deceased). The perusal of the documents, as highlighted by ld. Sr. PP for CBI, categorically goes to suggest that even the accused P.K. Thirwani was clearly hand in glove with the accused Gokul Chand Aggarwal as the report of the auditor P.K. Thirwani contains signatures of accused Gokul Chand

Aggarwal appended by him by necessary inference, as discussed herein above by impersonating himself as "Suraj Goyal". It is clear that accused P.K. Thirwani also filed a fake report. His report contains the address of the society as 20/36 West Patel Nagar, Delhi whereas it has already been proved that no such society carried on its business from the aforesaid address. Therefore, the report of accused P.K. Thirwani was Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) also proved to be fake one.

OTHER COMMON DEFENCES AND CONSIDERATION THEREOF.

I find force in the arguments advanced by Ld. Counsel for accused R.B. Chauhan that the accused being an official of lowest rank in the episode i.e. UDC was not expected to check up as to whether the society was existing at the given address or that the members were fake members as these are the duties which are expected from the officers of higher ranks like Inspectors investigation etc. Regarding the missing file, he had already put a noting to the effect that other zones may be asked to trace the file. There appears to be no concealment or intention to mislead on his part as nothing could be gathered from the record. Regarding plea of Ld. Sr. PP that only one week time was given for tracing the file, it is also clear that same does not find mention in the noting dt. 15.01.2004 Ex.PW186/A but one week time is found in the letter dt. 19.01.2004 lying in file D□8 Vol. I written by AR□ S.R. Goyal (since deceased). Further, with respect to the plea of Ld. Sr. PP for CBI that why the accused R.B. Chauhan failed to mention the change of name and address, the resolution of GBM of society held on 29.06.2003 (Vol. I D□8) is already on record wherein the change of name and address was resolved to be approved by the society.

The ld. Counsel for the accused R.B. Chauhan, U.S. Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) Bhatnagar and P.K. Thirwani had taken another defence that the present matter has been investigated by a police officer of the rank of the then Sub Inspector whereas the PC Act, 1988 provides that in cases of Delhi Special Police Establishment, no police officer below the rank of Inspector of Police is authorized to investigate the same. Ld. Sr. PP while responding to the said arguments stated that it is not the requirement of the PC Act that the matter can be investigated only by Inspector of Police but simultaneously it has also been mentioned therein that in case the authorities require the same to be investigated by an officer below the rank of Inspector, order of the Metropolitan Magistrate shall be required for the same which has already been taken in this case.

After hearing the arguments on this issue and after perusing the provisions of Section 17 of PC Act which deals with

persons authorized to investigate, though of course it is mentioned that no officer below the rank of Inspector under the Delhi Special Police Establishment is authorized to investigate the matter, but simultaneously it has been prescribed in the later part that the matter can also be investigated by an officer below the rank of Inspector but with the permission of the Magistrate. As highlighted in the testimony of PW 206 Insp. Raja Chatterjee, after registration of this case, the same was assigned to Insp. Brajesh Kumar for investigation.

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) Thereafter, the case was assigned to P W 206 Raja Chatterjee for further investigation. Since at that relevant time, Insp. Brajesh Kumar was preoccupied in other important branch cases, so, Sh. Bhupender Kumar the then SP CBI, ACB, New Delhi he moved an application Ex.PW206/C before the Ld. Special Judge, CBI, Patiala House Court for permission to handing over this case to PW 206 Sub Inspector Raja Chatterjee which was allowed. From the bare reading of the application Ex.PW206/C moved by the Superintendent of Police Sh. Bhupinder Kumar, it is clear that reasons for getting the matter investigated by Insp. Raja Chatterjee (Sub Inspector at that time) has been assigned by CBI as preoccupation of Insp. Brajesh Kumar in some other important cases. Permission was sought from Ld. Special Judge, CBI as at that point of time the IO of this case was having designation of Sub Inspector, however he was promoted to Inspector during proceedings of this case as is clear from the particulars of the IO mentioned in the testimony of PW 206. The Ld. Special CBI Judge vide the order of the even date allowed the application. Hence, there remains no issue that the investigation conducted by Insp. Raja Chatterjee and the same has not been done in violation of PC Act.

Regarding another defence that unlike the Companies Act which mandates for putting up sign boards in front of the office of the company, the society was under no obligation to place the same as the Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) provisions of Companies Act were not applicable to the societies, how come the neighbours knew that no society existed. On this aspect, ld. Sr. PP for CBI stated that existence or non existence of a company, society, organization, institution cannot be judged by putting up the sign boards and it is the common knowledge of the habitants of the nearby places which prevails and hence simply by stating that no sign boards etc. were put and for that reason the PWs residing nearby have lied is just a fiction created by the ld. Counsel for defence.

On this point also this court has no second opinion other than that of the arguments advanced by ld. Sr. PP as simply because the boards of the society were not being put up, this may not mean to say that people were not having knowledge about the running of any business from a particular place. This plea of ld. Defence counsel stands rejected.

The another defence for the ld. Counsel for accused R.B. Chauhan, U.S. Bhatnagar and P.K. Thirwani, that there are no specification of the charges as to whether the CBI wanted to prosecute the accused persons for the offences u/s 13 (1)(d)(II) or (III) PC Act and hence without knowing the specifications, a great prejudice has been caused to the accused persons during trial as they were unable to know even the specific charges. Ld. Sr. PP for CBI answered the said arguments by stating that when the charge has been specific and the Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) contents of the facts have also been mentioned in the detailed charge and accused persons have been able to understand the nature of allegations individually against them, the court is under no obligation to mention each and every section in the charge. He submitted that the purpose of framing of the charge is that the accused should understand the specific allegations against him for which he is being tried and it is not that he should understand the specific or particular section of a provision at the time of framing of charge. He also submitted that Section 215 CrPC and Section 464 CrPC clarifies the position even if the specific sections have not been mentioned in the charges framed against the accused persons.

After giving thoughtful consideration to the rival submissions of the parties with respect to this issue this court recalls a celebrated judgment of Hon'ble Apex Court of India in Willie (William) Slaney Vs The State of Madhya Pradesh AIR 1956 SC 116 in which it was held as under:

"□f he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is substantial Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice.

xxxxxx xxxxxxxx But when all is said and done, what we are concerned to see is whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. It all these elements are there and no prejudice is shown the conviction must stand whatever the irregularities whether traceable to the charge or to a want of one. It is immaterial whether the charge was framed properly or not; what matters is whether the error, omission or irregularity occasioned substantial prejudice."

In another judgment delivered by the Hon'ble Apex Court in AIR 1989 SC 129 State of West Bengal vs Laisal Haque and others, the Hon'ble Apex Court aired its views as under:

"In the celebrated case of Willie (William) Slaney v. State of Madhya Pradesh, 1956 CriLJ 291, Vivian Bose, Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) J. speaking for the Court after an elaborate discussion observed that in judging a question of prejudice, as of guilt, the Courts must act with a broad vision and look to the substance and not to the technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself. That test is clearly fulfilled in the facts and circumstances of the present case."

In view of aforementioned judgment of Hon'ble Apex Court, it is clear that court is not under obligation to mention each and every part of a particular section in the charge but it would be enough that the accused must know for what he is being tried. The perusal of charge categorically shows that allegations were explained to all accused clearly and fairly. Hence, this contention of ld. Counsel for defence does not carry any force.

Ld. Counsel for accused R.B. Chauhan, U.S. Bhatnagar and P.K. Thirwani has also relied upon the latest judgment of Hon'ble Supreme Court of India in A.Sivaprakash Vs State of Kerala D.O.D. 10.05.2016, 2016 IVAD (CRI.) (S.C.) 383 wherein it Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) was held as under:

" 18 . It was not even the case set up by the prosecution that appellant had taken that money from some person and had obtained any pecuniary advantage thereby. It was the obligation of the prosecution to satisfy the aforesaid mandatory ingredients which could implicate the appellant under the provisions of Section 13(1)(d)(ii). The attempt of the prosecution was to bring the case within the fold of clause (ii) alleging that he misused his official position in issuing the certificate utterly fails as it is not even alleged in the charge sheet and not even iota of evidence is led as to what kind of pecuniary advantage was obtained by the appellant in issuing the said letter."

Ld. Defence Counsel has also relied upon the judgment of Hon'ble High Court of Delhi in A.K. Ganju Vs CBI CrI. MC 3800/2011 DOD 22.11.2013 in support of his aforesaid claim.

In this aspect, this Court is of the opinion that the law laid down by the Hon'ble Supreme Court of India is not disputed but in the present case the accused have been charged for an attempt to commit offences u/s 13(1)(d)(II) of P.C. Act. It has already been proved that the freeze list of members was already sent by the office of RCS to Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) AR(Policy) for onward transmission to DDA for getting the land and the land was not yet allotted. The purpose of the private person as well as public servants was to get the land at subsidized rates for getting the pecuniary advantages and hence the same is not applicable to the facts of this case.

CHARGES U/S 15 OF P.C. ACT AGAINST ACCUSED R.B. CHAUHAN, U.S. BHATNAGAR AND P.K. THIRWANI AND CONSIDERATION THEREOF.

I shall now take up the defence raised that even attempt to commit offence has not been made out or that even if presumed to be correct the case was simply at the stage of preparation to commit the offence. In this context, I have taken guidance from the judgment of Hon'ble Supreme Court of India in AIR 1970 SC 713 Malkiat Singh Vs State of Punjab, relied upon by the ld. Counsel for the defence.

It has been held by Hon'ble Apex Court in Abhyanand Mishra Vs State of Bihar, 1962 SCR (2) 241 that it is to be borne in mind that the question whether a certain act amounts to an attempt to commit a particular offence is a question of fact dependent on the nature of offence and the steps necessary to take in order to commit it. No exhaustive precise definition of what would amount to an

J u d g m e n t C B I V s N a r a y a n D i w a k a r e t c . (G O D R E J C G H S) attempt to commit the offence is possible. The Hon'ble Supreme Court relied upon the judgment in an English case in R.MacCrea, (1893)ILR 15 Allahabad 173 and held as under:

"In the matter of the petition of R.MacCrea (1) it was held that whether any given act or series of acts amounted to an attempt which the law would take notice of or merely to preparation, was a question of fact in each case and that S.511 was not meant to cover only the penultimate act towards the completion of an offence and not acts precedent, if those acts are done in the course of the attempt to commit the offence, and were done with the intent to commit it and done towards its commission. Knox, J., said at p. 179.

"Many offences can easily be conceived where, with all necessary preparations made, a long interval will still elapse between the hour when the attempt to commit the offence commences and the hour when it is completed. The offence of cheating and inducing delivery is an offence in point. The time that may elapse between the moment when the preparations made for committing the fraud are brought to bear upon the mind of the person to be deceived and the moment when he yields to the deception practiced upon him may be a very considerable interval of time. There may be the interposition of inquiries and other acts upon his part. The acts whereby those preparations may be Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) brought to bear upon her mind may be several in point of number, and yet the first act after preparations completed will, if criminal in itself, be beyond all doubt, equally an attempt with the ninety and ninth act in the series."

The revival order along with freeze list was required to be sent to the DDA for the purpose of allotment of land to the society. The CBI has filed a letter dt. 15.03.2004 bearing no. F47/28/GH/W/Coop./285□286 dt. 15.03.2004 which was addressed to AR(Policy) O/o RCS, Parliament Street, New Delhi. The said letter was written by the then AR(W) S.R. Goyal (since deceased) and copy thereof was also endorsed to the President / Secretary, Godavari Apartment CGHS Ltd., 20/36, West Patel Nagar, New Delhi. The said letter was regarding approval of freeze list of members of Godavari Apartment CGHS Ltd. It was informed by the then AR(W) O/o RCS to AR(Policy) O/o RCS that he was sending freeze list of 251 members of Godavari Apartment CGHS Ltd. as approved by the RCS vide order dt. 09.03.2004 for onward transmission to DDA for allotment of land. The said order dt. 09.03.2004 is the same order vide which the society

was revived by the accused Narayan Diwakar. The then RCS which has already been discussed in the above paras. Meaning thereby immediately after the revival order was passed on 09.03.2004, the freeze list was sent by AR(W) accused SR Goyal (since deceased) to Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) AR(Policy). The said letter dt. 15.03.04 was shown to the PW 117 Sh. V.K. Bansal who stated that vide this letter freeze list of 251 members was sent to AR(Policy) for onward transmission to DDA for allotment of land. The said letter Mark PW206/DB did not face any challenge during the cross examination by the Ld. Defence counsels as all the accused opted for not cross examining PW 117 V.K. Bansal on any issue. The said letter was marked as Mark PW206/DB as during cross examination of another witness PW 206/Insp. Raja Chatterjee, a question was put w.r.t. the sending copy of this letter to President/Secretary of the society by the Ld. Defence counsel in order to establish that the society existed at the given place. Accordingly, the said letter stands duly proved and it has been established by the CBI that the letter Mark PW206/DB dt. 15.03.04 was sent by AR(W) to AR(Policy) with freeze list of 251 members of the society for onward transmission to DDA for allotment of land. It has further come in evidence during examination in chief of PW 117 Sh. V.K. Bansal that once the freeze list is approved by the RCS, its members cannot be increased or decreased with the approval of RCS. From this testimony of PW 117, it is also clear that AR(Policy) has no jurisdiction to alter the number of members once freeze list has been approved by RCS.

The prosecution has also produced another witness PW 196 Sh. Paras Nath who remained posted as Assistant in the Department of Group Housing Society, DDA, Vikas Sadan, New Delhi stated that the seizure memo dt. 11.07.2006 Ex.PW196/A bears his signatures at point A and he had also got the copy of the seizure memo at the time of recovery of documents by PW 206 Insp. Raja Chatterjee from him. The said document includes the copy of letter no. F.2(27)91/GH/DDA/10989 dated 04.08.2005 from Sh. K.G. Kashyap Dy. Director (GH)/DDA to Shri Pyush Anand SP CBI EOW and F.47/19/NGH/Coop./298 dated 25/3/04 from Yogi Raj, Asstt.Registrar (Policy) to the Dy. Director (GH)/DDA, consisting of 4 sheets. The first letter dt. 25.03.2004 which was exhibited as Ex.PW196/B (colly.) was written by the AR(Policy) Yogi Raj to Dy. Director(H), Delhi Development Authority, Vikas Sadan, INA Market, New Delhi. The subject matter of this letter was allotment of land to the Group Housing Societies.

Vide this letter, the then AR (Policy) Yogi Raj had sent a consolidated list of members duly approved by competent authority for allotment of land as per details mentioned therein serial wise. The serial no. '4' contained the name of the society as 'Godavari Society' with approved strength of members as 251 and registration no. 28 mentioned against the name of the Godavari CGHS. As already said, the said letter was seized by the IO/PW 206 Insp. Raja Chatterjee from PW 196 Sh. Paras Nath. The Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS)

photocopy of this letter was attested by Sh. K.G. Kashyap, Dy. Director (GH), DDA. The signatures of Sh. K.G. Kashyap on the attestation of photocopy were identified by PW□196 Sh. Paras Nath as he deposed before this court that he had seen him writing and signing during the ordinary course of his official duties. In another letter written by the said Sh. K.G. Kashyap, he had informed the CBI regarding the list of Group Housing Societies with details sent by RCS to the office of DDA. The said list also contained the name of Godavari Society at serial no.

4. The signatures of Sh. K.G. Kashyap on the attestation of the photocopy of the said letter were identified by PW□196. This Pw□196 was also offered for cross□ examination to Ld. Defence counsels and accused persons but they did not opt for the same and his cross□ examination was treated as NIL despite being given opportunity.

Accordingly, it becomes aptly clear that the list was sent by office of RCS to DDA for allotment of land to Godavari CGHS Ltd. after the revival order was passed on 09.03.2004.

From the overall reading of the evidence produced by the CBI, it is clear that the public servants namely U.S. Bhatnagar and P.K. Thirwani and who are accused persons had committed the acts which was within their power and means but all these accused persons misused their powers or in other words managed to procure and attempted to send the list of the freezed members of the society to Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) DDA which was against public interest. As mentioned in the last para, the freeze list was already sent by the accused the then AR(W) SR Goyal (since deceased) to A R (P o l i c y) and it was specifically mentioned that the same was required to be sent to DDA for allotment of land. Since AR(Policy) had no power to alter the number of members in the freeze list, his office was like a post office for complying the orders of RCS. Thereafter, the freeze list of members was sent to DDA by the O/o RCS, as deposed by the PW□196 Paras Nath. Now nothing more was within their powers and now everything was left to the virtue of the other department. Accordingly, it cannot be said that the stage of the action was only upto the stage of preparation to commit an offence in terms of the aforementioned judgment in Malkiat Singh's case relied upon by ld. Counsel for defence.

It is clear from the evidence brought forth that the step was ahead of the preparation and was clearly an attempt for committing the offence. Unlike the case of Malkiat Singh (supra), now nothing was left in the hands of the accused persons to even withdraw from doing acts to restrict the same upto the stage of preparation.

It is not in dispute that the CBI during investigation could not bring any material on record which may prove that the public Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS)

servants while holding office actually obtained any valuable thing for themselves or for any person, however as discussed herein above, it is clear that the CBI has been able to prove the fact that in fact the accused namely U.S. Bhatnagar and P.K. Thirwani both public servants were able to manage sending of the freeze list of members of the society to AR(Policy) for onward transmission of the freeze list of members to DDA for allotment of land on the basis of forged and fabricated reports of either the public servants or the documents filed by the accused Gokul Chand Aggarwal which was fake.

Now the question as raised by ld. Defence counsel during the arguments is as to when no fee has been deposited by the accused Gokul Chand Aggarwal and no steps had been taken, how the prosecution is able to say that all the public servants namely U.S. Bhatnagar and P.K. Thirwani attempted to commit criminal misconduct for procuring the valuable thing for accused Gokul Chand Aggarwal.

In this connection, this court would go to the flash back of this case vide which the Hon'ble High Court of Delhi had directed for the registration of FIR.

The genesis for the registration of the FIR is contained in the Division Bench of the Hon'ble High Court of Delhi in WP(C)10066/2004 titled Yogi Raj Krishna Cooperative Group Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) Housing Society Ltd. Vs DDA wherein on a consideration of the matter, the Hon'ble High Court directed the CBI to inquire/investigate in the cases of 135 cooperative group housing societies. The relevant extract of the order of Hon'ble High Court of Delhi dt. 02.08.2005 reads as under:

"we direct the Director of CBI to conduct a thorough investigation in all the matters of 135 Cooperative Societies. It has been stated that in case of Page 892 four societies the cases have been registered and the apprehension expressed by this Court in the earlier orders of a nexus between the builders taking over the Cooperative Movement in Delhi has been found to be correct. It is unfortunate that the same has been done, prima facie, as it seems in connivance with the office of the Registrar of Cooperative Societies and the office of the DDA. Land in Delhi is allotted at a predetermined rate and not on the basis of the market value of the land. Cooperative Societies were formed in order to have flats at affordable prices by the middle income group and lower income group. It is the element of profit making in view of difference of market value of land and the value on which land is allotted to the Societies, has resulted in the nexus of builders and Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS)

officials to reap gain by unholy alliance. If apartments are sold on the basis of market price the very purpose of land given on concessional rate to the Cooperative Societies stands defeated....."

Accordingly, the prosecution has been able to prove that the valuable thing which the public servants namely U.S. Bhatnagar and P.K. Thirwani attempted to procure for the accused Gokul Chand Aggarwal was the land at predetermined value from DDA the value of which was much less than the market value. Accordingly, it stands proved that this was clearly an attempt to commit offence within the definition of Section 15 of PC Act.

Now I shall take up the charge regarding the conspiracy hatched between the accused Gokul Chand Aggarwal as well as the accused public servants namely U.S. Bhatnagar and P.K. Thirwani. It would be appropriate to go through the latest judgment of Hon'ble High Court of Delhi in *Runu Ghosh Vs CBI (supra)* wherein the Hon'ble High Court extensively dealt with the issue with respect to the provisions of Section 120 B IPC and its application. The Hon'ble High Court of Delhi in this judgment has held as under:

"132. As regards criminal conspiracy, that is one, under Section 120 B IPC. The gist of what constitutes the offence Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) was summed up pithily by the Supreme Court, in *E.G. Barsay v. State of Bombay* AIR 1961 SC 1762 (an enunciation that was affirmed and applied in several later decisions, such as *Ajay Aggarwal v Union of India* 1993(3) SCC 609; *Yashpal Mittal v State of Punjab* 1977 (4) SCC 540; *State of Maharashtra v Som Nath Thapa* 1996 (4) SCC 659; *Firozuddin Basheeruddin v. State of Kerala* (2001) 7 SCC

596):

The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no

relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.

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133. There is no doubt that evidence of criminal conspiracy is hard to come by. When such agreements are made, people are not expected to commit themselves in writing; nor are all conspirators necessarily aware of the entire plan, which may be known only to a handful. However, for the Court to draw a conclusion that there was criminal intent, and meeting of minds, there has to be strong circumstantial evidence pointing to the conspiracy.

149. This Court is conscious of the fact that the head or high ranking officer of a private enterprise acts legitimately when he approaches the government or its functionaries, in the course of negotiations for entering into contracts. It would be considered legitimate that during even after parlays, letters are written to the government and its officers at various levels. These cannot be construed as objectionable behaviour.

At the same time the Court has to take into consideration and other important reality which is that seldom does a criminal conspiracy between a businessman or a private enterprise reveal a smoking gun. In such cases necessarily, the Court has to often wade through mountains of files and documents and wherever necessary draw inferences about the conduct of the concerned individual. It is in the light of this understanding that the Appellant Mr. Rama Rao's conduct Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) has too been scrutinized.

151. The essence of the offence conspiracy is the fact of combination by agreement. The agreement may be expressed or implied or in part express and in part implied. But the conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial Egremont is terminated by completion of its performance or by abandonment or frustration or however it may be. The actus reus in a conspiracy is the agreement to Exh. You to the illegal conduct, not the execution of its. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. It is not however, necessary that each conspirator

should have been in communication with every other. Crl.A.Nos. 482/02, 509/02 & 536/02 Page113

153. Direct evidence is seldom forthcoming to establish conspiracy. Stealth privacy and secrecy are usually its hallmarks. More often than not, Courts have to infer conspiracies on the basis of the facts and all the surrounding circumstances. The conduct of what the alleged conspirators Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) do and the trail they leave in their wake is often determinative whether they commit the crime. It was held (Mohammed Usman Mohammed Hussain Maniyar v. State of Maharastra AIR SC 1062) that for an offence under Section 120B IPC, the prosecution need not necessarily prove that the perpetrators expressly agreed to to or cause to be done the illegal act, the agreement may be proved by necessary implication.

Crl. A. Nos.482/02, 509/02 & 536/02 Page 114"

The ld. Counsel for the accused U.S. Bhatnagar and P.K. Thirwani has relied upon the judgment of Hon'ble High Court of Delhi in S. Swaminathan vs State of Delhi 2007(4) JCC 2750 and also on another judgment of Hon'ble High Court of Delhi in Dinesh Chand Shukla Vs State (2007) IV AD (Delhi) 173 to substantiate his claim that accused persons did not enter into conspiracy. The genesis of these judgments was that a advocate in first case and a Chartered Accountant in second case attested certain documents in the course of their professional duties, the Hon'ble High Court of Delhi in both the judgments relying upon the judgment of Hon'ble Supreme Court of India in Hira Lal Jain Vs Delhi Administration 1973 SCC (Crl.) 309 held that these acts does not amount to conspiracy by the professionals as the same is done in the ordinary course of business.

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In the case in hand, if we go by the sequence of events from the date when the accused Gokul Chand Aggarwal moved a letter dt. 06.01.2004 Mark 34/X (D□ 18 Vol. I) before the office of R C S for the purpose of cancelling the winding up order u/s 63 of DC Act upto the sending of freeze list of members, one can very well not only smell the conspiracy hatched between the accused Gokul Chand Aggarwal, U.S. Bhatnagar and the accused P.K. Thirwani but also their active participation in giving shape to it. Section 120□A IPC deals with definition of criminal conspiracy and pre requisite of the same is that two or more persons agree to do or cause to be done an illegal act. The illegal act which the accused agreed to have done has already been explained in the pre paras. Now the question is whether the agreement between these accused persons should be explicit or it can be inferred

by implications. As already discussed in the aforementioned judgments pronounced by the Ld. Superior Courts, the perpetrators of a conspiracy always hatch the same in dark rooms and hence it is difficult to gather direct evidence with respect to the same. But when we come to the evidence of the case in hand, the said dark room have got the ray of light through the documentary evidence placed and proved on record. As already discussed, the letter dt. 06.01.2004 Mark 34/X (D-8 Vol.I) written by accused Gokul Chand Aggarwal was found to contain forged signatures by necessary Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) implication as discussed herein above has been established by prosecution. Thereafter, the proceedings conducted by the accused S.R. Goyal (since deceased) and his overzealousness without approval of the seniors and the acts committed by him in contravention of the directions given by the accused Narayan Diwakar, as highlighted herein above in the pre paras while discussing other issues followed by the fake report of accused U.S. Bhatnagar vide which he had reported the existence of the members and the misleading reporting of the matter to higher authorities by accused S.R. Goyal (since deceased) on the basis of which the revival order was passed and also the fake report of the accused P.K. Thirwani which surprisingly carried the signatures of accused Gokul Chand Aggarwal appended as "Suraj Goyal" categorically goes to suggest that there was much more behind the scene than what it meets the eye. Man of ordinary prudence will easily infer from the actions of these accused namely Gokul Chand Aggarwal, U.S. Bhatnagar and P.K. Thirwani that they were active co-conspirators for giving shape to the designs they have architected for getting the illegal act done for which definitely they have entered into an agreement in terms of the provisions of Section 120A under Chapter V of IPC.

As already discussed in such type of cases, no direct evidence remains available for the same as conspiracy are always Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) hatched in locked corridors. The case is based on documentary and circumstantial evidence. While dealing with a case under circumstantial evidence, it was held by the Hon'ble Supreme Court of India in its judgment titled as Shakuntala vs State , CrI.A. No.836/2001 as under:

"41. The Supreme Court in a number of cases has observed that while appreciating circumstantial evidence, Court must adopt a very cautious approach and the conviction should be recorded or upheld only if all the links in the chain are complete pointing out to the guilt and every CrI A. 836 of 2001 Page 28 of

68 hypothesis of innocence is capable of being negated on evidence. This also cannot be disputed that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. The Court must be satisfied of : □
a. That the circumstances from which the inference of guilt is to be drawn, have been fully established by Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) unimpeachable evidence beyond a shadow of doubt. b. That the circumstances are of a determinative tendency unerringly pointing towards the guilt of the accused, and c. That the circumstances, taken collectively, are incapable of explanation on any reasonable hypotheses save that of the guilt sought to be proved against him.

The collective as well as individual evidence against all the accused have already been discussed in this judgment while dealing with the other offences for which the accused persons have been charged. From the evidence discussed in this judgment, it stands proved that accused Gokul Chand Aggarwal, U.S. Bhatnagar and P.K. Thirwani entered into an agreement to do illegal act and also attempted to do it and the circumstances from which inference of guilt is to be drawn have been fully established by unimpeachable evidence beyond shadow of doubt against them and thus they all committed offence of conspiracy u/s 120□B IPC read with Section 420/468/471 IPC read with Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

The defence has taken another plea that the prosecution case is full of loopholes and contradictions, as highlighted in the arguments of defence and as per the settled Indian Criminal Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) Jurisprudence, in case there occurs contradictions in the story of the prosecution or in case the prosecution fails to prove its case beyond reasonable doubt, the accused persons cannot be held guilty.

Regarding other contradictions and omissions, as highlighted by Id. Counsel for the defence as well as the accused persuing his case personally, I gain guidance from the judgment of Hon'ble Apex Court in a recent decision Mritunjoy Biswas vs. Pranab @ Kutu Biswas and anr. reported at 2013, Vol. 12 SCC 796, in which the Hon'ble Apex Court has held as under:

"As is evincible, the High Court has also taken note of certain omissions and discrepancies treating them to be material omissions and irreconcilable discrepancies. It is worthy to note that the High Court has referred to the some discrepancies which we find are absolutely in the realm of minor discrepancies. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies.

It needs no special emphasis to state Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission."

Accordingly, the omission, as highlighted by ld. Counsels during the course of arguments does not create any serious doubt about the truthful and creditworthiness of the witnesses examined by the CBI qua the accused Gokul Chand Aggarwal, U.S. Bhatnagar and P.K. Thirwani.

Further, Ld. Counsel for the accused persons relied upon the judgment of Hon'ble Supreme Court of India in State of Uttar Pradesh Vs Ramveer Singh CrI. A. 448/2001 DOD 05.03.2007 to apprise this court about the law laid down therein that if two views are possible on two evidence adduced one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted and that the miscarriage of justice Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) which may arise from the acquittal of the guilty is no less than from conviction of the innocent.

Regarding proof of case beyond reasonable doubt, Ld. Counsel had mainly stressed upon the word 'beyond' just before the word 'reasonable' and as per his interpretation 'beyond' means farther more than reasonable.

In this connection, I am being guided by the judgment of Hon'ble Supreme Court of India in Inder Singh vs. State (Delhi Administration) 1978 CrL. Law Journal 766 wherein Hon'ble Mr. Justice V.R. Krishna Ayyar has held that:

"Credibility of testimony, oral circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. If a case is proved too perfectly, it is argued that it is artificial, if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty men must be callously allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot get away with it because truth suffers Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) some infirmity when projected through human processes. Judicial quest for perfect proof often accounts for police presentation of foolproof concoction. Why fake up? Because the court asks for manufacture to make truth look true? No, we must be realistic."

Further, the Hon'ble Supreme Court of India in another judgment with respect to the word 'reasonable doubt' in Trimukh Maroti Kirkan V State of Maharashtra [(2006) 10 SCC 681] had held as under:

"the law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible/difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading having regard to facts and circumstances of the case."

Having taken guidance from the judgment and having discussed all the relevant evidence and documents made available and proved and having considered the arguments of ld. Defence counsels as well as Sr. PP for CBI, it appears to this court the prosecution has proved beyond reasonable doubt that the accused Gokul Chand Aggarwal (a private person) and other accused namely U.S. Bhatnagar Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) and P.K. Thirwani (both public servants) entered into conspiracy with each other for the purposes of committing offences u/s 120B IPC r/w Section 420, 468, 471 IPC and Section 13(2) r/w Section 13(1)(d) of the PC Act, 1988 and the CBI has been able to prove their active involvement for the charges framed against them. Accordingly, accused Gokul Chand Aggarwal, U.S. Bhatnagar and P.K. Thirwani

stands convicted for the charges u/s 120B IPC r/w Section 420, 468, 471 IPC and Section 13(2) r/w Section 13(1)(d) of the PC Act, 1988 Further, accused U.S. Bhatnagar and P.K. Thirwani stands convicted for the charges under Section 15 read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

Accused Gokul Chand Aggarwal is also convicted for the offences u/s 420/511 IPC & u/s 419 IPC and further u/s 468/471 IPC.

However, the CBI has not been able to collect enough material against the accused Narayan Diwakar and R.B. Chauhan and hence has failed to prove all the charges framed against both of them. Accordingly, accused Narayan Diwakar and accused R.B. Chauhan stands acquitted of all the charges against them. Their regular bail bonds stands cancelled, sureties discharged.

Acting u/s 437A Cr.PC as well as in terms of judgment passed by Hon'ble High Court of Delhi in DRI Vs. Mike Chimezie, CRL. L.P. 3/2015, all the accused persons have furnished bail bonds Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) to the tune of Rs. 10,000/- each with one surety each in the like amount in compliance of section 437A Cr. P.C. as per which, before conclusion of trial and before disposal of the appeal, the accused is required to execute bail bond with surety to appear before the higher court as and when such court issues notice in respect of any appeal or petition filed against the judgment of the respective court and such bail bond shall remain in force for a period of six months. Respective bail bonds in this regard have been accepted.

Let the convicts namely Gokul Chand Aggarwal, U.S. Bhatnagar and P.K. Thirwani shall be heard separately on the point of sentence for which date is given vide order sheet of even date. Announced in the open court on this 24th day of December, 2016.

(SANJAY KUMAR AGGARWAL) SPECIAL JUDGE-II (P.C.ACT), CBI ROHINI COURTS, DELHI.

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) IN THE COURT OF SH. SANJAY KUMAR AGGARWAL, SPECIAL JUDGE-II, (PC ACT), CBI, ROHINI COURTS: DELHI.

Name of Branch : CBI, ACB, NEW DELHI FIR No. RC/DAI/2005/A/0071 u/s 120B IPC r/w Section 420/468/471 IPC r/w Section 13(2) r/w Section 13(1)(d) of PC Act 1988 and Section 420/511 IPC & Section 468/471 IPC CBI Vs Narayan Diwakar etc. (GODREJ CGHS)

(Details of convicts)

1. Sh. Uday Shankar Bhatnagar, R/o Late S.S. Bhatnagar,
R/o 479, Type B, Timar Pur Delhi Admn. Flats, Delhi.

(Permanent: G-97, Sarojini Nagar, N.Delhi)

2. Sh. P.K. Thirwani S/o Late Sh. Moti Lal Thirwani R/o 348 - E, Pocket - II, Mayur Vihar, Phase - I,
New Delhi-110011.

3. Sh. Gokul Chand Aggarwal S/o Late Sh. Jagadish Prasad, R/o A-603,
Ashoka Apartments, Sector-9, Rohini, Delhi. ... Convicts
Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) ORDER ON SENTENCE
12.01.2017 Present: Sh. N.P. Srivastava, Ld. Sr. PP for CBI.

Sh. S.K. Bhatnagar, ld. Counsel for convicts namely U.S. Bhatnagar & P.K. Thirwani.

All the convicts in person.

Ld. Counsel for convict U.S. Bhatnagar submitted that he is a retired person having no other income and have two unmarried daughters. Recently, convict U.S. Bhatnagar has also undergone bypass surgery of heart and he is in financial crisis. Ld. Counsel prays that leniency be taken while awarding sentence to this convict.

On behalf of convict P.K. Thirwani, ld. Counsel submitted that he is a retired person, financially hand to mouth and has recently married his younger daughter due to which he is in great financial crisis. He is a patient of heart and suffering from hypertension.

It is submitted by convict Gokul Chand Aggarwal that he is a patient of brain related disease and have two unmarried children. He further submitted that he is the only bread earner in the family. He prays for leniency in sentence.

All the convicts have also jointly requested for leniency in fine owing to cash deficiency with them due to demonetization.

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) Ld. Sr. PP for CBI request that maximum sentence be awarded to all the convicts as out of three two convicts namely U.S. Bhatnagar and P.K. Thirwani were public servants and in view of the latest trend of the dictums laid down by Hon'ble Superior Courts, no leniency should be shown to the public servants who commits offences during their services more particularly the offences relating to the

Prevention of Corruption Act. It was highlighted by ld. Sr. PP that all the convicts are habitual offenders as previously also they were convicted by different courts. It was urged by ld. Sr. PP for CBI that in view of Section 109 IPC, maximum sentence be awarded to all the convicts in Section 120B IPC and for other offences. He has also referred one latest judgment titled as Shanti Lal Meena Vs State of NCT of Delhi AIR 2015 SC 2678.

I have heard ld. Sr. PP for CBI as well as ld. Counsel for two convicts who were public servants and also the convict Gokul Chand Aggarwal. I have also gone through the relevant judgments and have taken guidance delivered by superior courts with respect to sentencing. I have also considered the aggravating and mitigating circumstances of the individual convicts.

Section 120B IPC prescribes the punishment of criminal conspiracy to commit as an offence punishable with imprisonment of Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) term of two years or upwards shall where no express provision is made, will be in the same manner as if the convict has abetted the offence. For the purpose of ascertaining punishment of abetment, we will have to turn to Section 109 IPC which states that whoever abets an offence shall if the offence abetted is committed in consequence of abetment shall be punished with punishment provided for in the offence.

To this extent as mentioned in the last para, ld. Sr. PP for CBI is correct that if act abetted is committed in pursuance to the conspiracy then the offenders shall be liable for the punishment provided for the offence for which they entered into conspiracy.

Now the question is what if the act conspired could not be committed. For this purpose, Section 116 IPC categorizes the offenders into two categories. First category relates to the abetment of offences by persons who are not public servants, if act abetted is not committed and the second category deals with the punishment for abetment of offences by public servants if the act abetted is not committed. The first category provides punishment for a term which may extend to one fourth part of the longest term provided for that offence or with such fine, as provided in the offence or with both, the second category describes punishment which may extend to one half of the longest term provided for that offence or with such fine, as provided in the offence or with both.

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) From Section 116 IPC, it becomes aptly clear that if the act conspired u/s 120B IPC is not committed pursuant to conspiracy, the offender will be liable to half of punishment provided for the offence proposed to be committed in case the offender is a public servant and otherwise in case he is not a public servant, the punishment provided is one fourth of the

maximum sentence provided for the offence proposed to be committed.

Before proceeding further, I would like to mention a part of text from Kautilya's philosophy w.r.t. sentence:

"whoever imposes severe punishment becomes repulsive to people while he who awards mild punishment becomes contemptible. The Ruler just with the rod is honoured. When deserved punishment is given, it endows the subject with spiritual good, material well being and pleasures of senses."

I have also taken guidance from judgment reported in AIR 1978 Supreme Court 1548, wherein the full Bench of Hon'ble Supreme Court had severely castigated the lenient view taken by the Sessions Court in sentencing a convict in such offences and observed as under:

"7. Social defence is the criminological foundation of punishment. The trial judge has confused between correctional approach to prison treatment and Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) nominal punishment verging on decriminalization of serious social offences. The first is basic, the second pathetic. That Court which ignores the grave injury to society implicit in economic crimes by the upper berth 'mafia' ill serves social justice. Soft sentencing justice is gross injustice where many innocents are the potential victims. It is altogether a different thing to insist on therapeutic treatment, hospital setting and correctional goals inside the prison (even punctuated by parole, opportunities for welfare work, meditational normalization and healthy self-expression), so that the convict may be humanised and, on release, rehabilitated as a safe citizen. This court has explained the correctional strategy of punishment in Giasuddin's case (1978) 1 SCR 153: (AIR 1977 SC 1926). Coddling is not correctional, any more than torture is deterrent. While iatrogenic prison terms are bad because they dehumanize, it is functional failure and judicial pathology to hold out a benignly self-defeating non-sentence to deviants who endanger the morals and morale, the health and wealth of society."

Accordingly, I proceed to announce the sentence as under:

Sentencing for convict Gokul Chand Aggarwal
Convict Gokul Chand Aggarwal has been convicted for the offence u/s 120B IPC r/w Section 420, 468, 471 IPC and Section 13(2) r/w Section 13(1)(d) of the PC Act, 1988. He is also separately convicted for the offences u/s u/s 420/511 IPC & u/s 419 IPC and

Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) further u/s 468/471 IPC.

Accordingly, convict Gokul Chand Aggarwal is sentenced to undergo :

- (i) rigorous imprisonment for one and a half years and fine in the sum of Rs. 2000/□ for the offence under Section 120□B IPC r/w Section 420 IPC. In default of payment of fine, he shall undergo simple imprisonment for 60 days.
 - (ii) rigorous imprisonment for three years and fine in the sum of Rs. 2000/□ for the offence under Section 120□B IPC r/w Section 468 IPC. In default of payment of fine, he shall undergo simple imprisonment for 60 days.
 - (iii) rigorous imprisonment for one year and fine in the sum of Rs. 1000/□ for the offence under Section 120□B IPC r/w Section 471 IPC. In default of payment of fine, he shall undergo simple imprisonment for 30 days.
 - (iv) rigorous imprisonment for one and a half years and fine in the sum of Rs. 2000/□ for the offences under Section 120□B IPC r/w Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act. In default of payment of fine, he shall undergo simple imprisonment for 60 days.
- Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS)
- (v) rigorous imprisonment for three years and fine in the sum of Rs. 2000/□ for the offence under Section 420/511 IPC. In default of payment of fine, he shall undergo simple imprisonment for 60 days.
 - (vi) rigorous imprisonment for one year and fine in the sum of Rs. 1000/□ for the offence under Section 419 IPC. In default of payment of fine, he shall undergo simple imprisonment for 30 days.
 - (vii) rigorous imprisonment for three years and fine in the sum of Rs. 2000/□ for the offence under Section 468 IPC. In default of payment of fine, he shall undergo simple imprisonment for 60 days.
 - (v) rigorous imprisonment for one year and fine in the sum of Rs. 1000/□ for the offence under Section 471 IPC. In default of payment of fine, he shall undergo simple imprisonment for 30 days.

All the sentences shall run concurrently. Benefit u/s 428 CrPC be given to the convict.

Sentencing for convict P.K. Thirwani Convict P.K. Thirwani has been convicted for the offences u/s 120□B IPC r/w Section 420, 468, 471 IPC and Section 13(2) r/w Section 13(1)(d) of the PC Act, 1988.

He has been further convicted for the offences under Section 15 read with Section 13(1)(d) of the Prevention of Corruption Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) Act, 1988.

Accordingly, convict P.K. Thirwani is sentenced to undergo:

(i) rigorous imprisonment for three years and fine in the sum of Rs. 2000/□ for the offence under Section 120□B IPC r/w Section 420 IPC. In default of payment of fine, he shall undergo simple imprisonment for 60 days.

(iii) rigorous imprisonment for three years and fine in the sum of Rs. 2000/□ for the offence under Section 120□B IPC r/w Section 468 IPC. In default of payment of fine, he shall undergo simple imprisonment for 60 days.

(iv) rigorous imprisonment for one year and fine in the sum of Rs. 1000/□ for the offence under Section 120□B IPC r/w Section 471 IPC. In default of payment of fine, he shall undergo simple imprisonment for 30 days.

(v) rigorous imprisonment for two and a half years and fine in the sum of Rs. 2000/□ for the offences under Section 120□B IPC Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act. In default of payment of fine, he shall undergo simple imprisonment for 60 days.

(vi) rigorous imprisonment for one year and fine in the sum of Rs. 1000/□ under Section 15 r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988. In default of payment of fine, he shall Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) undergo simple imprisonment for 30 days.

All the sentences shall run concurrently. Benefit u/s 428 CrPC be given to the convict.

Sentencing for convict U.S. Bhatnagar Convict U.S. Bhatnagar has been convicted for the offences u/s 120□B/420/468/471 IPC read with Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

He has been further convicted for the offences under Section 15 of the Prevention of Corruption Act, 1988 r/w Section 13 (1)(d) of Prevention of Corruption Act, 1988.

Accordingly, convict U.S. Bhatnagar is sentenced to undergo:

(i) rigorous imprisonment for three years and fine in the sum of Rs. 2000/□ for the offence under Section 120□B IPC r/w Section 420 IPC. In default of payment of fine, he shall undergo simple imprisonment for 60 days.

(iii) rigorous imprisonment for three years and fine in the sum of Rs. 2000/□ for the offence under Section 120□B IPC r/w Section 468 IPC. In default of payment of fine, he shall undergo simple imprisonment for 60 days.

(iv) rigorous imprisonment for one year and fine in the sum of Rs. 1000/□ for the offence under Section 120□B IPC r/w Section 471 Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) IPC. In default of payment of fine, he shall undergo simple imprisonment for 30 days.

(v) rigorous imprisonment for two and a half years and fine in the sum of Rs. 2000/□ for the offences under Section 120□B IPC Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act. In default of payment of fine, he shall undergo simple imprisonment for 60 days.

(vi) rigorous imprisonment for one year and fine in the sum of Rs. 1000/□ under Section 15 r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988. In default of payment of fine, he shall undergo simple imprisonment for 30 days.

All the sentences shall run concurrently. Benefit u/s 428 CrPC be given to the convict.

Copy of the judgment as well as copy of order on sentence be supplied to all the convicts free of cost. File be consigned to record room.

Announced in the open court on this 12th day of January, 2017 (SANJAY KUMAR AGGARWAL) SPECIAL JUDGE□II (P.C.ACT), CBI ROHINI COURTS, DELHI.

J u d g m e n t C B I V s N a r a y a n D i w a k a r e t c . (G O D R E J C G H S)
CBI Vs Narayan Diwakar etc. (Godrej CGHS) CBI Case No.: 29/2016 12.01.2017 Present:
Sh. N.P. Srivastava, Ld. Sr. PP for the CBI.

All the convicts in person.

Sh. S.K. Bhatnagar, Ld. Counsel for convicts U.S. Bhatnagar and P.K. Thirwani.

Sh. Abhishek Prasad, Ld. Counsel for convict Gokul Chand Aggarwal.

Vide separate order of the even date, order on sentence announced in the open court.

All the convicts namely Gokul Chand Aggarwal, U.S. Bhatnagar and P.K. Thirwani have moved separate applications seeking suspension of execution of sentences imposed on them and for grant of bail.

I have heard ld. Sr. PP for CBI and convicts on their respective applications. All the convicts have deposited the fine imposed upon them.

Accordingly, acting u/s 389 (3) CrPC, all the convicts persons be released on bail on furnishing personal bonds in the sum of Rs. 10,000/□ each with one surety in the like amount each for a period of 60 days from this date for affording them to present an Judgment CBI Vs Narayan Diwakar etc. (GODREJ CGHS) appeal and obtain the orders of the Hon'ble Appellate Court under Sub Section 1 of Section 389 CrPC and till then their respective sentences shall remain suspended. Bail bonds furnished by all the convicts and accepted.

Copy of the judgment and order on sentence supplied to all the convicts free of cost. Copy of this order also supplied to all the convicts at their request.

Ahlmad is directed to page and book mark the file so as to enable the digitization of the entire record. File be consigned to record room.

(Sanjay Kumar Aggarwal)
12.01.2017

Special Judge□II (PC Act), CBI,

Rohini Courts, Delhi