IN THE COURT OF DIG VINAY SINGH, SPECIAL JUDGE (PC ACT), CBI-09 (MPs/MLAs CASES), ROUSE AVENUE DISTRICT COURT, NEW DELHI.

CNR No. DLCT11-000937-2024
(CBI /118/2024)
PS. CBI/EOU-IV/EO-II/ND
RC No. 06(E)/2022

CBI

Versus

A-1 **S. Bhaskararaman** S/o Sh. N. Subramaniam

A-2 **Karti P. Chidambaram S**/o Sh. P. Chidambaram

A-3 **M/s Talwandi Sabo Power Ltd.**

A-4 **M/s Bell Tools Ltd.**

A-5 **Viral Mehta** S/o Sh. Navnit Mehta

A-6 **Anup Agarwal** S/o Sh. Satya Narain Agarwal

A-7 **Mansoor Siddiqi** S/o Sh. Zahid Ali Siddiqi

A-8 **Chetan Srivastava** S/o Sh. Dhirendra Bahadur Shrivastav

Date of Institution: 01.10.2024
Date of arguments: 05.12.2025
Date of order: 23.12.2025

Order on Charge

1. The **six individual accused** persons named above and the **two companies** have been chargesheeted for the offences of Criminal Conspiracy, Demand and Acceptance of Illegal Gratification of ₹50 Lakhs, Destruction of Evidence, Cheating, Forgery for Cheating, using Forged Document(s), and Falsification of Accounts, punishable under sections **120B, 204, 420, 468, 471, 477A of the IPC, and Sections 8 & 9 of the PC Act, 1988**.

1.1. In addition to the six individual accused, one Vikas Makharia, who was initially identified as an accused, was granted a pardon and became an **approver**. His name is therefore mentioned in Column No. 12 of the charge sheet, and is a listed witness.

Scope at the stage of Charge

2. Since the stage is that of deciding charges, it be noted that it is well settled in law that at this stage, the Court need not weigh and sift through the evidence as if passing a judgment**;** a mini-trial is not required, and if the materials collected by the Investigating Agency reflect strong suspicion, that alone suffices to frame charges. At this stage, the Court cannot sift the evidence forming a part of the charge sheet to separate the grain from the chaff. The Judge has merely to sift the evidence to find out whether or not there is sufficient ground for proceeding. At this stage, the Court does not need to evaluate the truthfulness or veracity of the material presented before it. The Court need not even determine whether the evidence is sufficient to support a conviction. Those considerations will require attention once the evidence is recorded. At this stage, the court has to merely consider the broad probabilities, the total effect of the evidence and documents produced, any basic infirmities in the case, and so forth. However, this does not entitle the court to make a roving inquiry into the pros and cons. At this stage, the probative value of the material on record cannot be assessed, and the material presented by the prosecution has to be accepted as true. The defence of the accused cannot be examined at this stage under Section 250 of BNSS (Section 227 Cr.P.C.). The Code does not grant the accused the right to produce any document at the charge-framing stage. During this

stage, the accused's submission should be limited to the material provided by the prosecution. The established principle is to rely on the materials presented by the prosecution, both in oral statements and documentary evidence, and to act upon them without subjecting them to cross-examination, assuming in favour of the prosecution. *(**Reliance;** K. H. Kamaladini v. State 2025:INSC:745**;** M.E. Shivalingamurthy v. CBI, (2020) 2 SCC 768**;** State of Orissa v. Debendra Nath Padhi (2005) 1 SCC 568**:** State of J&K v. Sudershan Chakkar (1995) 4 SCC 181**;** P. Vijayan v State of Kerala (2010) 2 SCC 398**:** State of Rajasthan v. Fatehkaran Mehdu, (2017) 3 SCC 198**;** State v. S. Bangarappa, (2001) 1 SCC 369**:** Akbar Hussain v. State of J&K, (2018) 16 SCC 85**;** Mauvin Godinho v. State of Goa, (2018) 3 SCC 358***)*; *Sajjan Kumar Vs. CBI (2010) 9 SCC 368**;** Dilawar Balu Kurane Vs. State of Maharashtra (2002) 2 SCC 135**;** Ram Prakash Chadha Vs. State of UP (2024) 10 SCC 651**;** Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia (1989) 1 SCC 715 and Tuhin Kumar Biswas Vs. State of West Bengal 2025:INSC:1373).* A few of which are also relied upon by the accused in this case.

2.1. With that legal principle in mind, let the material be examined to determine whether there is any basis to frame charges.

Brief Facts

3. As per the chargesheet, the facts of the case, detail an alleged conspiracy, demand, and acceptance of a ₹50 lakh bribe. This payment was made in 2011 to obtain permission from the Ministry of Home Affairs (MHA) to re-use Project visas (PVs) for **A-3** M/S Talwandi Sabo Power Limited (**TSPL**), in violation of the MHA's existing guidelines and provisions. **TSPL**, a wholly owned subsidiary of M/s Sterlite Energy Limited (SEL), was collaborating with M/S Shandong Electric Power Construction Corporation (SEPCO) on a 1980 MW thermal power plant in

Mansa District, Punjab. **TSPL** was initially a Special Purpose Vehicle (SPV) wholly owned by PSEB, incorporated on 05.04.2007, before all shares were transferred to M/s SEL via a Share Purchase Agreement on 01.09.2008.

3.1. Due to project delays starting in 2009, which risked incurring significant penalties under Article 4.6 of the Power Purchase Agreement (PPA), **TSPL** needed additional manpower and Chinese experts. MHA guidelines (Circular No. 387, dated 05.10.2010) specified that **TSPL**, based on its capacity of three 660 MW units, was only eligible for 187 PVs. An additional 37 Visas could have been authorised if a Flue Gas Desulphurization System (FGD) had been sourced from abroad. However, Clause 30.00 of the Technical Contract between SEL and SEPCO stated that this system was outside the scope. It was also not installed. Despite being limited to 187 visas and facing restrictions on reusing visas, **TSPL** had allegedly received 263 visas by misrepresenting the project as four units instead of three and falsely claiming the FGD system. Additionally, no approval had been sought from the Ministry of Labour & Employment for the additional visas required, in violation of visa rules. Allegedly, several letters signed by **A-8** exaggerated the plant's capacity to obtain visas fraudulently.

3.2. **TSPL**, along with employees **A-5 Viral Mehta (**Vice President and Construction Head**)**, **A-6 Anup Aggarwal (**CFO**)**, and **A-7 Mansoor Siddiqi (**Project Head and Director**)**, conspired with **A-2 Karti P. Chidambaram**, the son of the then Home Minister, Mr P. Chidambaram, and **A-1 S. Bhaskaraman**, who allegedly is **A-2**'s close aide and CA, to obtain additional visas to speed up the project. **Vikas Makharia**

(turned approver), an Associate Vice President and liaison for **TSPL** was deputed by **A-7** to oversee and expedite the project.

3.3. The approver allegedly approached **A-1** to help obtain additional visas. After a meeting with **A-1 and A-2** in Chennai in June 2011, **A-1** instructed the approver to send a note detailing the requirements. On 27.06.2011, the approver emailed **A-1** a "*Note on Visa*" requesting 800 additional Chinese VISAs beyond the 219 sanctioned. Thereafter, **A-1** demanded an illegal bribe of ₹50 lakhs to secure approval for the reuse of PVs. Between 18 & 22 July 2011, the approver visited Beijing, met with the First Secretary (VISA) to discuss issuing additional visas, and also exchanged emails with **A-1.** On 21.07.2011, before leaving Beijing, the approver emailed **A-5** with an attachment titled "*Visa/SEPCO Personnel Way Forward*," highlighting four issues, including employing a "*Chennai friend*" on a success fee basis and requesting ₹3 Lakhs for expenses plus ₹50 lakhs and taxes, to be paid by cheque. The "*Chennai friend*" was allegedly **A-2**. **A-5** replied that after the approver returned, they would discuss the amount with **A-7** and might as well include **A-6** in the discussion.

3.4. As 800 visas were deemed impossible, the approver was advised by **A-1** to seek MHA approval for reusing existing visas. The approver submitted a request letter dated 30.07.2011 to the MHA's Foreigners' Division, and a copy was sent to **A-1,** who forwarded it to **A-2**. After the copy was forwarded to **A-2**, the bribe demand was made to obtain approval. Following discussions with **TSPL** officials (**A-5**, **A-6**, & **A-7**), the approver assured **A-1** that the company was prepared to pay the bribe. On 27.08.2011, the approver sent **A-1** an email with a draft offer

letter proposing a payment of ₹50 lakhs, with the work to be completed by 30.08.2011.

3.5. MHA approved the reuse of PVs on 30.08.2011. The approver collected the permission letter dated 30.08.2011 from the Deputy Secretary (F), MHA, after receiving information from **A-1.** On 02.09.2011, the approver emailed **A-1** a copy of the MHA permission letter, saying, "*Respected Sir, we have received approval. Many thanks*". **A-1** forwarded this email to **A-2** approximately an hour later, and **A-2** allegedly read it within minutes. A printout of an email dated 02.09.2011, sent by the approver to **A-5** and **A-6**, was also found in the **TSPL** records. In this email, approver wrote, "*Due to your blessings and support, we have been able to secure approval of Re-Use Visas. A copy of the approval letter is enclosed herewith."* This email printout was found in **TSPL** records along with a "*note for approval*" dated 23.08.2011, debit note dated 05.09.2011, and a photocopy of an HDFC Bank cheque for ₹45 lakhs. The payment was made to **A-4 M/s Bell Tools Limited (BTL)** through this cheque. The email was also allegedly discovered in **A-5**'s email dump from **TSPL**'s server.

3.6. An approval note dated 23.08.2011, signed by the approver, **A-5**, **A-6**, and **A-7**, suggests a conspiracy among the accused. The ₹50 lakh bribe was paid through **A-4** (**BTL**). This was executed using two bogus invoices/debit notes dated 05.09.2011, one for ₹9 lakhs for "*Consultancy Services*" and another ₹41 lakhs as "*Out of Pocket Expenses*". **BTL** dealt primarily in industrial knives and related products and was never involved in VISA consultancy. **A-6**, the then CFO, processed these debit notes at **TSPL**. The payment was made by cheque from **TSPL** to

BTL, specifically an HDFC Bank cheque for ₹45 lakhs, paid on 01.10.2011.

3.7. Mr Sushil Morarka (now deceased), then Director of **BTL**, arranged the ₹50 lakhs cash from Dr Ramesh Kumar Kagzi, a Director of M/s Balaji Heart Hospital and Diagnostic Centre Pvt. Ltd., Mumbai. Dr Kagzi subsequently received the amount back through a bank transfer, supposedly as share application money. **A-1** collected the ₹50 lakh cash bribe from Mr Sushil Morarka at the **BTL** office in Mumbai, in the presence of Abhishek Morarka (LW-17). Thereafter, **A-1** called the approver to confirm receipt of the payment. Thereafter, the approver called **A-2** and thanked him, asking him to convey gratitude to Mr P. Chidambaram**;** **A-2** confirmed during this call that he had received the amount.

3.8. The investigation revealed that the MEA issued a total of 325 visas to **TSPL** for the project, which included 263 visas, 59 additional visas, and three replacement visas/reuse visas, despite the lack of provision for reusing visas.

3.9. Furthermore, **A-1** deleted relevant incriminating emails, leading to the destruction of evidence. The relevant MHA file regarding the reuse of PV for **TSPL** was unavailable because it had been weeded out.

3.10. The eight accused (**A-1** to **A-8**) have been chargesheeted based on these allegations.

Submissions of Both Sides

4. Arguments on the point of charge were advanced by Sh. Satish Garg, Ld. Senior Prosecutor for CBI, on one side. On the other side, arguments were presented by Ld. Mr. Jai Anant Dehadrai for **A-1,** Ld. Senior Advocate Mr. Siddharth Luthra for **A-2**, Mr. Vikas Pahwa Ld. Senior

Advocate for **A-3**, **A-5** & **A-7**, Mr. Manu Sharma, Ld. Senior Advocate for **A-6**, and Ld. Mr. Aditya Wadhwa for **A-8**. Written submissions were also filed by the prosecution and by **A-1** to **A-3**, **A-6**, and **A-7**. **A-4 BTL remained unrepresented**.

5. Most of the arguments presented on behalf of the accused, although made separately, were similar and can be grouped into certain categories. Arguments specific to each accused will be discussed when addressing their roles, if required, to avoid repetition. The common arguments are explained in detail below to avoid repetition.

5.1. The standard arguments are on the following points**:**

- *There is a procedural flaw in granting the pardon and non-compliance with section 306(4)(a) of Cr.PC. concerning the pardon granted, which vitiates the entire process.*
- *The approver is unreliable, and solely based on the statements of the approver without corroborating material, no charge can be framed.*
- *There is no motive for entering into any such conspiracy as alleged by the Prosecution, as an administrative clarification already existed, and there was no need for the accused persons to bribe anyone for the already existing practice.*
- *There is a chronological impossibility of the offence, for the reasons outlined under this argument below.*
- *There is a distinction between Employment Visas and PVs, which the prosecution conveniently ignores.*
- *There is no misrepresentation of the plant's capacity, as alleged, and the company made a genuine attempt to increase its capacity, which may not have fructified ultimately.*
- *No offence u/s 8 & 9 of the PC Act is made out, and the ingredients of those offences are not fulfilled as there is no inducement of any public servant**;** no public servant has been identified or charge-sheeted**;** the official process pre-approved the act, and the routine administrative approval has been sought to be converted into a case of corruption.*
- *In the absence of the concerned MHA decision file, which has been weeded out, the trial would be futile.*

- *There is no money trail, and the sequence of transfer of money sought to be alleged by the prosecution is discredited.*
- *There is commercial improbability of the manner of transaction sought to be presented by the prosecution.*
- *As to the procedural and evidentiary infirmities, it is argued that there is an inordinate delay in registration of the present case, and the digital evidence sought to be presented is unreliable.*
- *It is argued that there is no material whatsoever to show that any criminal conspiracy came into existence between the accused at any stage.*
- *There is an absence of grave suspicion, which is necessary for the purposes of framing a charge, and thus it is claimed that, based only on suspicion, charges cannot be framed.*

6. Additionally, **A-1** (S Bhaskaraman), a private individual, claims he was made a scapegoat for a decision that was already legally permissible. There is no evidence that **A-1** contacted or induced any public servant. Neither LW15 Vinod Kumar, nor LW18 G.V.V. Sarma states they were contacted, induced, or influenced by **A-1.** It is argued that the approver, in his statement U/s 164 of the Cr.P.C., merely says **A-1** asked him to send a note about what the approver seeks, there is no mention of money, gratification, or inducement in that statement**;** thus, the elements of Sec. 8 & 9, requiring demand or acceptance of gratification and inducement of a public official, are absent. It is also argued as to why **A-1** would involve **BTL** if there were any illegal gratification transactions involved, especially when the approver and director of **BTL** were related. **A-1** also points to contradictions in approvers' statements to show inconsistencies. **A-1** also challenges the statement of Mr. Abhishek Sushil Morarka, claiming that there are serious inconsisten-

cies therein. The central contradiction in Mr. Morarka's statements concerns two issues. Firstly, Mr. Morarka's account shifts from being based solely on second-hand information from his late father (Sushil Morarka), as he initially claimed that he was *"unaware"* of the details, to an eyewitness account stating, "*I was present in the office when the transaction took place."* Secondly, the recipient's identity changes from a general description given by his father to a spontaneous visual recognition of **A-1** at the CBI office on 28.05.2022, over a decade after the alleged event. The knowledge of the recipient's name is later attributed to the Investigating Officer. **A-1** relies on the case of *Narayan Chetanram Chaudary Vs. State of Maharashtra (2000) 8 SCC 457.*

7. Additionally, **A-2** (Karti P Chidambaram) raises numerous detailed challenges to the prosecution's case, primarily arguing that the charges are based on unreliable evidence, violated procedure, and lack substantiation for core allegations. **A-2** contends that the approver's statements should be disregarded because the procedures for granting the pardon were grossly violated. The approver's statement under Section 164 Cr.P.C. was recorded on 19.07.2022, while he was still an unpardoned accused, the pardon was granted only on 11.07.2024, in contravention of Section 306(1) of the Cr.P.C. Furthermore, since the approver is no longer facing a joint trial, his confessional statements are argued to be inadmissible under Section 30 of the Indian Evidence Act (IEA). **A-2** also highlights that the approver's multiple statements are vague, changing with improvements made, and lacks reliability. Crucially, the initial statement under Section 161 Cr.P.C. did not mention **A-2**, and the approver's subsequent statement does not mention any financial dealings

with **A-2**. **A-2** asserts that the prosecution's case against **A-2** hinges on three unsubstantiated claims**:** the alleged meeting in Chennai, a telephonic call, and the reading of an email (dated 02.09.2011). Regarding the alleged meeting in Chennai in June 2011 and the supposed telephonic call, **A-2** states there is no evidence whatsoever. Specifically, the prosecution has failed to produce call detail records (CDR) of conversations or location data. There are also no bills, including hotel, travel, or mobile locations or bills, to confirm the approver's trip to Chennai or to prove that **A-2** was present for the alleged meetings. The timing of the meeting remains unexplained, with no prior appointment, no correspondence with **A-2**, tickets, location data, or vouchers. The email dated 02.09.2011, which **A-2** allegedly read, is challenged as being unsubstantiated and inadmissible. Qua the emails, the central issue is the lack of a requisite certificate under Section 65B of the IEA. The existing Section 65B certificate only applies to internal emails among **TSPL** officials and does not cover the specific email related to **A-2**. The prosecution's assertion that **A-2** read the email is deemed mere speculation with no legal or forensic proof. A 'read receipt' alone cannot establish liability. Additionally, the prosecution failed to follow established protocols for collecting digital data, such as following the CBI Manual or obtaining hash values of the collected data. No investigation of service providers or the actual owners of email accounts has been conducted. No forensic analysis of emails or call detail records has been performed. The documents and emails collected in another case of 'INX Media' are filed here. There are no documents linking **A-2.** The approver's statement is vague**;** he tried to identify a *"Chennai friend"* as **A-2** without

providing any supporting evidence. **A-2** argues that the application of Sections 8 and 9 of the PC Act is premature and unsupported. For these sections to apply, the prosecution must at least identify the specific public servant who was intended to be or was influenced. **A-2** maintains that there is no evidence of contact within the MHA or documents linking **A-2** to the visa processing or influencing MHA decisions. Crucially, the prosecution has not traced or recovered any money that reached **A-2**. There is no evidence of a conspiracy between **A-2** and others. **A-2** also argues that Dr Kagzi's alleged statement is neither relied upon nor listed among unrelied documents. Therefore, either that statement was not recorded, or it has been concealed from the accused. In either case, especially when Dr Kagzi is not even a cited witness, the story of generating cash as payment of the alleged bribe is unsubstantiated, and in this regard, the statement of Sh. Abhishek Sushil Morarka is at best hearsay. Moreover, Abhishek Morarka's statements are riddled with contradictions and are entirely unreliable.

7.1. On the point of principles of discharge, **A-2** relies upon the case of *State of Tamil Nadu Vs. R. Soundirarasu & Ors. (2023) 6 SCC 768**;** Dilawar Balu Kurane Vs. State of Maharashtra (2002) 2 SCC 135**;** State Vs. Dr Anup Kumar Srivastava (2017) 15 SCC 560**;** Niranjan Singh Karam Singh Punjabi Vs. Jitendra Bhimraj Bijjaya & Ors. (1990) 4 SCC 76 and Tuhin Kumar Biswas Vs. State of West Bengal 2025: INSC 1373,* which is pretty well settled and already mentioned above.

7.2. **A-2** also relies upon the case of *Dipakbhai Jagdishchandra Patel Vs. State of Gujarat & Anr. (2019) 16 SCC 547,* in addition to the case of *Tuhin Kumar Biswas (supra)*, on the point that strong suspicion that is required for

framing charge must be the suspicion which is premised on some material which commends itself to the Court as sufficient to entertain the prima facie view that the accused has committed the offence and which can be translated into evidence.

7.3. **A-2** relies upon the case of *Neeraj Dutta Vs. State (2023) 4 SCC 731 and Suraj Singh @ Deepak Singh Vs. State of Jharkhand, a Judgment dated 24.03.2021 passed by Jharkhand High Court in Criminal Appeal (SJ) No. 663/2020,* on the point that there is no demand & acceptance of illegal gratification in this case, which is a must.

7.4. As to the absence of the necessary ingredients of Sections 8 & 9 of the PC Act, **A-2** also relies upon the cases of *Queen v. Setul Chunder Bagchee 1865 Crl WR 69**;** Praful Pandurang Patil Vs. State of Maharashtra (Judgment dated 25.11.2021 of Bombay High Court in Crl. Appeal No. 1118/2013 and Jothiramalingam @ Jothi Vs. State 2001 SCC OnLine Mad 1440.*

7.5. As to what constitutes inducing for the PC Act, reliance is placed upon the case of *Kalya Singh Vs. Genda Lal & Ors. (1976) 1 SCC 304*.

7.6. In support of the argument that the CDR of call details between the accused and the approver is missing, reliance is placed upon the case of *Suresh Kumar Vs. Union of India 2014 SCC OnLine SC 1833**;** Shyam Gupta & Ors. Vs. State 2023 SCC OnLine Del 1490 and**;** Irfan Abdul Majid Memon Vs. State of Gujarat (Judgment dated 27.12.2018 in Crl.Rev. App. No. 1524/2018*.

7.7. In support of the argument that the necessary certificates U/s 65B of the IEA, corresponding to Sec 63 of the BSA, are lacking in the present matter, reliance is placed by **A-2** upon *Sonu Vs. State of Haryana (2017) 8 SCC 570 and Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal (2020) 7 SCC 1.* **A-2** also relies upon the relevant extracts from *CBI Manual 2020, Digital Evidence Investigation Manual, Central Board of Direct Taxes, Saravana*

Selvarathnam Retails Pvt. Ltd. & Ors. Vs. CIT 2024 SCC OnLine Mad 953 and; Umesh Vs. State of Karnataka Crl. A. No. 2760/2012, on the point that digital evidence collected in the present matter is not as per requisite standards and therefore must be discarded even at this stage.

7.8. **A-2** also relies upon the case of *Dilawar Balu Kurane Vs. State of Maharashtra (2002) 2 SCC 135; Ashok Kumar Vs. State (Delhi Admn.) 2008 (101) DRJ 322 and; Virender Singh Vs. State (Govt. of NCT of Delhi) 2025 SCC OnLine Del 1238,* in support of the plea that there is a delay in recording statements of witnesses, particularly the approver and Abhisekh Morarka.

7.9. As to the ingredients of Sec. 120B & 420 of IPC, **A-2** relies upon *CBI Vs. K. Narayana Rao (2012) 9 SCC 512 and; Vijay Kumar Ghai & Ors.Vs. State of WB (2022) 7 SCC 124,* with which there can be no dispute. However, the question is whether these judgments can help **A-2** at this stage of the matter.

7.10. In support of the claim that approver evidence is weak, **A-2** relies on *Sarwan Singh v. State of Punjab 1957 SCC OnLine SC 1*, *Somasundaram @ Somu Vs. State (2020) 7 SCC 722*, *A. Srinivasulu Vs. State (2023) 13 SCC 705*, and *Pramod Kumar Vs. State 2024 SCC Online Mad 3060.*

7.11. **A-2** also relies upon the case of *Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri & Anr. (2011) 2 SCC 532,* on the point that hearsay evidence is inadmissible, which is also the undisputed position in law.

8. Additionally, **A-5 (Viral Mehta)** also presented arguments.

8.1. The key element of the argument of **A-5** focuses on the lack of culpability, claiming that he was not responsible for Visa management and he had no knowledge of any alleged conspiracy or dealings related to

illegal payments. He claims that the approver acted unilaterally, informing **A-5** only later about the payments required for the already-applied-for Visa permission. It is argued that any signatures **A-5** affixed to internal financial documents were routine under the company's financial protocol and do not imply awareness of any underlying illegal transactions. It is claimed that there is a complete absence of any direct communication linking **A-5** to the other accused / the approver. **A-5** claims that the statement of the approver does not reflect that he ever informed **TSPL** officials, including **A-5**, that **A-1** had allegedly spoken to the father of **A-2**. Instead, the statement of approver reflects that the information relayed was limited to two points, viz. (i) a payment had to be made to **BTL**, and (ii) this payment was for Visa reuse. It is argued that the timeline established by the approver's statement shows that he acted independently. He had already applied for the reuse permission (30.07.2011) and had spoken with **A-1** before informing **A-5** and other officers of the need for payment, indicating that the decisions were made without **A-5's** prior knowledge or consent. It is also argued that the prosecution does not allege that **A-5** ever spoke with or exchanged e-mails with **A-1, A-2** or the father of **A-2**. The approver did not include **A-5** in the "CC" or "BCC" of any e-mails the approver had sent to **A-1,** effectively isolating **A-1** from their dealings. It is argued that **A-5**'s professional duties did not include handling visa-related issues. The responsibility was explicitly assigned to other individuals within the company, as evident by internal e-mails. So far as a few e-mails related to Visa, which were marked to **A-5**, are concerned, **A-5** claims that the

same were for informational purposes only. His primary role was coordinating construction activities with the partner company, SEPCO and the copies of e-mails to him were merely necessary to ensure "ease of communication with SEPCO", and do not indicate he was responsible for the Visa process or that he was aware of the conspiracy. As to the nature of the signature on the Note for Approval (NFA), **A-5** argues that it was a routine procedural act that does not imply criminality. The signature appended on the NFA was in accordance with standard financial protocols followed by **TSPL. A-5** and other officers signed numerous NFAs and payment vouchers as part of their regular duties, which was a routine administrative function**;** and the signatories were not expected to know the intricate details of every underlined transaction for which they provided routine approval, particularly after seeing the corresponding invoices. It is claimed that their role was one of procedural oversight, not forensic investigation.

9. Additionally, **A-6 (Anup Aggarwal)** made the following submissions.

9.1. He too claims he lacked prior knowledge of any unlawful agreement, asserting that internal e-mails regarding the conspiracy were often marked "confidential" and did not include him, reflecting deliberate exclusion from sensitive communications. During the alleged conspiracy period (June to October 2011), **A-6** was included in only a small portion of 45 e-mails, and specific sensitive e-mails dated 21st & 22nd June 2011 were not marked to him. Mails dated 19th & 20th July 2011 contained explicit instructions for secrecy, using phrases such as *"VISA confidential"***,** *"VISA matters need to be kept very confidential"***, and** *"not to be discussed in any conference call or forum considering the sensitivity of*

the issue". Regarding the "*thank you*" e-mail dated 02.09.2011, in which the approver thanks **A-6** for "*blessings and support*," **A-6** claims he was unaware of the reasons for the thanks and had no context for it. He was not privy to any prior discussions on visa approval and did not even respond. He also claims to be unaware of the approver's trip to Beijing. In this regard, he refers to an e-mail dated 23.07.2011 concerning the approver's travel expenses, in which he advised the approver to follow proper procedures. Therefore, he asserts he was unaware of specific visa actions.

9.2. **A-6** maintains his involvement was limited to routine tasks, consistent with his responsibilities as CFO, such as signing approval notes and authorising payments after standard audits and processing, which was within normal operational boundaries. He asserts he believed the request for services rendered by **BTL** to **TSPL** was legitimate, noting he merely appended "*Pl. Pay*" after receiving payment advice from junior staff, making his approval the final step, not the initial one. This routine vendor payment process was confirmed by witnesses Satbir Singh (LW10) and Tarun Kumar (LW11), and an internal auditor reported, "*The project team has recommended the above debit note for payment*".

9.3. Furthermore, **A-6** points to his prior action of sharing the UK Bribery Act with the **TSPL** organisation (28.04.2011) to demonstrate his commitment to lawful practices, as also to certain other emails to emphasise that he was never in favour of corrupt practices.

9.4. **A-6** also heavily challenges the approver's oral testimony, arguing that the approver's statements show a pattern of fabrication by adding increasingly incriminating details in subsequent versions. He points out

that in Statement 1 (dated 30.05.2022), the approver mentions that **A-6** was on a conference call discussing contacts and vetted an approval note. In Statement 2 (dated 31.05.2022), the approver states that everyone, including **A-6**, knew about political connections and that false invoices were used for cash payments. In Statement 3 (dated 24.06.2022), the approver specifically claims "*It was Mr. Anup Agarwal, CFO, who informed that the company had no provision for cash payment*." In Statement 4 (under Section 164 Cr.P.C.), the approver becomes vague, stating only that "*He informed Mr. Viral Mehta and Mr. Anup Agarwal that Rs.50 lakh is to be given to Bell Tools*." He argues this statement lacks details about when, where, and how the information was provided and whether **A-6** responded, making it unreliable.

9.5. Regarding the conspiracy, **A-6** contends there is no direct or circumstantial evidence of his agreement or knowledge, emphasising that he signed the relevant approval note on 08.09.2011, after the alleged conspiracy had purportedly concluded on 30.08.2011. He argues that simply clearing a bill as part of his official duties cannot establish liability and claims he is being unfairly targeted through selective charging, as junior staff and auditors involved in verifying the payments are not chargesheeted. It is argued that Balaji Hospitals' investment in **BTL** occurred well before **BTL** submitted bills to **TSPL**, and the payment credited to **BTL** from **TSPL** on 01.10.2011, via cheques dated 21.09.2011, confirms the authenticity of the transaction between Balaji Hospitals and **BTL**.

9.6. **A-6** relies upon the cases of *Yogesh Vs. State of Maharashtra (2008) 10 SCC 394; Union of India Vs. Prafulla Kumar Samal and Anr. (1979) 3 SCC 4; P. Vijayan*

*Vs. State of Kerala (2010) 2 SCC 398**;** Central Bureau of Investigation Vs. Srinivas D. Sridhar (2025) 1 SCC 378 and**;** Rita Handa Vs. CBI 2008 SCC OnLine Del 878*, on the point of considerations at the stage of framing of charge and the principles governing discharge, with which there cannot be any disagreement and those principles have already been mentioned in this order above.

9.7. As regards the alleged change of version presented by the approver in his statements u/s 161 Cr.PC recorded on various dates and in his statement u/s 164 Cr.PC, **A-6** relied upon *State Vs. Dr. Gajraj Singh 2017 SCC OnLine Del 6672**;** State Vs. Ashok Kumar Verma 2023 SCC OnLine Del 1948 and**;** State (Govt. of NCT of Delhi) Vs. Nitin 2019 SCC OnLine Del 7239*.

9.8. As to the criminal conspiracy, reliance is placed by **A-6** upon the cases of *State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru (2005) 11 SCC 600**;** Rakhal Chandra Das and others Vs. Emporer 1930 SCC OnLine Cal 153**;** Pran Krishna Chakravarty and others Vs. Emperor 1934 SCC OnLine Cal 300 and**;** Kehar Singh and others Vs. State 1988 SCC (Cri) 711.*

9.9. **A-6** also relies upon the case of *Dilawar Balu Kurane (Supra),* as to the stage of charge and that when two views are possible, the view in favour of the accused has to be preferred.

9.10. Relying on *Ashok Kumar Gupta Vs. Central Bureau of Investigation 2025:DHC:6883*, **A-6** submits that, as CFO, merely the clearance of the bill raised by **BTL** cannot create suspicion against **A-6**, as it was within his institutional mandate, and before **A-6's** clearance, the established procedure in the company for bill clearance was followed. Also argued is that when other persons from the company who were responsible for

first verifying and approving the bill before the ultimate signatures of **A-6** have not been chargesheeted, **A-6** cannot be selectively prosecuted.

9.11. **A-6** relies upon the cases of *Sri Vinay Rajashekharappa Kulkarni and Ors. Vs. CBI and Ors., decided by the High Court of Karnataka on 04.12.2024 in Crl. Petition no.12176 of 2024; DoE Vs. Rajiv Saxena (2020) SCC Online Del 719; CBI Vs. Narendra K. Amin and Anr., Crl. Rev Petition no.640 of 2016 decided by Hon'ble Bombay High Court and Horilal Mohanlal Gond Vs. Emperor AIR 1940 Nag 218,* on the point of irregularity in the procedure adopted while granting pardon to the approver of this case.

9.12. **A-6** also cites precedents establishing that the confession of a co-accused or an approver requires corroboration and that the Court must first examine other material, not the approver's statement. These precedents include *Haricharan Kurmi Vs. State of Bihar AIR 1964 SC 1184*, *Karan Talwar Vs. State of Tamil Nadu 2024 INSC 1012*, *Suresh Budharmal Kalani @Pappu Kalani Vs. State of Maharashtra (1998) 7 SCC 337*, *Dipakbhai Jagdishchandra Patel Vs. State of Gujarat (2019) 16 SCC 547*, *Banu Singh and others Vs. King Emperor (1905-06) 10 CWN 962*, *Laxmipat Choraria and others Vs. State of Maharashtra 1967 SCC OnLine SC 30*, and *Laxmandas Chaganlal Bhatia and Ors. Vs. the State 1966 SCC OnLine Bom 17*.

9.13. Furthermore, **A-2** and **A-6** rely on *P Krishna Mohan Reddy Vs. State of Andhra Pradesh 2025 INSC 725* concerning the insufficiency of material based on an approver's statement for framing a charge.

10. On behalf of **A-8 (Chetan Srivastav),** it is argued that against **A-8**, there is no role attributed to him that he was part of any conspiracy regarding the discussion or payment of a bribe and other things. All that is alleged against him is that he wrote certain letters to the Visa Officer at the Indian Embassy, Beijing, in which the capacity of the project was

stated as 4 X 660 MW, instead of 3 X 660 MW. He argues that besides **A-8**, other letters were written by three other persons on 13.04.2015, 31.12.2015 and 19.04.2016, namely Amit Jain, Debabrat Mishra and J. K. Mukherjee, wherein the similar capacity of 4 X 660 MW was mentioned. Still, the prosecution chose not to charge sheet them and instead made one of them, namely Mr. Amit Jain, a witness LW51. It is argued that the mention of the capacity by **A-8** in the ten communications to the Indian Embassy at Beijing contains only two letters, written in 2011, and the rest are from 2013 and 2014, i.e., after the alleged commission of the offence. He also argues that **A-8** noted that capacity, based on the records of the company, wherein there was a proposal to enhance the capacity, and therefore, there is no false misrepresentation given by **A-8** in the two letters written in 2011. The two letters merely sought an extension of the Visas, and it is nobody's case that the Embassy people in Beijing or any other public servant were induced to do or forbear from doing any act based on those two letters.

10.1. It is also argued that, along with the letters, supporting documents in the form of contracts between the companies were attached, as required, and as per the rules of MHA, such applications were considered based on the documents attached to the applications, not merely on the applications. Therefore, when the embassy officials/MHA considered the documents themselves, there can be no inducement attributed to **A-8** merely from the contents of the letters.

10.2. It is argued that no additional Visa was issued based on the letters of **A-8**, and therefore, there is no question of cheating, as alleged. It is claimed that, in addition to contracts between the companies, there are

also **TSPL** board meetings that include a proposal to enhance capacity**;** therefore, **A-8** did not misrepresent any fact before any authority.

10.3. **A-8** relies upon the case of *Jupally Lakshmikantha Reddy Vs. State of Andhra Pradesh & Anr. 2025:INSC:1096.*

11. All the arguments of **A-3 (TSPL)** and **A-7 (Mansoor Siddiqi)** are addressed under common arguments or those presented by other accused. They argue that the prosecution's case is based on a fictional motive, misinterpretation of visa laws and regulations, and MHA circulars**;** there is no evidence of criminal conspiracy as the actions taken by **TSPL** in seeking visas and their reuse were legally permissible, aligned with established administrative practices**;** there was no abuse of official position or corrupt means by any public servant**;** and, in the absence of essential elements of the alleged offences, the accused are entitled to be discharged.

12. On the other hand, **the prosecution argues** that substantial evidence, including email correspondence between the accused persons and the statement of the approver, sufficiently establishes a prima facie case of criminal conspiracy and other offences under IPC as well as Sections 8 and 9 of the PC Act. This evidence warrants the continuation of the trial against all the accused. The prosecution alleges that instead of following proper and legal channels, the accused persons engaged in a scheme involving misrepresentation and bribery.

12.1. Specifically, the prosecution highlights the Board Minutes from 2011 and contends that these Minutes reveal a significant gap between the planned and actual progress of the project. These delays prompted **TSPL** to urge its Chinese contractor, M/S SEPCO, to accelerate work,

creating an urgent need for additional manpower that served as a motive for bribery. Citing email correspondence between **TSPL** employees and the accused person, sent between June and September 2011, it is argued that these emails reflect a pressing need for 200 to 300 additional visas for Chinese personnel, permission to reuse existing PVs, etc.

12.2. The prosecution outlines a sequence of events constituting a bribe payment. It points out that in the e-mail dated 23.07.2011 sent by the approver to **A-5** with an attachment, titled *"visas for SEPCO personnel way forward,"* the proposal for gratification is incorporated**;** in the note, the approver proposed, *"We appoint Chennai Friend on success fee basis. He wants Rs 3 lakhs towards reimbursement of expenses plus Rs 50 lakhs plus service tax, if any, by cheque, for which they will raise a consulting fee from the company."*

12.3. It is argued that thereafter, internal deliberation took place within **TSPL**, and the payment structure was decided. Referring to an email from **A-5** to the approver on 23.07.2011, it is claimed that it indicates that a discussion would be held with **A-7** and that **A-6** be included in the "*negotiation committee*." The email also discussed the potential amount of ₹1 crore (₹50 lakhs for 75 additional visas and ₹40 lakhs for the reuse of 263 visas). The final agreed-upon payment of ₹fifty lakhs was processed through a fraudulent invoice from **BTL**.

12.4. LW17 Abhishek Sushil Morarka, a Director of **BTL**, stated that his company has no involvement in visa services and that the invoice was issued under the approver's guidance. He further stated that fifty lakhs received from **TSPL** was paid in cash to a "*South Indian person*" who collected it on behalf of the father of **A-2**, and the collector of the

amount was later identified as S. Bhaskaraman, i.e., **A-1.**

12.5. After permission for visa re-use was granted on 30.08.2011, **A-5** sent an e-mail to SEPCO on 13.09.2011, stating that the additional visas and reusability had been achieved with "*tremendous effort, strategic actions, and huge cost.*"

12.6. The prosecution alleges that the accused falsely introduced a fourth unit (1 X 660 MW) and an FGD plant into official correspondence to increase the project's perceived scale. This is supported by an email from Sandesh Mishra (LW20), on 07.06.2011, suggesting they could *"have projected two projects (3 X 660 MW + 1 X 660 MW) at one location*" to increase the visa count. Letters from **A-8** to the SSP Mansa, Punjab, changed the plant's capacity from the correct 1980 MW in 2010 to 2640 MW in 2011. Multiple official records from **TSPL** and others contradict the claim of a fourth unit. In the agreements between **TSPL** and SEPCO, the plant specified is 3 x 660 MW. The Ministry of Environment, Forest, and Climate Change granted clearance only for the 1980 MW (3 x 660 MW) project. PSBE records show no approval or reference to a fourth plant. **TSPL**'s Board Meeting dated 19.01.2013 records the discontinuance of the fourth unit as resolved on 20.10.2012. Witness B.K. Sharma (lW2), a Director of **TSPL**, states that the FGD system was not mandatory, was not part of the SEPCO contract, and has not been installed to date. The Ministry records show that the directions for FGD installation were issued only in 2017. The prosecution thus claims that the fourth unit and the FGD plant were fabricated solely to mislead authorities and to obtain more visas.

12.7. The prosecution further argues that **TSPL** obtained far more visas than

it was legally entitled to and then secured a non-existent "reuse" permission. Through misrepresentation, the company secured an additional 44 visas beyond the 219 PVs already held by **TSPL**, bringing the total to 263, whereas it was entitled to far fewer. Despite this, on 30.08.2011, permission to reuse 263 visas was granted, despite the prosecution's claim that there is no such provision in the visa manual.

12.8. The core evidence relied on by the prosecution includes e-mail correspondence between the approvers, **A-1, A-5**, **A-6**, **A-7**, and **A-2;** the statements of the approver**;** e-mails extracted from **A-1** 's accounts**;** and official documents of **TSPL**.

Analysis, Reasoning and Conclusion

13. Let the common arguments from the accused persons be addressed first, broadly categorised under the following heads.

Defect in Grant of Pardon, and Insufficiency of Approver's Statement

14. Firstly, the grant of pardon is challenged, alleging procedural flaws in the granting process, allegedly rendering the approver's statement as that of an unpardoned accomplice. It is argued that the legislative scheme u/s 306 Cr.P.C. (Sec 343 of BNSS) requires a pardon to be granted before statements are recorded. Particularly, Sec. 306(4)(a) Cr.PC. (Sec. 343(4)(a) BNSS) mandates that after a pardon is granted and accepted by the approver, his statement should be recorded before the Magistrate, and his evidence cannot be directly recorded during the

trial. In this case, there was a gap of over two years between the statements already made by the approver and the subsequent grant of pardon. The pardon granted to the approver is dated 23.07.2024, whereas his statement u/s 164 Cr.P.C. (Sec. 183 of BNSS) is dated 19.07.2022. It is argued that Makharia was an unpardoned accomplice when he made his initial incriminating statements u/s 161 and 164 of the Cr.P.C. (Sec. 180 & 183 of BNSS); he was an accused seeking pardon. Therefore, those statements were self-serving, made to shift blame and secure his own release, and at most fell within the scope of Sec 30 of the IEA (24 of BSA 2022). However, since Makharia is not being jointly tried, even section 30 of the IEA cannot be invoked.

14.1. Relying on the case of *Horilal Mohanlal (supra)*, it is argued that the tender of pardon must precede the making of full and true disclosure, not follow it.

14.2. The reliance placed by **A-6** on this judgment is misplaced for the following reasons. The case involved an appeal against the conviction of Horilal, who was the approver. He was arrested on 06.11.1938. His first statement was recorded by the learned Magistrate on 12.11.1938, and another was recorded by a Sessions Court as a witness. He was granted a pardon on 17.11.1938. Later, Horilal was tried for failing to make a true and complete disclosure as required, and his initial statement (recorded by the Magistrate) and his second statement (recorded by the Sessions Judge) were substantially contradictory. He was then tried and found guilty by the Trial Court, heavily relying on his earlier statement to the Magistrate as Ext. P25 for his conviction. However, the High

Court held that the said statement (Ext. P25) could not be used to convict him, as it was made before the pardon was granted. Paragraph 5 of the judgment clarifies that the High Court is referring to the disclosure expected from the approver when examined as a witness in an inquiry or trial. It was a case under the old Cr.PC of 1898, and the applicable provisions were Section 337 of the Cr.PC. In that judgment, it was specifically observed that the statement given by the convict/approver on 12.11.1938 could not be used against him at trial, and that the remaining evidence was too flimsy to sustain a conviction. The contention that Horilal's statement, recorded before the grant of a pardon, fell under section 339(2) of the Cr.PC was rejected, stating that this provision does not apply to statements made before the pardon was tendered. Statements made after the tender of pardon would be covered under Section 339(2). It was held that, before the pardon was tendered, the approver was in the position of an accused**;** after the pardon, even if conditionally granted, he ceased to be an accused and became a potential witness. Any confessional statement recorded before the pardon would be governed by Section 164 and would be admissible if the essential provisions of that section were followed. Since those provisions were not met, the statement was not admissible. Paragraph 10 of the judgment discusses that in *Emperor Vs. Parma Nand (1933) 20 AIR Lahore 321*, it was accepted that obtaining a detailed statement from a pardoned person might be necessary to complete the investigation and establish corroboration, and it might not be easy to wait for that information until the Magisterial inquiry began.

14.3. In the present matter, the true and complete disclosure by the approver

is yet to follow, and the disclosure referred to in Section 5(2) of the PC Act 1988, and Section 306 of the Cr.PC (corresponding to Section 337 of the earlier Cr.PC., and Section 343 of BNSS) is yet to take place. There ought not to be any confusion regarding the disclosure made by the approver during an investigation to an investigating agency, which an investigating agency might choose to record to ensure what disclosure the approver will make and, in many cases, what aid in the investigation that disclosure would be.

14.4. Reliance by **A-6** upon the case of *Rajiv Saxena (supra)* is on the limited point that the provision corresponding to Sections 306 & 308 of the Cr.PC 1973 were *peri materia* in the earlier Cr.PC and that the judgments rendered by the Hon'ble Higher Courts regarding the earlier similar provisions would apply. There can be no dispute with the said legal position. Besides, that case does not help any of the accused in the present matter.

14.5. Reliance by **A-6** on the case of *Sri Vinay Rajashekharappa Kulkarni (supra)* is also unhelpful. From this case, what **A-6** intended to demonstrate is that recording a statement u/s 164 Cr.PC before granting pardon would invalidate the order granting pardon u/s 306 of Cr.PC. In that case, the issue was that during an ongoing trial against an approver, and after the first application was dismissed, the approver filed a second application to become an approver. On the second application, the ld. Special Judge scheduled the matter for recording the statement by the ld. Magistrate, who then recorded the statement u/s 164 Cr.PC. Based on that statement, approval was granted. **Recording of a confession u/s 164 Cr.PC ceases once the trial begins.** In that case, the trial had already started,

as charges had already been framed. Long after the trial commenced, an order was issued to record the accused's statement u/s 164 Cr.PC, which was done by the Magistrate, despite the trial being before a Special Court, and also the confession was recorded in the presence of the accused's advocate. This was held to be illegal. Because of this statement, the grant of pardon was considered unlawful.

14.6. Therefore, it cannot be said that even during an investigation, an accused cannot have a statement under section 164 Cr.PC recorded before the grant of pardon. There is no restriction on recording a co-accused's confession under that provision before the start of the trial. If an accused wishes to make such a confession, it cannot be prevented simply because the person is an accused. It is entirely different for such a person to later express a willingness to become an approver.

14.7. To counter the accused's claim regarding the procedural lapse in granting pardon and non-compliance with Section 306(4)(a) of Cr.P.C., one can immediately refer to the decision of the Hon'ble Supreme Court in ***A. Srinivasulu v. State of T.N., (2023) 13 SCC 705***, which is also relied upon by **A-2**. In that case, the relevant facts were that an FIR was registered on 31-1-1997 against four persons, including one 'K' (the person who later became an approver). K was arrested in August 1998. After his release on bail, K gave a confessional statement under Section 164 of the Cr.P.C. before the MM on 16-11-1998. Based on K's statement, the prosecution filed a petition before the CJM, Madurai, under Section 306 of Cr.P.C. for granting a pardon. On this petition, filed on 22-6-2000, the ACJM, Madurai (to whom it was assigned), summoned K, and on

18-7-2000, the ACJM read out the contents of his confessional statement and asked K whether he voluntarily gave it after understanding the consequences. Once K answered in the affirmative, the ACJM passed an order on 18-7-2000 granting a pardon to K under Section 306 of Cr.P.C. Subsequently, a final report was filed on 16-7-2002 directly before the Special Judge for CBI cases, Chennai, without the Magistrate's formal commitment. Since the ACJM had already granted K a pardon, the prosecution examined him as LW 16 before the Special Court. The accused therein challenged the procedure, arguing that examining an approver twice is a mandatory requirement of Section 306(4)(a), and a series of decisions have held that non-compliance with Section 306(4)(a) invalidates the proceedings.

14.8. **Rejecting the contention, the Supreme Court held that** a careful consideration of section 306(4)(a)&(b) shows that the procedure prescribed there applies only to cases covered by sub-section (1), (as stated in para 65.6). In paragraph 68, it is held that, *"Interestingly, sub-section (2) of Section 5, which empowers the Special Judge to tender a pardon, does not speak about the stage at which a Special Judge may tender a pardon."* In paragraph 78, it is held that, ***"But in cases where a Special Court itself is competent to take cognizance and also empowered to grant pardon, the procedure under Section 306 of the Code gets bypassed,*** *as held by this Court in State of T.N. v. V. Arul Kumar [State of T.N. v. V. Arul Kumar, (2016) 11 SCC 733…. "* In paragraph 79, it is held that, *"In other words, this Court recognised in Arul Kumar [State of T.N. v. V. Arul Kumar, (2016) 11 SCC 733: (2017) 1 SCC (Cri) 381: (2016) 2 SCC (L&S) 715] two types of cases, namely, (i) those which*

*come through the committal route**;** and (ii) those where cognizance is taken directly by the Special Judge under Section 5(1) of the PC Act.* ***In the second category of cases, the Court held that Section 306 of the Code would get bypassed****."*

14.9. Paragraph 80 says that, ***"Therefore, it is clear that when the Special Court chooses to take cognizance, the question of the approver being examined as a witness in the Court of the Magistrate as required by Section 306(4)(a) does not arise****……."*

14.10. In the present case as well, the Special Court took the cognizance under the PC Act, and the pardon was granted by the Ld. Predecessor Special Court, which would be under section 5(2) of the PC Act. Therefore, the question of the approver being examined as a witness as required by Section 306(4)(a) Cr.P.C. does not arise.

14.11. In any case, after granting the pardon, a formal statement of the approver was recorded by the Ld. Predecessor Special Court on 23.07.2024, in which he not only undertook to abide by the conditions of the pardon but also committed to make full and truthful disclosure of all the circumstances within his knowledge relating to the offence and to every other person involved. He explicitly stated that all his previous statements, including the statement U/s 164 Cr.P.C., were made voluntarily, without any force, pressure, or influence. He further confirmed that he had disclosed in detail his own role as well as the roles of other accused in the commission of the offence, and pledged to depose the facts during the trial. Therefore, the grant of pardon cannot be considered to have any procedural flaw. Consequently, even though the ap-

prover's statements were made before the pardon was granted, they cannot be disregarded.

14.12. Even otherwise, an investigating agency may record an approver's statement before or after granting a pardon for various reasons, such as aiding the investigation or understanding what facts the approver intends to disclose. Recording such statements at either time is legally permissible, as the words "*with a view to obtain...*" in Section 306 do not prohibit it. These words are meant to ensure that a pardon allows the approver to present evidence at trial, and not to prevent pre-pardon disclosures. For example, a co-accused may voluntarily provide a confession before an investigating officer or magistrate, or an extrajudicial confession, and still later apply for a pardon, which is legally allowed. There is no legal restriction on making a full disclosure before or even after applying for a pardon. The lack of a subsequent statement under section 164 Cr.P.C. after the pardon is granted does not matter in this case. What is important is the truthfulness and completeness of the disclosure during trial. If the approver fails to do so, the prosecution can seek to withdraw the pardon and proceed under Section 308 of Cr.P.C. (Sec. 345 of BNSS).

14.13. Therefore, the contention of the accused as to the procedural lapse in the grant of pardon, is rejected.

15. **Secondly**, the defence argues that **an approver's statement alone, without corroboration,** cannot be the sole basis for framing a charge, claiming it as 'legally weak'. They argue that the limited other evidence, i.e. a few emails, demonstrates only logistical coordination and fails to

prove demand etc. The defence asserts that the approver acted independently, committing fraud against his employer (**TSPL**) by concealing **BTL's** ownership by his relative and failing to disclose the involvement of **A-1, A-2**, or **A-2's** father. They also point out that the Note for Approval was initiated only on 23.08.2011, four days before the formal offer letter was issued by **BTL** on 27.08.2011.

15.1. Reliance by **A-2** on *Sarwan Singh (Supra): Somasundaram @ Somu (Supra); A. Srinivasulu (Supra)*, and *Pramod Kumar (Supra)* do not aid the accused at this stage. The first three cases pertain to judgments after trial, not the charge stage. Although *Pramod Kumar (supra)* relates to the charge stage, it is distinguishable as that case lacked a money trail, involved a defective sanction, and found no evidence of demand or acceptance of a bribe, no witnesses testified that they received orders from the accused to commit the alleged offences**;** and only the approver's statement was relied upon, thus, no sufficient material was found to frame charges in that case.

15.2. It is important to note that in para 80 of the case of *Somasundaram (supra),* ***a 3-Judges Bench of the Hon'ble Supreme Court*** specifically noted that though an approver is an accomplice who has received pardon, "….***we would hold, that as between an accomplice and an approver, the latter would be more beholden to the version he has given*** *having regard to the adverse consequences which await him as spelt out in Section 308 Cr.PC…… It is* ***also settled principle that the competency of an accomplice is not impaired, though he could have been tried jointly with the accused and instead*** *of so being tried, he has been made a witness for the prosecution*."

15.3. Also, the **Constitutional Bench judgment in *Haricharan Kurmi (supra)* drew a distinction between Section 30 (confession of a co-accused) and Section 133 of the IEA (evidentiary value of an approver),** holding that while the evidence of an accomplice is considered tainted and weak, it is **substantive evidence under Section 3 of the IEA** and may be acted upon if corroborated in material particulars. Section 133, read with illustration (b) of Section 114 of the IEA, clarifies that an accomplice is a competent witness, though prudence requires material corroboration. In contrast, the statements contained in confessions of a co-accused cannot be examined until other satisfactory evidence is found. In para 14 & 15, the Hon'ble Constitution Bench clearly observed that reading Section 30 on one hand and Section 133 r/w illustration (b) of 114 of the IEA on the other hand, clearly establishes that the statements contained in the **confessions of the co-accused stand on a different footing than the testimony of an accomplice**. **It is held that the point of significance is that when the court deals with the evidence of an accomplice, the Court may treat the said evidence as substantive evidence and enquire whether it is materially corroborated or not. The testimony of an accomplice is evidence u/s 3 of the IEA and must be dealt with accordingly. It is no doubt evidence of a tainted character and, as such, is very weak; nevertheless, it is evidence and may be acted upon, subject to the requirement which has now become virtually a part of the law that it is corroborated in material particulars.** It was held that, on the other hand, in cases where confessions of co-accused are relied upon by

the prosecution, the Court cannot begin by examining the said statements**;** the stage to consider them arises only after other evidence is considered and found satisfactory. It **is held that the difference in the approach that the Court has to adopt in dealing with a confession of a co-accused and evidence of an accomplice is clear, well understood and well established**.

15.4. The law laid down by the Constitution Bench in ***Haricharan Kurmi*** *(supra)* addresses most of the precedents cited by the accused, which primarily concern the confession of a co-accused, which is not the case before this Court. Therefore, those judgments are distinguishable both on the facts and on the law. For that reason, I need not delve into the details of those judgments cited by **A-6** and other accused and the cases of *Karan Talwar (supra)*, *Suresh Budharmal (supra)*, *Deepakbhai (supra)*, and *P. Krishna Mohan Reddy (supra)*, which primarily concern the confession of a co-accused under Section 30 of the IEA, are distinguishable. The cases of *Banu Singh (supra)*, *Laxmipat (supra)*, and *Laxmandas (supra)* are also distinguishable as they involved appeals arising from convictions. Also, the case of *Banu Singh (supra)* examined the legality of a conditional pardon granted by a local government, which was found to be illegal.

15.5. However, the present case is found **not to rely solely on the uncorroborated testimony of the approver**. Material corroboration is provided by the fact that **₹Fifty lakhs were paid via cheque** from **TSPL to BTL**. This supports the approver's claimed bribe arrangement, especially when considered alongside Abhishekh Morarka's statement that **BTL** dealt in industrial knives and never provided Visa consultancy. The issuance of a bill for visa consultancy by a company dealing in industrial

knives is highly suspicious, particularly since **BTL** undertook no steps regarding visa services in question either for **TSPL** or for anyone else. Not even one communication by **BTL** to MHA or to **TSPL** as to pursuing the Visa applications could be found during investigation. If **BTL** actually extended services for Visa, there would have been at least some proof available.

15.6. Furthermore, the approver's statement is prima facie supported by Abhishekh Morarka, who stated that cash was arranged through Dr. Kagzi and handed over to **A-1,** a statement which must be accepted as true at the charge stage. Although Abhishekh later clarified that he personally saw **A-1** take money from his father during his lifetime, and this detail was not mentioned in earlier statements of this witness, this does not justify disregarding his statement at this stage. At the charge stage, Abhishekh's statements must be accepted as true and cannot be doubted.

15.7. Any contradictions or omissions in his statements, or in the statements of the approver are matters for trial and should not be prejudged now.

15.8. Additionally, corroboration also arises from e-mails exchanged between the accused and the approver.

15.9. The prosecution relies on *Arjun Panditrao Khotkar (supra)* to claim that the certificate under section 65B IEA can be filed later also, while the accused relies on paragraphs 54, 55, and 61 of the same judgment, arguing that the certificate is a condition precedent and the prosecution cannot fill lacunae at a later stage.

15.10. Relying on the cases of *CBI Vs. Narendra K. Amin (supra) and Suresh Budharmal Kalani (supra),* it is argued by the accused that, at the stage of framing

a charge, the Court must restrict its focus to only those materials gathered during the investigation that can be legally used as evidence. **A-2** also relies on a part of the judgment in the case of *Tuhin Kumar (supra)*, where the Hon'ble Supreme Court observed that, although at the charge stage a strong suspicion is enough, it must be based on some material that can be converted into evidence during trial. It is also held that a criminal court, when framing a charge, must act as an initial filter to ensure that only cases with a strong suspicion proceed to a formal trial, thereby maintaining the efficiency and integrity of the judicial system. Additionally, it is held that filing chargesheets in cases lacking strong suspicion clogs the judicial system, forcing judges, court staff, and prosecutors to spend time on trials likely to result in an acquittal. This diverts limited judicial resources from handling more serious cases and contributes to massive case backlogs. It is also emphasized that, although no definitive analysis can be made at this stage about whether the case will end in conviction or acquittal, the fundamental principle is that the State should not prosecute citizens without a reasonable prospect of conviction, as this would compromise the right to a fair process.

15.11. Regarding the challenge to the e-mails based on the lack of a **Certificate U/s 65B of the IEA**, since the e-mails were primarily exchanged among the accused, the prosecution may not have expected them or asked them to provide a certificate against themselves. Although the prosecution also failed to obtain the certificate from the investigating officer who initially retrieved the mails from laptop of **A-1** during the investigation of another case, this is not a ground to reject the possibility

of obtaining it later. Ld. Prosecutor in this regard specifically emphasized that as per the case of *Arjun Pandit Rao Khotkar (supra)* an accused can be directed by the Court even at the stage of proving of the e-mails to furnish the certificate. On the other hand, the accused argues that certificate can be filed only when a defective certificate is earlier filed or it is mistakenly not filed even though obtained from the concerned person, and in no other circumstances it can be allowed to be filed later.

15.12. Even otherwise, along with the email dated 02.09.2011 from the approver to **A-5** & **A-6**, informing about the permission received and enclosing the approval letter, a Certificate u/s 65B issued by S. Kartheesan and also signed by Deputy Manager (Legal) Shashank Kanungo, is present in D-85. D-83 is a letter with an enclosed pen drive containing the email dump of **A-5** stored on the **TSPL** server, along with a Certificate u/s 65B. It also includes a printout of the email dated 02.09.2011 by the approver to **A-5** regarding informing receipt of approval, enclosing a copy of the approval. D-86 is another letter from **TSPL**, enclosing certain printouts of the emails and their attachments, along with the Certificate u/s 65 B. It contains an email dated 18.07.2011 by the approver to others, including **A-5**, wherein the approver informs about developments in China regarding visa. It also contains emails dated 19.07.2011 and 20.07.2011, in which **A-5** was informed by the approver about Visa developments and instructed to keep the matter confidential due to its sensitive nature. Additionally, there is an email from **A-5** to **A-7** regarding the Visa, in which **A-5** appreciated the approver's efforts, and **A-7** was informed about the sanction of 44 addi-

tional visas beyond the 2019 sanctioned visas. It also mentions that a communication from **A-7** to the approver would be appreciated and that the matter should remain confidential. These communications not only points to conspiracy, but also rebut the claims of ignorance by **A-5** & **A-7**. **All these emails are supported by Certificates u/s 65 B**. The file also contains an email dated 23.07.2011 from **A-6** to the approver with a copy to **A-5**, stating that all expenses and tour bills related to the approver, along with the gift, are to be signed only by **A-7**, and that the modalities regarding gifts should be discussed with and known by **A-6**. **Certificate for this email also exist in D-86**. Similarly, the file includes a printout of an email dated 23.07.2011 from **A-5** to the approver regarding the visa, in which **A-5** explicitly states that the amount can be discussed with **A-7** upon the approver's return to India, and **A-6** can also be involved to decide further strategy. Within the same document, there is another email dated 05.08.2011 from the approver to **A-5** & **A-6**, titled "gift," mentioning that **A-7** has approved it. This implies that some gift was approved by **A-7** and with the knowledge of **A-5** & **A-6**. The attachment shows that some gold coins were purchased from HDFC Bank at an approximate worth of ₹ 5.5 lakhs. This email contradicts the claims by **A-5**, **A-6** & **A-7** that they were unaware of these activities, and also contradicts **A-6' s** claim that he never approved such matters. **As mentioned above, all emails in this document are supported by Certificates u/s 65 B. The document also contains other similar emails, all supported by Certificates u/s 65 B**.

15.13. Crucially, even without proof of the e-mails, the approver's sole oral testimony, if deemed reliable and supported by other material, may be sufficient to succeed in this case.

15.14. Thus, reliance on the cases of *Sonu (supra), Arjun Pandit Rao (supra), Narendra K. Amin (supra), Suresh Budharmal Kalani (supra), Tuhin Kumar (supra), and on the CBI manual* regarding absence of certificate U/s 65B, the collection, seizure, preservation, and storage of digital evidence is of no help to the accused at this stage. The case of *Saravana (Supra)* pertains to the passing of some assessment order by Income Tax Authorities based on certain digital evidence collected, whereas the case of *Umesh (Supra)* pertained to an appeal against the judgment of conviction, wherein the mode & manner of the voice sample / telephonic conversation recorded was in question. Those cases therefore are distinguishable and do not help the accused at this stage of the matter.

15.15. The defence also points to alleged **"progressive improvements"** in the approver's statements, arguing that the subsequent addition of incriminating details suggests a fabricated narrative. **A-6** relies on *Dr. Gajraj Singh (supra)*, *State Vs. Ashok Kumar Verma (supra)*, and *State (Govt. of NCT of Delhi) Vs. Nitin (supra)*, contending that if **A-6** is not implicated in the Section 164 Cr.P.C. statement, the allegations made in statements U/s 161 should be disregarded.

15.16. These cases are also distinguishable**;** for example, in *Gajraj Singh (supra)*, the prosecutrix fully exonerated the accused in her Section 164 statement, and in *Nitin (supra)*, the accused was named by eyewitnesses only after a five-month delay. Similarly, cases cited regarding delay in recording witness statements, such as *Dilawar Balu (supra)*, *Ashok Kumar (supra)*, and *Virender Singh (supra)*, are also factually distinguishable.

15.17. Here, the offence came to the Investigating Agency's knowledge only

after several years, concerning corruption and conspiracy, and then witnesses' statements were recorded, and evidence gathered. Due to the nature of such offences, it is possible that the offence remains undisclosed until it is revealed by one of the conspirators or otherwise. Given that the present offence involves corruption and conspiracy revealed only after several years, the delay in recording statements is understandable.

15.18. Merely because the approver added more incriminating details later does not justify discarding all his statements, including the statement U/s 164 Cr.P.C., at this stage, where the Court cannot judge the details as if passing a verdict. The standard of proof required at a final criminal trial is much higher, requiring proof beyond a reasonable doubt. In contrast, at this stage, even a prima facie strong suspicion is enough. After all, the law is well settled that this Court need not weigh and sift through evidence as if it were a mini-trial or pass a judgment. This Court also cannot sift the evidence in the charge sheet to separate grain from chaff. Neither does the Court need to evaluate the truthfulness or reliability of the material relied upon by the prosecution, or whether it would suffice for conviction.

15.19. The argument of the accused persons that CDRs have not been collected to support the approver's statements, and therefore the accused persons should be discharged, must be rejected. It is not a case where only circumstantial evidence exists. There is ocular proof offered by one of the conspirators who has turned approver, and if found reliable, his testimony would be sufficient against the accused once corroborated during trial, even without the CDRs. Currently, we are only at the charge stage,

where mere grave suspicion suffices, which is indeed supported by the statement of the approver. Therefore, the non-obtaining of CDRs regarding conversations between the accused or with the approver cannot be considered at this stage, and reliance on the cases of *Suresh Kumar (supra), Shyam Gupta (supra), and Abdul Majid Memon (supra*), is distinguishable on the facts. Regarding the argument of the prosecution that CDRs could not be collected because of a time lapse of more than two years in registration of the FIR from the date of offence, the defence responds that the delay in FIR registration cannot be used as an excuse for non-availability of evidence, as the burden of proof lies with the prosecution which must produce alternative evidence, which it fails to do. As mentioned above, when the offence itself came to the knowledge of the investigating agency after a decade of its commission, and if the CDRs were not available, there cannot be any adverse presumption against the prosecution. Even without the CDRs, the approver's version is prima facie strongly corroborated by other evidence as mentioned above, which creates a strong suspicion as to the conspiracy and the offence of bribery.

15.20. In effect, not only can the approver's statement be considered at this stage, but it also raises a strong suspicion against the accused persons. The question as to qua which accused person the evidence is sufficient to charge, and under which provision of law, is addressed hereinafter to avoid repetition.

15.21. **Therefore, the approver's statements, supported by other facts, raise a strong suspicion of a conspiracy and the offence of bribery**.

Offence Made Out Under PC Act (Sections 8 & 9)

16. The defence contends that the requirements of Sections 8 and 9 of the PC Act, which involve inducing a public servant, have not been fulfilled, as no public servant who was or was to be induced has been identified. Two public servants, LW- 15 Vinod Kumar and LW- 18 G. V. V. Sarma, explicitly denied any influence, pressure, or illegality. LW- 15 Vinod Kumar (Dy. Secy., MHA) stated he issued the 30.08.2011 letter "*not under coercion, pressure or influence of any person... or in lieu of any consideration*." LW- 18 G. V. V. Sarma (Jt. Secy., MHA) explained that although the Visa Manual does not explicitly include a "*re-use*" clause, it allows personnel replacement within the approved limits, and both the July and August 2011 letters adhered to the Visa Manual. It is argued that no public servant has been identified or prosecuted, the CBI effectively cleared the involved public servants, and a sanction to prosecute Dr Adarsh Swaika was refused three times. LW- 15 Vinod Kumar received a "clean chit." Although the sanction under Section 17A of the PC Act to investigate Dr Swaika was declined three times, he could have been examined as a witness, but was neither investigated nor questioned. The defence maintains that, since no public servant was found to have been induced and the public officials identified have already been cleared, no offence under the PC Act exists.

16.1. It also asserts that the prosecution is attempting to turn a routine administrative clarification into a corruption case without any supporting evidence. Furthermore, seeking permission to reuse visas was a standard practice aligned with established MHA policy, as confirmed by the

MHA letter dated 04.07.2011 (by LW- 15 Vinod Kumar), which explicitly allows PVs to be considered for new personnel when the original personnel leave the country. **TSPL**'s request letter dated 30.07.2011 was submitted after the MHA had already approved the reuse policy. Therefore, **A-3**'s request followed existing policy and did not seek a new or illegal benefit. A subsequent MHA clarification dated 30.08.2011 reaffirmed that replacing personnel within the sanctioned ceiling was allowed, and LW-15 Vinod Kumar stated it was not issued under any influence or coercion. Similar reuse permissions granted to other major companies indicate that this was a standard administrative practice rather than an exception for **TSPL**.

16.2. On the other hand, Ld. Prosecutor relied upon the case of *State Vs.* ***Jitender Kumar Singh*** *(2014) 11 SCC 724,* wherein Hon'ble Supreme Court held that an offence u/s 8 & 9 of the PC Act, 1988 (as it stood prior to its amendment) can be committed by any person who need not necessarily be a public servant and such an offence can be committed by a public servant or by a private person or by a combination of the two. It is also held that even a private person can be the only accused person in an offence u/s 8 & 9 of the PC Act, and that it is not necessary that a public servant should also be specifically named as an accused in the same case. This position was reiterated by the Hon'ble Delhi High Court in *Sandeep Deshwal v. State of GNCTD Crl. Appeal 168 of 2013 decided on 04.05.2020*, relying on the case of *Jitender Kumar (supra).* In the case of *Sandeep Deshwal (supra)*, the contention of the accused as to the absence of a public servant was rejected, and his conviction u/s 8 of the PC Act was upheld.

16.3. Ld. Prosecutor also relies upon the case of ***Sita Soren*** *Vs. Union of India 2024 INSC 161 (Constitution Bench of 7 Judges)*, to emphasise the point that the offence of bribery is not contingent on the performance of the promise for which money is given or is agreed to be given, and the offence is not contingent on the performance of the illegal promise. While considering the matter u/s 7 of the PC Act, the Hon'ble Supreme Court held that it is not necessary that the act for which the bribe is given be actually performed, and the offence would stand even if the performance of the public duty by a public servant has not been improper. **By giving an example, the Hon'ble Supreme Court clarified that if a public servant asks for a bribe from another to process his routine ration card application on time, the public servant would be guilty regardless of whether he actually processes the application on time.** In the facts of that case, it was held that when a Legislator accepts a bribe, it does not matter whether she votes in the agreed direction or whether she votes at all. At the point in time when she accepts the bribe, the offence of bribery is complete. It was also held that even prior to the amendment of the PC Act in 2017, Section 7 expressly de-linked the offence of bribery from the actual performance of the act for which the undue advantage is received. Relying on the case of ***Chaturdas Bhagwandas Patel*** *Vs. State of Gujarat (1976) 3 SCC 46*, it was held that a public servant using his official position to extract illegal gratification is a sufficient ground to constitute the offence of bribery and it is not necessary in such a case for the Court to consider whether the public servant intended to actually perform any official act of favor or disfavor.

16.4. **Sec. 8 of the PC Act**, as it stood prior to its amendment w.e.f.

26.07.2018, provided punishment for ***"Taking gratification, in order, by corrupt or illegal means, to influence public servant"***. It provided that whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward **for inducing**, **by corrupt or illegal means**, any public servant, **whether named or otherwise**, to do or to forebear to do any official act, or in the exercise of the official functions of such public servant to show favor or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government etc., shall be punished.

16.5. **Similarly, Sec. 9 of the PC Act**, as it stood prior to its amendment w.e.f. 26.07.2018, provided punishment for "***Taking gratification, for exercise of personal influence with public servant"***. It provided that whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward **for inducing**, **by exercise of personal influence**, any public servant, **whether named or otherwise,** to do or to forebear any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government etc. shall be punished.

16.6. Sections 8 & 9 of the PC Act themselves make clear that it is not necessary for the person who received the gratification to have succeeded in inducing the public servant. Nor is it required that the recipient actually attempted to induce the public servant. The receipt of gratification

as a motive or reward **for inducing** a public servant, by corrupt or illegal means, or by exercise of personal influence, is sufficient for the offence, and all that is needed is that the accused had the intent or motive at the time of receipt, to be a reward for inducing a public servant. The receipt of gratification will complete the offence. It is not necessary that the person who received the gratification should have succeeded in inducing the public servant. It is not even necessary, that the recipient of the bribe should have attempted to induce the public servant. The receipt of gratification as a motive or reward for the purpose of inducing the public servant by corrupt or illegal means will complete the offence under section 8, or by exercise of personal influence will complete the offence under section 9. But it is necessary that the accused should have had the animus or intent, at the time when he receives gratification, that it is received as a motive or reward for the purpose of inducing the public servant as such. *(Reliance, Dewan alias Vasudevan v. State, 1988 Cri LJ 1005).*

16.7. In this case, the statements of the approver, including under section 164 Cr.P.C., clearly establishes that he approached **A-1** and **A-2** intending to obtain additional PVs for the project. The aim of obtaining additional Visas is also clearly reflected in the internal mails of **TSPL**. The approver explained his requirement to **A-2** in the presence of **A-1. A-2** asked him to convey his requirement to **A-1,** which the approver did. Subsequently, **A-2** demanded ₹ 50 Lakhs for the work, which was paid through **BTL**. The approver also explicitly stated that the purpose of approaching **A-1** and **A-2** was because **A-2**'s father was then serving in the relevant Ministry overseeing the department responsible for issuing

the PVs. Besides it, various e-mails reflect that the approver indicated **A-1** that the officials of MHA at Embassy in Beijing be dropped a word as to the aim of obtaining Visas and various e-mails reflects that the approver informed **A-1** that he was scheduled to meet Dr. Swaika in Beijing.

16.8. On 19.07.2011, an email was sent by **A-1** from his one email ID to his own second email ID, containing an attachment regarding visas. It is alleged to include a note on the visa dated 27.06.2011. In that same letter, **TSPL** requested an additional 800 Chinese personnel visas, beyond the 219 Indian visas already allotted to SEPCO. In the e-mail dated 20.07.2011 from **A-1** to the approver, it is mentioned that **A-1** contacted the High Commission and tried to reach the approver on the approver's Chinese mobile phone, but it was not reachable. **A-1** requested a callback from the approver. It is important to note that **A-1** used the term "We" when **informing the approver that the High Commission had been contacted**. This e-mail suggests inducement of the public servant. The approver then sent an e-mail to **A-1** on the same day, stating he would respond later. Prior to that, in the e-mail dated 19.07.2011 from the approver to **A-1** , he explicitly mentioned an appointment to meet Dr. Adarsh Swaika, IFS, First Secretary, Embassy of India, at 3 pm China time. In this e-mail, the approver also provided his local Chinese phone number to **A-1.**

16.9. The e-mails dated 19.07.2011 and 20.07.2011 between the approver and **A-1** show that the approver is referring to the first Secretary in those e-mails, so, strictly speaking, it cannot even be claimed that no public servant was to be induced or that no public servant to be induced, was discussed or disclosed. There is another email dated 18.11.2011, in

which the approver to **A-1** expressed a desire to discuss the issue related to the attached document. The attachment shows that on 14.10.2011, regarding 75 ad hoc visas, a letter was written to Dr. Adarsh Swaika by the approver. Subsequently, Vinod Kumar sought clarification through a letter dated 14.11.2011, and an explanation was provided on 18.11.2011. In a separate communication, an email referring to **A-2** as "our friend" suggested that "*our friend will have to make a call to Dr. Adarsh"* (Secretary at the Indian Embassy in China) regarding efforts to acquire 300 additional visas. **These emails indicate public servants to be induced.**

16.10. These allegations, prima facie, satisfy all the essential elements of Sections 8 and 9 of the PC Act. There was no requirement for **A-1** and **A-2** to specifically name either **A-2**'s father or any other public servant to be induced, for attracting these provisions. In a given case where the bribe acceptor even indirectly indicates or allows an impression to the bribe giver that some unknown public servant would be induced, even that would be enough to bring a charge under these two or either of the provisions. A bribe obtainer can directly or indirectly merely indicate to the bribe giver that, from the bribe amount, the bribe obtainer would get the work done through some public servant or some particular Government office, and even that impression conveyed to the bribe giver would be enough to attract Section 8 of the PC Act. If a bribe acceptor obtains bribe for using his influence in the manner provided in Section 9, even that would be enough without actually naming the person to be influenced.

16.11. Even the argument of **A-2** that at that time his father was not holding

the pertinent Ministry or Portfolio, this is irrelevant in relation to a charge under Section 8 or 9 of the PC Act. Also, the law does not require the demand to be made directly by a specific individual.

16.12. In *Neeraj Dutta's case (supra)*, what is laid down is that proof of demand and acceptance of illegal gratification by a public servant is essential to establish guilt under Sections 7 and 13(1)(d)(i) & (ii) of the Act, as elaborated in paragraphs 88.3 and 88.4.

16.13. In the case of *Suraj Singh(supra)*, relying upon the case of *Prakash Singh Badal Vs. State of Punjab & others (2007) 1 SCC 1*, it is held that the analogy as to proof of demand being indispensable for Section 7 & 13 of the Act, will be squarely applicable to the offence punishable U/s 8 of the PC Act also (Para 24).

16.14. It is noteworthy that the *Suraj Singh case* was decided against a final conviction prior to the *Neeraj Dutta's* Constitution Bench decision on 15.12.2022. The Constitution Bench in the *Neeraj Dutta's case* explained that demand and acceptance can be proven through circumstantial evidence if there is no direct evidence.

16.15. **A-2**'s argument that no demand was made, relying on the cases of *Neeraj Dutta (Supra) and Suraj Singh @ Deepak Singh (Supra)*, must be rejected. In cases like this, where money is demanded through a third party, it is prima facie enough to frame a charge. Therefore, even if only **A-1** is alleged to have made the demand, and not **A-2**, this does not exonerate **A-2**. A demand can be made from the bribe-giver through a third person without affecting the charge.

16.16. In the present case, there is a specific allegation in the approver's statement that a demand was indeed made to the approver, and accepted to

be paid by the bribe giver, and ultimately, the bribe was also paid. Therefore, obtainment is clearly alleged. The allegations made by the approver prima facie indicate that the gratification was obtained for the purpose of inducing a public servant either by corrupt or illegal means or by using personal influence. Whether or not the public servant is named does not matter. Even if it is unclear whether the public servant was induced, it does not matter, because even if no inducement is made to any public servant, accepting gratification as a motive or reward for inducing through corrupt or illegal means or by using personal influence would be sufficient to attract Sec. 8 & 9 of the PC Act, respectively. It is also not necessary that the accused should have identified any particular public servant who would be induced before or while accepting the bribe.

16.17. At this stage of framing the charge, the approver's statement must be accepted without questioning its authenticity, as that will be examined during trial. The material presented by the prosecution must be accepted at face value at this stage.

16.18. The judgments relied upon by the accused, namely, the cases of *Setul Chander (Supra), Praful Pandurang Patil (Supra), and Jothiramalingam (Supra)*, are all distinguishable based on their facts. In *Setul's case*, he was accused of attempting to obtain gratification from a person named K for another, unknown person, to induce favour towards K. The only evidence was a letter stating, "*I have agreed to pay 30 rupees in the event of success. If, by god's will, we succeed, the money must be paid.*" This letter did not contain the necessary elements, and therefore, Setul was acquitted.

In *Praful's case*, the complainant's evidence only showed that M had referred him to the appellant to fill out the form and complete formalities for obtaining a license. There was no evidence that the appellant received money from the complainant to induce M to issue the license, especially since M was not charged, and investigations did not reveal any money to be given to M. Consequently, the appellant was acquitted. Similarly, in *Jothiramalingam's case*, there was no evidence that the second accused demanded any amount to induce the first accused, so the essential element of inducement under Sec. 8 was not satisfied, and the element of inducement and was deemed absent. This was also an appeal against conviction.

16.19. For the reasons given above, even reliance on the case of *Kalya Singh (Supra)* regarding the definition of 'inducing' is of no assistance to the accused.

16.20. Qua the reliance placed by the prosecution upon the case of *Sandeep Deswal (Supra)*, **A-2** argues that it is not applicable as the said judgment only holds that a public servant need not be prosecuted alongside a private person, which is different from the defence's argument that a public servant must at least be identified as the target of influence. But then in the present case, as mentioned above, the evidence does prima facie strongly suggest that the officials of MHA were proposed to be induced, particularly, Dr. Adarsh Swaika.

16.21. Qua reliance placed by the prosecution upon the case of *Sita Soren (Supra)*, it is argued that the said case was U/s 7 of the PC Act and not U/s 8 & 9 of the PC Act. Nevertheless, the said judgment did deal with the persons who can be prosecuted U/s 8 & 9 of the PC Act, and therefore,

qua that part, can indeed be relied upon.

16.22. Also, **A-2** refutes the prosecution's claim that a bribe can be given even for a legal act, arguing that the charge sheet explicitly alleges that the bribe was paid for an illegal purpose, i.e. *"getting permission for reuse of visas in contravention of the Visa Manual"*. This argument also has to be rejected for the reason that it is the prosecution's inference from the material collected that the bribe was given for obtaining permission, and even if the bribe was for an act which was otherwise legally permissible and not in contravention of the Visa manual, still Sec. 8 & 9 would apply.

16.23. **A-2** also relies upon the case of *South Central Railway Employees Cooperative Credit Society Employees Union Vs. B Yashodabai & Ors. (2015) 2 SCC 727*, as to the binding effect of the rulings of the Hon'ble Supreme Court and as to the judicial discipline while calling the judgment per incuriam by the Hon'ble High Court, by relying on para 15 of this judgment. This is relied in response to the contention of the Prosecutor that the judgment of Hon'ble Delhi High Court in the case of *Upendra Rai (Supra)* may be *per incurium*. There cannot be any dispute regarding what is laid down in the case of *B. Yashodabai (Supra)*. **However, as discussed above, the case of *Jitender Kumar (Supra)* does clarify that even in the absence of a public servant, a private individual can be prosecuted**.

16.24. In the case of *Upendra Rai Vs. CBI & Anr., Hon'ble Delhi High Court in Crl.M.C. 7294/2025*, vide order dated 14.10.2025 while considering a quashing petition pursuant to some agreement between the complainant and the accused, in the peculiar facts of that case, it was held that since

the allegations were essentially of extortion of money from the complainant on the pretext of getting some favour from the Income Tax Officer, and when pertinently no Income Tax Officer was ever identified nor was there any evidence to show that there was anybody contacted by the petitioner to get the undue favour, the allegations do not make out a case u/s 8 of the PC Act, and the proceedings were quashed. In that case the complainant claimed that the FIR was got registered on some misunderstanding in respect of some consultancy agreement entered into between the complainant and the accused. Therefore, the facts of the case of *Upendera Rai* are completely distinguishable.

16.25. Accordingly, in the facts & circumstances of this case the ingredients of section 8 & 9 of PC Act, gets attracted, **in the alternative**, against **A-1** as well as **A-2,** as presently it is not very clear whether the inducement was to be through 'corrupt or illegal means' (as required u/s 8), or the inducement was to be by using 'personal influence' (as required u/s 9).

Absence of Motive

17. It is also argued that the CBI's claim that **TSPL** was motivated by the fear of liquidated damages due to manpower shortages is illusory and factually incorrect. It is claimed that contemporaneous records, including a letter from Punjab State Power Corporation Limited (PSPCL) to CBI dated 12.07.2022, show that the project delays were caused by the non-availability of inter-connection facilities and the non-execution of Fuel Supply Agreements, and not shortage of manpower as sought to be

projected. An Arbitration Tribunal, ruling on 18.09.2017 in a dispute between PSPCL and **TSPL**, dismissed the claim of the former and stated that the delays were due to the reasons mentioned above, not a lack of manpower. That Tribunal's judgment was upheld by the ld. ADJ, Patiala, Punjab.

17.1. It is argued that, therefore, the fear of damages is purely imaginary and could not have prompted a criminal conspiracy. It is also claimed that a bribe of ₹50 lakhs is implausible for a project with an outlay of ₹9320 crores, especially given that legal permission was already allowed, as a matter of policy. Consequently, there is no rational basis for such a quid pro quo. The alleged reason for seeking additional PVs and the motive for bribery lacks foundation, asserting that the core claim of the prosecution, that the **TSPL** project was behind schedule and incurred significant expenses in interest and penalties, is false.

17.2. There is no strength even in this argument. Motive must be inferred from surrounding circumstances in a specific case, especially considering the context at the time the offence was committed, as in the present case. Direct evidence of motive is hard to obtain. The accused persons, particularly those from **TSPL**, only knew the driving force and motive for offering a bribe.

17.3. However, the documentary evidence does show that the project was behind schedule, necessitating additional personnel from China**;** therefore, it cannot be said that there was no motive to offer a bribe. Merely because the arbitrator later did not favour the petition of PSPCL, it cannot be argued that the circumstances in 2011 were not such as to have

created a need for additional Visas.

17.4. As highlighted by the prosecution, the Board Minutes of **TSPL** from 2011 reveal a significant gap between the planned and actual progress of the project. They show that, until June 2011, the project was only 41% complete compared to a planned 58%, and by September 2011, it had reached only 50% against a planned 71%. These delays could indeed have prompted **TSPL** to urge its Chinese contractor, M/S SEPCO, to accelerate work, creating an urgent need for additional manpower that was prima facie capable of prompting an application for more Visas and serving as a motive for bribery.

17.5. Also, the email correspondence between **TSPL** employees and the accused person, sent between June and September 2011, forming part of D-86 supported with a certificate u/s 65B, prima facie reflects a pressing need for 200 to 300 additional visas for Chinese personnel, permission to reuse existing PVs, etc.

Chronological Impossibility of the Offence

18. The accused points out that the prosecution's timeline doesn't quite add up. Regarding the legality and past practice of reusing PVs, it's argued that this was neither illegal nor subject to improper influence, but rather a standard administrative procedure approved by the government, supported by MHA communications, witness testimonies, and sector-specific precedents. The prior approval is evidenced by a letter from Vinod Kumar (LW15) dated 04.07.2011, establishing a policy that allows replacing foreign personnel within the permitted project time frame. The letter clearly states, *"as and when a foreign person leaves the country*

after completion of their role, Project Visa may be considered for a new set of foreign personnel." **TSPL**'s request on 30.07.2011 to reuse visas, made after the MHA's approval, was in line with the existing policy and did not seek any special favour. The MHA confirmed this again in a letter dated 30.08.2011, reaffirming the allowance for personal replacements within the approved limits. In his statement under section 161 Cr.P.C., Vinod Kumar mentioned that the letter was issued without any "*coercion, pressure or influence*." Sector-specific practice shows that similar permissions for visa reuse and replacement were granted to major companies like BALCO, Essar, GMR, Energy Ltd., and Wardha Power, demonstrating that this was just standard administrative procedure. Additionally, it is claimed that Sh. G. V. V. Sarma (LW18), the then Joint Secretary of the MHA's Foreigners Division, confirmed that the communications from 04.07.2011 and 30.08.2011 matched existing circulars (Circular no. 387 dt. 05.10.2010) and followed the Visa Manual. According to the accused, this affirmed the lawfulness of the practice, and there was no occasion for offering bribe.

18.1. Again, this contention must be rejected because, to attract Sec. 8 or 9 of the PC Act, it is not important whether the bribe is demanded, offered, or obtained for a legal or an illegal act. Therefore, even if one assumes that the reuse of visas was already permitted, this does not diminish the offence of bribery under those provisions, as evidenced by the statement of the approver supported by other material.

18.2. Instead the communications between **TSPL**, approver and the accused indicates that **TSPL** was experiencing need to obtain more visas. Therefore, it seems that with an urge to obtain more visas the approver was

directed to act as a Liaison Officer and to see how he can contribute in that regard and therefore it cannot be claimed that since the visa reuse was already permitted, there was no occasion to enter into the criminal conspiracy and further offences.

Discredited Money Trail Allegation

19. The defence claims that ₹50 lakh transaction between **BTL** and Balaji Heart Hospital was a genuine corporate investment**;** there is "no established money trail"**;** and points out that documentary evidence disproves the allegation of illegal gratification. **TSPL**'s payment of ₹45 lakhs (after ₹5 lakh TDS) was duly approved and made by cheque to **BTL**. It used funds to purchase shares in Balaji Heart Hospital via two cheques totaling ₹50 lakh (on 07.09.2011 and 12.09.2011), and **BTL** remained a shareholder for 10 years. The defence argues that the timelines show no nexus between the share purchase and **TSPL**'s payment. A board resolution by **BTL** on 01.09.2011 to invest ₹50 lakh in Balaji Heart Hospital exists. The share purchase preceded the payment made by **TSPL**, hence there is no nexus between the two. Also argued is that there is no proof of cash linkage between the **BTL** and **A-1,** and that no withdrawal, transport, or delivery of the alleged ₹50 lakh has ever been traced. The defence notes that there is no bank or digital link connecting **A-1** to any suspected illegal gratification. The collection of cash by **A-1** from the father of LW17 is unsubstantiated, and the claim of LW17 that this cash was collected in his presence is unbelievable and contradictory within his statements. At most, LW's version about payment is

hit by the principle of hearsay when one examines his multiple statements and his affidavit dated 08.04.2022. His subsequent claim in statement U/s 164 Cr.P.C regarding witnessing the payment cannot be believed. Therefore, the cash generation theory is unproved and unbelievable as per the accused. Furthermore, an alleged facilitator, Dr. Ramesh Kagzi, was never examined by the prosecution. His wife Beena Kagzi (LW73), and other LWs, Anup Aggarwal and Sonal Khurana, had no knowledge of the cash deal. It is also argued that it is economically irrational for **BTL** to exchange a cheque for ₹50 lakhs from **TSPL** for cash, as it would have incurred an estimated tax loss of ₹15 lakh (corporate tax plus TDS).

19.1. None of these arguments can be in favour of the defence at this stage of the matter. Once the approver's version of demand for a bribe and payment through the above-mentioned discreet channel from **TSPL** to **BTL**, evidenced by a payment via cheque from **TSPL** to **BTL**, is prima facie established, and when LW-17's statement claims that cash was given to **A-1,** the rest of the details about what exactly transpired between **BTL** and Dr. Ramesh Kagzi / Balaji Heart Hospital, and how the cash was generated, loses significance. There could not have been any bank or digital link connecting **A-1** to the receipt of that payment, as it was allegedly collected in cash. These arguments may be examined during the trial, but cannot be prejudged as sought. It has already been held that at this stage, LW-17's version must be accepted as true and cannot be doubted. Any contradictions in his statements would be a matter for trial. The non-examination of Dr Kagzi would also be addressed during

the trial. However, he has passed away, and his son claimed in his statement under section 164 Cr.P.C. that cash was paid to **A-1** by his father. The issues of commercial unviability or improbability are also not relevant at this stage. How the payment was made and how the tax adjustment was manipulated will also be resolved during the trial. Even if **BTL** initiated an arrangement to purchase hospital shares before the actual transfer of payment from **TSPL** to **BTL**, this cannot be used to doubt the prosecution's version at this stage, as the agreement or conspiracy appears to have existed well before September 2011. It is quite possible that, to preempt the process, **BTL**, led by a relative of the approver, falsely initiated the share purchase. Notably, the proposal for **BTL** to charge a fee to **TSPL** was discussed on 27.08.2011. Therefore, the hospital's share purchase process might have been initiated in anticipation of this, and this possibility cannot be dismissed.

19.2. The debit note dated 05.09.2011 specifies that **BTL** debited an amount of ₹41 lakhs to **TSPL** for incurring ***'out-of-pocket expenses for Visa reuse***', whereas the second debit note debits an amount of ₹9 lakhs for ***'consultancy services'*** for the same purpose. If this amount was legitimately paid by **TSPL** for consultancy services, the out-of-pocket expenses could not have been as large as ₹41 lakhs, whereas the consultancy services were only ₹9 lakhs. This fact also raises questions regarding the legitimacy of the transaction, particularly when there is no communication from **BTL** to any authority about pursuing any such services extended, and it deals in industrial knives and not Visa services.

Procedural and Evidentiary Infirmities

20. The defence highlights that there is an 11-year delay between the alleged events (2011) and the FIR registration (2022), which is cited as evidence of mala fide and political motivation.

20.1. Even this argument is without force. Delay in registration of an FIR by itself cannot be a ground to discharge an accused. The prosecution ought to be given an opportunity to explain the delay, which can occur only after trial.

20.2. In any case, in the present matter, the crime did not come to the notice of the investigating agency for 11 years. It was not until the Investigating Agency stumbled upon evidence of the crime that the inquiry was initiated, and an FIR was registered. While investigating another criminal case, when the laptop of **A-1** was checked on 16.05.2017, from his four e-mails, which were already open in his system, the data was downloaded, and from those e-mails the crime of the present matter saw the light. Thereafter, it was inquired into and investigated.

20.3. Regarding the Unreliable Digital Evidence, it is argued that the key emails lack the necessary Section 65-B certificates and hash values, and the relevant laptop was not seized, rendering them unreliable as evidence. It is claimed that the guidelines in the CBI manual for the collection, preservation, and transmission of digital data have not been followed. Therefore, the accused contends that the emails cannot be trusted.

20.4. This argument has already been addressed above. Suffice it to note here

that out of the three sets of emails obtained in this case, certificates under section 65B do exist for the emails related to document D-86 and those related to documents D-83/D-84. Specifically, for D-83, the email dump data from **TSPL** was obtained, and a certificate under section 65B is available. For D-86, the internal emails of **TSPL** employees supplied to the IO also have certificates. However, the emails obtained from **A-1** 's laptop do not have such certificates. Only the emails retrieved from **A-1** 's laptop during another case investigation lack the certification. As per the prosecution, **A-1** can be asked to produce the certificate at the time of proving those emails, as per the case of *Arjun Pandit Rao (supra)*. The non-seizure of the laptop and the absence of hash values will have their effects during trial, but cannot be prejudged now.

20.5. It is clarified that the incriminating emails in the present case were downloaded and copied directly from **A-1** 's computer system. During an investigation of another case on 16.05.2017, the IO checked **A-1** 's laptop at his house, where four email accounts were found logged in**:** ***"bhaskar@advantconsult.com," "bhaskar@cgas.in," "bhaskar@icai.org," and "bhsrmn@gmail.com."*** The IO copied data from these four accounts onto four pen drives in the presence of **A-1** and independent witnesses, as documented in a seizure memo signed by **A-1.** Subsequently, the same pen drives were obtained by the IO in this case, and printouts of those mails were taken through CFSL, contained in document no. D-70. There was no Section 65B certificate for these emails, as the IO of that case did not request **A-1** to provide it, nor was it provided by him or the person who downloaded the mails onto

the pen drives. The CFSL expert's certificate for the printouts was also not obtained. Besides these emails in D-70, another set obtained from **TSPL** consists of internal **TSPL** emails in document D-86, for which a section 65B certificate does exist. The third set involves emails provided by **TSPL** regarding **A-5** Viral Mehta's email account in document D-83, which also has a section 65B certificate, as given by witness Shashank Kanungo. Some emails sent by the approver to **TSPL**, including those involving **A-5**, **A-6**, and **A-7**, are part of the Viral Mehta email dump, and internal **TSPL** emails also include certificates.

Distinction between Employment Visas (EVs) and PVs (PVs).

21. It is argued that the chargesheet overlooks a critical distinction between Employment Visas (EVs) and PVs (PVs). EVs were permitted under existing norms prior to 2010. The previous scheme was introduced later, through an MHA circular dated 05.10.2010, and operated prospectively, supplementing the EV scheme rather than replacing it. It is asserted that there were separate ceilings for EVs and PVs, as evidenced by the statements of LW6 Smt. Amarjeet Kaur (Deputy Director, MOL), who stated that she saw no reference indicating that prior EVs would be counted against the new PV ceilings. It is also clear from LW19 Anil Goswami's statement, who confirmed that his understanding is that EV and PV ceilings should not be combined and that PV guidelines would operate prospectively. It is argued that based on those separate ceilings, **TSPL** was entitled to a total of 435 visas (248 EVs + 187 PVs), and the company's

applications were well within this total limit. It is also claimed that letters from various government bodies (MHA, MEA, SSP Mansa) provide conflicting figures on the number of Chinese personnel who visited India, making it impossible for the prosecution to definitively prove that any ceiling was breached.

21.1. Even this argument lacks strength. It is actually irrelevant that there was a distinction between EVs and PVs, as the crucial point in the present matter is that a bribe was paid to obtain either additional Visas or permission to reuse them, even if legitimate, following a conspiracy to commit the offence. Once that fact is proven during the trial, none of the arguments raised above will favour the accused.

Absence of "grave suspicion"

22. It is argued that the prosecution's case does not reach the "grave suspicion" level as set in *Sajjan Kumar v. CBI (2010) 9 SCC 368*. The defence maintains that, without substantial evidence indicating such suspicion, charges cannot be brought forward. Arguably, the case rests on tenuous grounds, including the uncorroborated statement of the approver**;** a few emails that purportedly show only logistical arrangements without any indication of demand or favour**;** and explicit denials of influence or illegal activity by two independent public servants, LW-15 Vinod Kumar and LW-18 G.V.V. Sarma.

22.1. The above-mentioned discussion would reveal a grave suspicion of the conspiracy coming into existence and the commission of an offence un-

der the PC Act. It is not a case where the material, suggests mere suspicion, as discussed above. Instead, it suggests grave suspicion about the conspiracy and the commission of an offence.

MHA decision file 'weeded out'

23. It is argued that since the concerned MHA decision file has been 'weeded out', there is no primary evidence without that original file, and it is impossible to determine how the MHA officials processed the request. There can be no presumption of wrongdoing or abuse of position when all other available documents indicate that the decision was lawful. Instead, an adverse inference should be drawn under Section 113 (g) of the IEA for concealing or withholding the best evidence. It is also argued that because the prosecution does not even allege that the accused were involved in the weeding out of the file, the charge u/s 204 of the IPC for destruction of evidence is inapplicable.

23.1. When the law states that, for an offence under sections 8 and 9 of the PC Act, actual inducement of a public servant is not necessary, it becomes irrelevant whether the file in question is available or not. Once it is established that a bribe was accepted with the intent to induce any public servant, whether named or unnamed, identified or not, and whether actually induced or not, and if the other elements of those provisions are satisfied, then sections 8 and 9 of the PC Act will apply fully, and the absence of the file is not significant.

23.2. There can be no question of drawing an adverse inference, as argued, since it is not a case of withholding or concealing material evidence**;**

rather, the file is unavailable due to routine office procedures of weeding out.

23.3. The charge under section 204 of the IPC has not been invoked for the destruction of that file**;** instead, it is invoked against **A-1** concerning the deletion of emails containing incriminating evidence, which is discussed below.

Applicability of Section 477-A of IPC

24. A substantive charge under Section 477-A has been invoked against **A-4 BTL** company.

24.1. Section 477-A of IPC deals with '*falsification of accounts'* by persons such as clerks, officers, or servants, or those employed or acting in such capacities. The phrase *"whoever, being a clerk, officer or servant, or employed or acting in that capacity,"* clearly indicates that only individuals within these categories can commit an offence under this provision, not a company. Consequently, a company cannot, by itself, falsify its own accounts or those of others. Therefore, the proposed charge against **A-4 BTL** under this provision cannot be sustained legally. It cannot sustain even otherwise for the following reasons.

24.2. Section 477-A covers two types of offences. The first involves the destruction, alteration, mutilation, or falsification of any book, electronic record, paper, writing, valuable security, or accounts by persons in the specified capacities, willfully and with the intent to defraud. Also, that book, etc., must belong to or be in possession of the employer, or they should have been received by the offender for and on

behalf of his employer.

24.3. The *second category* of offence covered by Section 477A is when a person from the category mentioned above, willfully and with intent to defraud, makes any false entry in or abets its making in any such book etc., or that person omits or alters any material particular from or in any such book etc., or he abets the omission or alteration of any material particular therein.

24.4. **For both the categories of offences, the act should have been done not only willfully, but also with the intent to defraud**. To prove intent to defraud, the prosecution must establish two elements**:** *first*, that the act was deceitful, and *second*, that it caused injury or harm. If only deceit is demonstrated without harm, or harm without deceit, the criteria is not met.

24.5. Hon'ble Supreme Court, in *N. Raghavender Vs. the State of A.P. (2021) 18 SCC 70,* clarified that the marginal note of Section 477-A indicates the law applies solely to falsification of accounts namely, book keeping or written accounts.

24.6. In this case, only **A-4 BTL** has been charged under Section 477-A. The prosecution asserts that when **BTL** issued two debit notes/invoices to **TSPL** for visa consultancy services, which services **BTL** did not actually provide, **BTL** purportedly willfully and intentionally falsified its accounts to defraud. This argument is flawed because a person cannot commit fraud against himself. If accounts were falsified, it was by an individual, not the company itself. **BTL**, being a juristic entity, cannot falsify its own accounts**;** such acts must be committed by an individual within the categories specified in section 477A IPC. The late

Mr. Sushil Morarka, then Director of **BTL**, has passed away, and the prosecution does not claim he falsified accounts. If he had, and alive, he would be an accused. Any other employee, clerk, or officer who might have committed falsification has not been charged or identified. To be liable under section 477A, an individual must fall within the prescribed categories, and only such persons can falsify accounts belonging to the employer, which in this case is **BTL**. Since **BTL** is itself an employer, it cannot have defrauded itself without human intervention.

24.7. Additionally, no financial harm has been caused to **BTL**, nor is any such injury claimed. **BTL**'s involvement is limited to the transfer of bribe money from **TSPL** via cheques after **BTL** issued the two debit invoices and received the money. Thereafter, the money was clandestinely converted into cash for paying **A-1.**

24.8. Without any financial loss or injury to **BTL**, the element of intent to defraud cannot be established. Moreover, a person cannot deceive himself**;** deception requires at least two parties, one deceiving the other.

24.9. In the case of ***S. Harnam Singh*** *Vs. State (Delhi Admn.) (1976) (2) SCC 819,* Hon'ble Supreme Court held that for offences under Section 477A, both willfulness and intent to defraud must be shown. Willfully means intentionally or deliberately, and "intent to defraud" involves two components**:** deceit and injury. The mere fact that the act was done "willfully" does not necessarily follow that it was done "with intent to defraud". Deceit occurs when one intentionally induces another to believe something false. Injury is defined in Section 44 of the IPC as any illegal harm caused to a person's body, mind, reputation, or

property.

24.10. Therefore, for an offence under Section 477A, at least two persons must be involved, one committing the act and another harmed by it. In this case, only **BTL** is named as a charged party for allegedly causing falsification of its own accounts, which is not possible under the law.

24.11. Even if one considers whether someone within **TSPL** falsified its accounts on dishonest payment entries, there is no evidence of such falsification. No one has been identified as the falsifier. The case of falsification against **A-6** Anup Agarwal cannot be sustained because there is no evidence that he made any false entries or falsified accounts, thereby causing injury to **TSPL**. Furthermore, **A-6** has not been charged with the substantive offence of falsification of accounts, but only with conspiracy under Section 477A IPC and related charges, and no other offence.

24.12. Had **TSPL** been chargesheeted for this offence, for the same reason as mentioned above qua **BTL**, the charges would not have sustained against **TSPL** under this provision of law.

24.13. **In conclusion, there is insufficient material even to prima facie suggest that Section 477A has been violated** in this case.

Applicability of Section 471 r/w 468 of IPC

25. Besides Sec. 477A of IPC, **A-4 BTL** has also been charge sheeted for the substantive offence of Sec 471 read with Section 468 of IPC.

25.1. Section 471 of the IPC makes punishable the use of a forged document or electronic record as if it were genuine. It states that whoever

fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reasons to believe it to is forged shall be punished as if he had forged it himself.

25.2. Section 468 of the IPC prescribes punishment for the offence of forgery committed for the purpose of cheating. It states that whoever commits forgery intending that the forged document or electronic record will be used for cheating shall be punished.

25.3. When it is forged and used for cheating, the offence falls under 468 of IPC**;** similarly, if a forged document is used by someone who knows or believes it to be forged, it is punishable under 471 of IPC.

25.4. Therefore, the first condition for charging someone under sections 468 or 471 is that the document or electronic record must be forged.

25.5. Forgery is defined in Sec. 463 of the IPC. It states that whoever makes any false document or false electronic record, or a part thereof, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, it shall be treated as commission of forgery.

25.6. Therefore, it is necessary that the document, which is termed as 'forged', should first be a 'false document' and it should have been made with intent as mentioned in Sec 463 of the IPC.

25.7. Making of a false document is described in Sec 464 of the IPC. Under this provision, a person is said to have made a "false document", **only if he makes or executes a document claiming to be someone else or**

authorised by someone else, or he alters or tampers with a document, or he obtains a document by practicing deception, or from a person not in control of his senses.

25.8. In ***Sheila Sebastian*** *Vs. R. Jawaharaj (2018) 7 SCC 581*, it is held that Sec. 464 specifies a component of forgery, i.e. the making of a false document, and that proving forgery requires establishing the offence under Sec. 463, including the ingredients of Sec. 464. The word "to make" in Sec 464 involves a conscious act**;** thus, an offence of forgery cannot be charged against someone who did not create or sign the document. Relying on the case of ***Mohammad Ibrahim*** *Vs. State of Bihar (2009) 8 SCC 751,* it is also held that a person is said to have made a "false document", if (i) he made or executed a document claiming to be someone else or authorized by someone else**;** or (ii) he altered or tampered a document**;** or (iii) he obtained a document by practicing deception, or from a person not in control of his senses. Essentially, creating a false document as per Sec. 464 is necessary to establish the offence.

25.9. In *Mohammad Ibrahim's case*, it was clarified that simply executing a sale deed claiming the property is owned by the person executing it does not constitute forgery even if the title does not actually vest in him. The key distinction is whether the document was made with the intent to deceive, implying that impersonation or false authority must be involved. Without proof of such intent, the document is not considered false or forged, and neither Sec. 467 nor Sec. 471 applies. It was held that unless it is shown that the false document was made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows

that it was not made or executed, the offence of forgery would not be complete, and it would not be making a false document.

25.10. Relying on the case of ***Mir Nagvi Askari*** *Vs. CBI (2009) 15 SCC 643,* in the case of *Sheila Sebestian (supra),* it was held that for making a false document, one of the three conditions, as noticed above, has to be satisfied. In para 24 of the case of *Sheila Sebestian*, it is held as follows **:**

> "……. *A person is said to make a false document or record if he satisfies one of the three conditions as noticed herein before and provided for under the said Section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else……..*"

25.11. The *Sheila Sebastian case* further clarified that the definition of "false document" is integral to the offence of forgery, and both must be proven together.

25.12. In the present case, the prosecution has not presented any specific document that qualifies as a false document. Only the **A-4** company (**BTL**) has been charge sheeted for offences under sections 471 R/w 468, with no individual maker of the document identified. The prosecution claims that two invoices/debit notes dated 05.09.2011 issued by **BTL** to **TSPL** for alleged consultancy services are false. But these do not qualify as false documents under Sec. 464 because they were signed by an authorised signatory and do not meet the criteria of making or creating a false

document. Even if considered false, they lack the element of making a document claiming someone else or involving deception, which is necessary for forgery. These two documents do not fall within the definition of making of false document as defined in Sec. 464 of IPC and even though these two documents may not be true in the claim made therein but the **ingredients of Sec. 464 of IPC are not fulfilled in so much so the execution or making of those debit notes claiming to be someone else or authorized by someone else, or any alteration or tampering of those documents, or obtaining of document by practicing deception from a person not in control of his senses, are lacking. The documents in question, even if they are assumed to have been made dishonestly or fraudulently, have not been made with the intention of causing it to be believed that they were made by or under the authority of someone else.**

25.13. A company alone cannot produce a false document**;** it can be done by an individual only. No individual has been charged with forgery. In the case of *Sheila Sebestian*, it was also held that keeping in view the strict interpretation of the panel statute, a charge of forgery cannot be imposed on a person who is not the maker of the same, and making of a document is different from causing it to be made. It was also held that Explanation 2 of Sec 464 further clarifies that, for constituting an offence U/s 464, it is imperative that a false document is made and the accused person is the maker of the same; otherwise, the accused person is not liable for the offence of forgery.

25.14. The same reasoning applies to any correspondence allegedly written by

TSPL through its employees to the Government claiming misrepresented and inflated power units, which also do not meet the above mentioned criteria u/s 464 & 463 of IPC.

25.15. **Accordingly, Sections 463 and 464 of the IPC are not satisfied here, and thus, Sec 468 or Sec 471 cannot be applied since no forged document exists**.

Applicability of Section 420 of IPC

26. In the present case, the offence u/s 420 of the IPC has been invoked only against **A-8 (Chetan Srivasatava**).

26.1. The prosecution alleges that, pursuant to the criminal conspiracy, **A-8** cheated the authorities by signing letters that dishonestly and fraudulently inflated the capacity of the power project. The capacity was represented as 4 X 660 MW (2640 MW) instead of the actual 3 X 660 MW (1980 MW) in the official communications sent by **A-8**. At the relevant time, **A-8** was the General Manager (Project) of **TSPL**.

26.2. The only allegation against **A-8**, as detailed in paragraphs 17.25 to 17.28 of the chargesheet, is that he sent 10 letters to Visa Officers, allegedly misrepresenting the capacity of the power project. Notably, only 3 of these letters pertain to 2011**;** the rest relate to subsequent years. However, the prosecution's case is that the offence was committed between June and September 2011. The letters by **A-8** are dated 12.02.2011, as detailed in para 17.26 of the chargesheet, and were signed by him.

26.3. **A-8** argued that the ingredients of the offence u/s 420 IPC are not met

in this case. He also references the case of *Jupally Lakshmikantha Reddy (supra)*, which held that the ingredients for Section 420 read with Sec. 24 & 25 of IPC require that a person must knowingly make a false statement which would induce another to part with property or to do or omit to do a thing which the latter would not do or omit unless deceived and thereby is likely to suffer damage/harm in body, mind, reputation or property. It is also held that mere deception by itself would not constitute cheating unless the other essential ingredients, i.e. dishonest inducement, are established, as held in the case of Dr *Sharma's Nursing Home Vs. Delhi Administration & Ors. (1998) 8 SCC 745.* Relying on *Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr. (2000) 4 SCC 168*. It is also held that Sec 415 of IPC covers two situations**:** one where a person is dishonestly induced to deliver property, and another where a person is induced to do or omit an act he would not otherwise do or omit. In the former, the inducement must be fraudulent or dishonest**;** in the latter, it need only be intentional. Therefore, intention is the core of the offence.

26.4. In *Jupally case (supra)*, the accused allegedly used a fake NOC from the fire department to obtain recognition or renewal of the affiliation of an educational institution. However, since that NOC was not necessary for such recognition or renewal, it was held that the representation of possession of a valid NOC could not have induced the education department to grant recognition or renew affiliation. It was concluded that for criminal liability, it must be shown that the false representation involved a material fact that induced the victim to part with property or act differently than they would have otherwise. Without such a vital link, the offence could not be established.

26.5. In the present case, besides the three letters signed by **A-8** in 2011, the subsequent letters are irrelevant as they fall outside the alleged offence period.

26.6. Even if all the letters are considered, there is no evidence from any witness from the Indian mission or other departments that the assertions in **A-8**'s letters misled them in any manner.

26.7. The Visa manual (Clause 5.14.4) states explicitly that "*the Project Visa would be issued based on submission of the relevant documents clearly establishing the project/ contract has been assigned to the particular foreign company by the Indian company/ organization concerned*."

26.8. LW49 (Shivani Gupta), the Second Secretary at the Beijing Embassy, stated that the embassy verifies project capacity by referring to contract documents and agreements. LW28 (Prasanna Srivastava) confirmed that the embassy reviews documents enclosed with visa applications, including the contract between the Indian and foreign companies. LW46 (Satya Prakash), an Assistant Section Officer in the Visa wing, also stated that the contract or agreement is essential because it determines the number of visas that can be issued for the project.

26.9. Since the relevant documents were supplied to the embassy along with **A-8**'s letter, and no one claims to have acted or refrained from acting based on mere assertions in the letters, there can be no deception. Even if the letters contained false statements, no deception occurred because the Indian Mission did not rely on those letters in making its decision. Proper scrutiny of primary documents, such as contracts and agreements, is necessary, as embassy officials confirmed.

26.10. Since no witness claims to have been deceived or cheated by **A-8**'s letters, there is no offence of cheating. The letters merely requested visa extensions, and it is not claimed that embassy officials or other public servants were induced to act or refrain from acting based on those letters.

26.11. During arguments, the Ld. Prosecutor claimed that SSP Mansa, Punjab, was misled because of **A-8**'s letters, but those letters were addressed to the Indian Embassy, not SSP Mansa. Moreover, neither SSP Mansa nor anyone from his office states that they were deceived by those letters.

26.12. **Under these circumstances, one of the key elements of Section 420 of IPC is absent**. Consequently, **A-8**'s other arguments, that there was a proposal to increase **TSPL**'s capacity from 3 to 4 units, and that other persons from **TSPL** also wrote similar letters to the Indian Mission, become irrelevant.

26.13. **In conclusion, the ingredients required to establish an offence under Section 420 IPC are not satisfied in this case**.

Applicability of Section 204 of IPC

27. Section 204 of the IPC prescribes punishment for destroying a document or electronic record to prevent its use as evidence. When someone secretly deletes or destroys a document or electronic record that may be legally required to be produced in court or in any lawful proceeding before a public servant, which includes investigations, or when they obliterate or make illegible the whole or part of such a record

with the intent to prevent its use as evidence, or after being lawfully summoned or required to produce it, they shall be punished.

27.1. In this case, the prosecution alleges that **A-1** deleted incriminating emails from his email accounts, which were key evidence, with the intention of preventing them from being used as evidence. Precisely, the case of prosecution is that after the incriminating e-mails were copied from the laptop of **A-1** in another case on 16.05.2017, from his four e-mail accounts which were already found open on his laptop, once again the IO of the present case under a Memorandum of Inspection of those four e-mail accounts of **A-1** tried to access those e-mail accounts by directing **A-1** to open them. However, **A-1** declined to access the first three e-mail accounts claiming that they belonged to the companies and he refused to disclose the passwords, and in his fourth e-mail account the incriminating e-mails were found missing. Regarding it a Memorandum was prepared by the IO on 05.07.2024.

27.2. **Therefore, prima facie, Sec 204 of the IPC applies to the facts and circumstances of this matter for the substantive offence against A-1, in conjunction with Sec. 120B of IPC.**

No Criminal Conspiracy:

28. It is next argued that the prosecution has not produced any evidence of an agreement or "meeting of minds" (the *sine qua non* of conspiracy), such as call detail records (CDRs), chat logs, or travel records showing any meeting between **A-1** and any public servant. The accused argues

that there is no proof of a criminal conspiracy among them, and therefore, a charge under Section 120B of the IPC cannot be sustained.

28.1. Section 120A of the IPC defines criminal conspiracy as an agreement between two or more persons to commit an illegal act or to perform a legal act through illegal means. The primary requirement is simply the existence of an agreement among the parties involved. The purpose of the agreement may be to engage in illegal activities or to carry out legal actions unlawfully. It is essential to note that the mere existence of an agreement to commit an offence is sufficient to establish the crime of conspiracy, and actually committing the criminal act is not required. Section 120B of the IPC details the punishments for conspiracy and classifies them based on the goal of the conspiracy.

28.2. To prove a conspiracy, there must be evidence, either direct or circumstantial, demonstrating an agreement between two or more persons to commit a crime. This agreement requires a mutual understanding that leads to a collective decision by the conspirators to commit the offence.

28.3. In the present case, the accused individuals demonstrated a mutual understanding regarding the bribe, which is an offence under the PC Act, as evident from their conduct, as discussed above. This strongly suggests that a criminal conspiracy existed prima facie to commit an offence under the PC Act. For conspiracy, the circumstances of a case, when taken together at face value, should indicate a meeting of minds among the conspirators for the intended purpose of committing an illegal act or an act that is not illegal by illegal means. The essence of the offence of conspiracy is the fact of agreement. The agreement may be

express or implied, or partially express and partially implied. A conspiracy arises, and the offence is committed as soon as the agreement is made**;** and the offence continues as long as the combination persists, that is, until the conspiratorial agreement is terminated by its completion, abandonment, frustration, or other means. The actus reus in conspiracy is the agreement to commit the illegal conduct, not its execution.

28.4. It is not necessary for each conspirator to communicate with all others. Nor is it required for each conspirator to know every detail of the scheme or to participate in every stage. What is essential is that they agree on the design or purpose of the conspiracy. The law clearly states that a person can be charged with conspiracy even if he is unaware of all details or the agreements made by others involved. A person can be part of a conspiracy even if he only knows part of it, as long as the key elements are present. As previously explained, the main element of criminal conspiracy is the agreement to commit a crime. If the agreement aims to carry out an act that is itself a crime, the prosecution does not need to prove any overt act, because in such cases, conspiracy can be shown through the agreement alone. When the alleged conspiracy involves committing a serious crime as described in Section 120-B, read with the proviso to sub-section (2) of Section 120-A, demonstrating only the agreement to commit that crime is sufficient**;** proof of any overt act by the accused or any of them is not necessary. These rules do not require every conspiracy participant to perform an overt act toward its goal. Conspiracies are hatched in secrecy and therefore obviously their direct proof is hard to come. It has to be gathered from the circumstances.

28.5. When the circumstances of the present case, as deduced from the oral statements of the approver, the transaction of money which is documented from **TSPL** to **BTL**, the oral statement of Abhishek Morarka and the e-mail communications, do prima facie strongly suggest existence of such a criminal conspiracy.

28.6. Reliance by defence upon the cases of *Navjot Sandhu alias Afsan Guru (supra)**;** Rakhal Chandra Das (supra)**;** Pran Krishna Chakravarty (supra) and**;** Kehar Singh (supra)* not only differ as to the stage of trial and they arose out of final judgment, but also the facts are distinguishable. Nevertheless, the principles applicable to infer conspiracy in a given case, as laid down in these cases and other precedents, are undisputed.

28.7. In the present matter, the statements of approver, corroborated by the statement of Abhishek Morarka, further corroborated by the documented payment from **TSPL** to **BTL** and, the e-mails clearly indicate participation of **A-1** to **A-7** in the criminal conspiracy. The said criminal conspiracy was to commit an offence u/s 8 & 9 of the PC Act. Pursuant to that conspiracy, the bribe amount was transferred from **TSPL** to **BTL** and then paid in cash to **A-1.** Therefore, **A-1** to **A-7** agreed to commit an offence which is squarely covered within the definition of criminal conspiracy, which is defined under Section 120A of the IPC.

28.8. It is only the **A-8** Chetan Shrivastav, qua whom there is insufficient material to indicate that he was a part of the conspiracy, as discussed below.

28.9. **Accordingly, the charge of criminal conspiracy u/s 120B is prima facie made out against A-1 to A-7, and it ought to be framed.**

28.10. So far as **A-8** is concerned, against him due to insufficient material to frame a charge of criminal conspiracy, no charge under that provision

is made out.

Specific allegations and material against each charge-sheeted accused.

29. A-1 (S. Bhaskaraman)

29.1. He is identified as a Chartered Accountant and a close aide of **A-2.** The approver, who had saved **A-1** 's email ID as "ChKcBhashar" (referencing Chennai, Karti Chidambaram (**A-2**), and Bhaskaraman), initially approached **A-1** for help obtaining 800 additional visas for **TSPL**, believing **A-1** and **A-2** had contacts within MHA through **A-2**'s father, the then Home Minister. **A-1** met with the approver in Chennai, where **A-2** was also present, and **A-2** instructed the approver to discuss the requirements with **A-1.** The approver discussed the requirements with **A-1.** Later, **A-1** advised against seeking 800 additional visas and instead suggested applying to the MHA for permission to reuse existing PVs. He also received a copy of the **TSPL** request letter to MHA dated 30.07.2011 from the approver and then forwarded it to **A-2**. He exchanged e-mails with the approver regarding the visa process, including an e-mail dated 20.07.2011 stating, "*we have contacted the high commission.*" **A-1** allegedly **demanded an illegal gratification of ₹50 lakhs** from the approver to secure this MHA permission for visa reuse. **A-1** assured the approver that the work would be completed, confirming he had spoken to **A-2**'s father. Allegedly, he then sent an offer letter via email, explicitly stating that ₹50 lakhs would be charged as remuneration for the visa work. The approver's statements, including the Section

164 statement, clearly indicate that **A-1** made this demand. Emails exchanged between **A-1** and the approver on 19.07.2011 and 20.07.2011 also reflect **A-1** 's participation in the conspiracy, even mentioning contact with the "first Secretary," suggesting that a public servant was to be induced.

29.2. **A-1** was instrumental in the application process and payment transfer. The approver sent **A-1** a copy of the **TSPL** request letter to MHA (dated 30.07.2011), which **A-1** forwarded to **A-2**. After the application was submitted, **A-1** telephonically informed the approver that the permission to reuse visas would be approved. **A-1** collected **₹50 lakhs in cash** from late Sushil Morarka (Director of **BTL**) at the company's Mumbai office, in the presence of Abhishek Sushil Morarka. **A-1** later called the approver to confirm the receipt of payment.

29.3. Following the approval dated 30.08.2011, **A-1** directed the approver to collect the permission from Vinod Kumar, Deputy Secretary at MHA. The approver emailed a copy of the MHA approval letter to **A-1** on 02.09.2011. **A-1** then forwarded this approval email to **A-2** on the same date, an email **A-2** allegedly read. This action, along with the other communications, indicates a **meeting of minds** to achieve a common object.

29.4. Crucially, **A-1** allegedly **deleted incriminating e-mails** from his account and withheld access to other email accounts during the investigation, constituting destruction of evidence.

29.5. Based on this material, which creates a strong suspicion, **A-1** 's prayer for discharge is rejected.

29.6. **Prima facie, sufficient material exists to frame charges against A-1 for:**

- Criminal conspiracy, under Section **120B IPC**, read with Section 204 IPC and Sections 8 & 9 of the PC Act, 1988.
- Substantive offence of Destruction of evidence, under Section **204 IPC,** read with Section 120B IPC.
- Substantive offences under **Sections 8 & 9 (in the alternative**) of the PC Act, 1988, read with Section 120B IPC.

29.7. However, the necessary ingredients for Sections 420, 468, 471, and 477A of the IPC are **not made out,** as mentioned above.

30. <u>A-2 (Karti P. Chidambaram)</u>

30.1. The approver approached **A-2** in Chennai to obtain 800 additional Project Visas for **TSPL**, believing **A-1** and **A-2** had contacts within the MHA through **A-2**'s father. The approver met **A-2** and **A-1** at **A-2**'s Chennai office in June 2011 to discuss the visa requirements, where **A-2** instructed the approver to discuss the necessary details with **A-1. A-1** subsequently demanded and obtained a bribe. After a bribe of ₹fifty lakhs was paid, the approver even called **A-2** to thank him, and **A-2** affirmed that he had received the payment. Although the approver avoided using explicit terms like payment or money, **A-2** affirmed the receipt of the amount during this call. **A-2** was referred to as the "Chennai friend" in internal **TSPL** communications related to the payment. The approver had saved an email from **A-1,** with a short name as mentioned above. In this abbreviated email name, the letters "Kc" denote Karti Chidambaram. The approver also identified **A-2** as the "Chennai friend". **A-2** received a copy of the request letter sent by **TSPL** to the

MHA (dated 30.07.2011), which was forwarded by **A-1.** An email attachment sent by **A-1,** containing the request letter for visa reuse submitted by the approver, was also forwarded to an email address indicating it belonged to **A-1** 's office, which, from its name and domain, suggested it was the email ID of Karti P. Chidambaram, implying **A-1** was discussing the work with **A-2**. **A-2** also received and read the MHA approval letter for the re-use of visas, which was forwarded to him by **A-1** via email on 02.09.2011.

30.2. The above-mentioned facts of **A-2** meeting the approver in the presence of **A-1** at Chennai, and telling the approver to explain his requirement to **A-1,** followed by the subsequent demand and payment and telephonic conversations regarding receipt of amount, as well as exchange of crucial documents, are cited as demonstrating a **"meeting of minds to achieve a common objective"**.

30.3. The conspiracy between **A-1** and **A-2** is evident, and the law does not require a conspirator to interact with every other conspirator, nor was the recovery or tracing of the bribe money up to **A-2** necessary. The defence arguments, including the claim that **A-2** did not read the emails, or that there is no substantiated proof of the alleged meeting in Chennai or the telephonic call, do not help his case, as the strong suspicion is supported by the approver's statements and the case against him is not based solely on email confirmation. The concerns regarding lack of prior appointments, tickets, vouchers, location data, or the ability to collect CDRs are matters for trial. Recovery of money from **A-2** or tracing the money up to **A-2** was not necessary. The absence of Dr Kagzi's statement would also be a matter for trial. Even if there is no direct

documentary or e-mail link to **A-2**, the approver's statement makes it clear that **A-2** guided the approver to **A-1** to disclose his requirement and details, and thereafter **A-1** demanded and received the bribe.

30.4. The material establishes a strong suspicion against **A-2**, therefore his prayer for discharge is also rejected.

30.5. **Prima facie, sufficient material exists to frame charges against A-2 for:**

- Criminal conspiracy, under Section **120B IPC**, read with Section 204 IPC and Sections 8 & 9 of the PC Act, 1988.
- Substantive offences under **Sections 8 & 9 (in alternative)** of the PC Act, 1988, read with Section 120B IPC.

31. **<u>A-3 (TSPL)</u>**

31.1. It is the alleged beneficiary of the conspiracy. As alleged by the prosecution, it entered into a criminal conspiracy to obtain additional Visas/PVs to expedite its delayed power project and avoid substantial financial penalties. Allegedly, the company, through its employees, assured **A-1** that it was prepared to pay an illegal gratification of ₹50 lakhs**;** this amount was subsequently paid after MHA approval was obtained, following the bribe being paid through a conduit, **BTL**, using two bogus invoices for non-existent consultancy services. The payment was made from its HDFC Bank account against **BTL** via a cheque signed by **A-5** and **A-6** as authorised signatories. The internal records of **TSPL** include an approval note dated 23.08.2011, signed by key officials including **A-5**, **A-6**, and **A-7**, proposing a payment of ₹50 lakhs to **BTL** and recommending confidentiality, noting "*No Eol is issued or*

competitive quotations are invited as matter is confidential." This document indicates knowledge of and wilful participation in criminal conspiracy.

31.2. The facts and circumstances discussed above clearly point out the existence of a criminal conspiracy. **TSPL** was the beneficiary of this conspiracy. Accordingly, prima facie, there is sufficient material against **A-3**, indicating its involvement in the criminal conspiracy.

31.3. Therefore, **prima facie, sufficient material exists to frame charges against A-3 for:**

- Criminal conspiracy, under Section **120B IPC**, read with Section 204 IPC and Sections 8 & 9 of the PC Act, 1988.

32. **<u>A-4 (BTL)</u>**

32.1. **BTL** has been charged with the offence of criminal conspiracy, punishable under section 120B read with sections 204, 420, 471, 468, and 477A of the IPC, and Sections 8 & 9 of the PC Act. **BTL** has also been chargesheeted for a substantive offence under section 471 read with sections 468, and for a substantive offence under section 477A of IPC.

32.2. The prosecution claims that **BTL** knowingly used a conduit to legitimise an illegal payment of ₹50 lakhs from **TSPL** to **A-1.** It issued two false invoices/debit notes to **TSPL** dated 05.09.2011, amounting to ₹9 lakhs for 'consultancy services' and ₹41 lakhs for 'out-of-pocket expenses'. The investigation found that **BTL**'s main business was manufacturing and trading industrial knives, and that it did not provide visa-related consultancy services. This was further confirmed by an affidavit from its Director, Abhishek Morarka. It is alleged that its former Director, Sushil Morarka, arranged the ₹50 lakhs bribe in cash through Dr

Ramesh Kumar Kagzi, fraudulently recorded as share application money, and paid it to **A-1** at the company's Mumbai office.

32.3. So far as Sections 471 r/w 468 and Section 477A of the IPC are concerned, as discussed above, the ingredients of those offences are not established.

32.4. However, from the facts and circumstances discussed above, prima facie, there is sufficient material against **A-3**, indicating its involvement in a criminal conspiracy, because **BTL** participated in the clandestine method of transfer of money.

32.5. Therefore, **prima facie, sufficient material exists to frame charges against A-4 for:**

- Criminal conspiracy, under Section **120B IPC**, read with Section 204 IPC and Sections 8 & 9 of the PC Act, 1988.

33. **<u>A-5 (Viral Mehta)</u>**

33.1. **A-5** held the position of Vice President (Project) and Construction Head of **TSPL**. He was aware of the project delays and the consequential need for increased manpower. The allegations against **A-5** are that he was informed by the approver that a bribe of ₹ 50 lakhs was required to obtain permission to reuse PVs. He was allegedly present during a joint conference call in June 2011, where the initial decision was made to approach **A-2** and **A-1** for assistance in obtaining 800 additional visas, leveraging **A-2**'s father's perceived contacts in the MHA. **A-5** stated that approximately 800 extra visas were needed due to the project being behind schedule. He approved the subsequent strategy modification to seek permission to reuse 263 existing visas instead of requesting 800 new ones. He provided the technical information used to seek additional

visas, explicitly citing the FGD system as part of the contract, a fact that was used to request 44 additional PVs. He later forwarded an email asking whether a dummy contract should be submitted to the Indian Embassy regarding the FGD system. He was informed of and discussed the ₹ 50 lakh bribe demanded by **A-1** for the reuse permission. He participated in the discussion where it was agreed that, since **TSPL** had no provision for cash payments, the illegal payment should be routed through an invoice raised by **BTL** for consultancy services or out-of-pocket expenses.

33.2. He received an email from the approver on 23.07.2011 detailing the proposed payment of ₹50 lakhs to the "*Chennai friend*" on a "*success fee basis*". **A-5** replied with "*Perfect*." and *"On your return to India, can we have a discussion with Mr Siddiqi on the amount? The negotiation committee may be Anup with u."* He suggested discussing the amount with **A-7**, proposing a negotiation committee involving himself and the approver. He signed the NFA dated 23.08.2011 proposing the ₹50 lakh payment to **BTL**, noting its confidential nature by explicitly stating**:** "*No Eol is issued or competitive quotations are invited as matter is confidential,*" indicating his willful entry into the conspiracy. He received the MHA approval letter via email from the approver on 02.09.2011, indicating his awareness of the bribe's successful outcome. He signed a letter dated 13.09.2011 to SEPCO stating the visa reuse approval was achieved with *"tremendous efforts, strategic action and huge cost"*. He co-signed the cheque number. 002227 for ₹45 lakhs paid to **BTL**, along with **A-6**.

33.3. **A-5** argued that he was not responsible for Visa management, lacked

knowledge of the alleged conspiracy or illegal dealings, and argued that the approver acted unilaterally. He also contended that he routinely signed documents under the company's financial protocol without knowing the underlying transaction. Furthermore, **A-5** argued that the reuse permission application had already been submitted before he and other officers were informed. The detailed arguments raised by **A-5** have already been mentioned above, and there is no need to repeat them.

33.4. Even if the permission had been applied for earlier, **A-5**'s participation in the conspiracy began the moment he consented to and engaged in the bribe. It is irrelevant that **A-5** may not have directly communicated with **A-1, A-2**, or **A-2**'s father, or that the approver did not report directly to him. The specific and clear allegations against him, along with the documentary evidence, mean he cannot be exonerated on the basis of the assignment of visa matters to other officials or the claim that he signed the NFA merely as a routine procedural act. The facts mentioned above undermine **A-5**'s claim that he was not responsible for Visa management or that he had no knowledge of the alleged conspiracy or the dealings involving illegal payments. They also weaken the argument that the approver acted unilaterally, that **A-5** was only informed later of the required payments, or that **A-5** signed the documents routinely under the company's financial protocol without awareness of any underlying transaction. Even if the approver did not inform **TSPL** or its officials that he spoke to **A-2**'s father, this is inconsequential. The approver's statements must be considered as a whole, and all of his statements clearly reveal **A-5**'s role. Even if **TSPL**'s internal emails indicate that

some visa matters were assigned to other officials, this does not exonerate **A-5,** given the specific and clear allegations against him, particularly given his role as Vice President (Project) and Construction Head. It is also premature to conclude that **A-5**, or **A-6** & **A-7**, signed the approval note as a routine procedural act without criminal intent.

33.5. The allegations establish a strong suspicion that **A-5** was involved in the criminal conspiracy.

33.6. Therefore, **prima facie, sufficient material exists to frame charges against A-5 for:**

- Criminal conspiracy, under Section 120B IPC, read with Section 204 IPC and Sections 8 & 9 of the PC Act, 1988.

34. **<u>A-6 (Anup Agarwal)</u>**

34.1. **A-6** served as the head of finance and CFO of **TSPL**. He was also allegedly aware of the project delays and their financial implications. The allegations against **A-6** are that he was informed by the approver (along with others) in August 2011 about the ₹50 lakh bribe required to secure PV reuse permission. He participated in the joint meeting via conference call in June 2011, where the decision to seek assistance from **A-1** and **A-2** for additional visas was made. He was consulted and participated in discussions regarding modifying the strategy to seek permission to reuse existing visas. He attended a conference call discussing **A-1** 's demand for a cash bribe. He was part of the decision to route the payment through an invoice raised by **BTL** for consultancy or out-of-pocket expenses. The approver specifically claims in a subsequent statement (dated 24.06.2022) that **A-6** informed the team that the company had no provision for cash payment. The approver also

stated (in the 31.05.2022 statement) that **A-6** was aware of the political connections and the use of false invoices for cash payments. On 23.07.2011, **A-5** suggested that **A-6** be included in the negotiation committee to determine the bribe amount. On the same day (23.07.2011), **A-6** sent an email to the approver (copied to **A-5**) demanding that *"the modalities on gift etc. with knowledge and discussion with the undersigned"* occur, indicating his involvement in the illegal payment discussions. In this same email, he noted that *"All your expenses and tour bill etc. to be signed by MS only"*. On that same date, the approver wrote to **A-6** (copied to **A-5**) detailing bills to be submitted, including cash payments and foreign tour expenses. He signed the NFA, which demonstrates his knowing and willful participation in the criminal conspiracy to pay the bribe under the guise of consultancy services to **BTL**. He allegedly signed the NFA on 08.09.2011. On 02.09.2011, he received the MHA approval letter via email from the approver, who stated that approval was secured "*due your blessings and support*". He received the bogus invoices/debit notes from **BTL**, and on 15.09.2011, after receiving the pre-audit advice, he wrote "*Pl. Pay*" on them, directing the payment. He also co-signed the cheque of ₹45 lakhs disbursed to **BTL** on 21.09.2011 for "*visa approval – Chinese*".

34.2. **A-6** also contended that he was unaware of the conspiracy, claiming he signed the approval note only on 08.09.2011, which he asserted was routine. He argued that the approver's Section 164 Cr.PC's statement failed to detail his role specifically, and the documentary evidence contradicted or exonerated him. He also claimed his involvement was

passive, that he lacked *mens rea*, and that the confidentiality marks on emails should exonerate him. The detailed arguments raised by **A-6** have already been mentioned above, and there is no need to repeat them.

34.3. The allegations against **A-6** in the approver's statement are specific, stating that **A-6** participated in key meetings, approved the fraudulent transaction, and was involved in financial decisions related to the common object. Corroborating material exists in the emails dated 23.07.2011 and other emails, strongly suggesting that the claim that **A-6** was unaware is prima facie false. The approver did not exonerate **A-6** in his Section 164 Cr.PC statement, and specific allegations are found in his Section 161 Cr.PC statements. At most, in his section 164 Cr.PC statement, the approver did not provide details about **A-6**, but his other statements under section 161 Cr.PC do describe **A-6**'s detailed role. His participation by sanctioning the bribe, fully aware of its purpose (as evidenced by his signature and the "Pl. Pay" instruction), indicates active involvement, rejecting his claim of passive participation. As the CFO, he should have opposed the bribe. Furthermore, the fact that **A-6** had previously shared the UK Bribery Act with the organisation does not guarantee his innocence in this case, nor does the non-charge sheeting of his juniors exonerate him.

34.4. Documents D-486 and D-487 also reveal some manipulation regarding the date of signature. The copy of NFA at D-486 shows that it is signed by the approver, **A-6** and **A-7**, with **A-5**'s signature missing. However, the word "enclosed" is written above **A-5**'s name. Another copy of NFA, at D-487, shows that the signatures of **A-5** and **A-6**, both dated 08.09.2011, are present, but **A-7**'s signature is missing. If **A-5** and **A-6**

signed this document on 08.09.2011, and **A-7** had not signed it by then, D-486 could not have existed, as **A-5**'s signature is absent from it. The date below the signatures on the NFA may have been manipulated.

34.5. Incriminating material against **A-6** contained in the emails is already discussed above and need not be repeated. The allegations establish a strong suspicion that **A-6** was involved in the criminal conspiracy.

34.6. Therefore, **prima facie, sufficient material exists to frame charges against A-6 for:**

- Criminal conspiracy, under Section 120B IPC, read with Section 204 IPC and Sections 8 & 9 of the PC Act, 1988.

35. **<u>A-7 (Mansoor Siddiqui)</u>**

35.1. **A-7** was the then Project Head of the Vedanta Group and Director of **TSPL**, overseeing the **TSPL** Power Project and responsible for the timely completion of project schedules. The approver reported directly to **A-7** while at the Mumbai project office. **A-7** deputed the approver to address project delays and the shortage of Chinese manpower. The approver informed him that a bribe of ₹50 lakhs was required. He was present via conference call in June 2011 during the joint meeting with **A-5** and **A-6**, where the decision was made to approach **A-1** and **A-2** for visa help, citing their perceived MHA contacts through **A-2's** father. When the strategy shifted to seeking reuse permissions rather than additional visas, **A-7** and others agreed to proceed. He was informed of and participated in the conference call discussing **A-1 's** demand for a ₹50 lakh cash bribe. Upon learning of the demand, **A-7** asked if the permission would accelerate the plant's establishment, and upon receiving a positive response, he instructed the team to "go ahead for

the same". He was involved in the decision to route the payment through an invoice raised by **BTL** to circumvent the company's lack of a cash payment provision. He signed the NFA proposing the ₹50 lakh payment to **BTL** and explicitly noted its confidential nature, which demonstrates his knowledge and willful participation. The approver specifically stated that the NFA was "vetted by" and "finally approved by" **A-7**. As the competent officer, he approved the approver's travel to Beijing in July 2011 to meet Dr Adarsh Swaika at the Indian Embassy regarding visa issues. In the approver's statement, it is alleged that **A-7** was responsible for the timely completion of project schedules as a Director (Projects). **A-7** was an experienced employee of the Vedanta Group and maintained a good relationship with the Promoter and Chairman of Vedanta Group, who had complete faith in him. He specifically directed the approver at **TSPL** to explore how he could contribute to the project, which was behind schedule. **A-7** was involved in the decision to circumvent the company's lack of a cash payment provision by routing the payment through an invoice raised by **BTL**.

35.2. All the allegations clearly make out a strong suspicion that **A-7** was involved in the criminal conspiracy.

35.3. Therefore, **prima facie, sufficient material exists to frame charges against A-7 for:**

- Criminal conspiracy, under Section 120B IPC, read with Section 204 IPC and Sections 8 & 9 of the PC Act, 1988.

36. **<u>A-8 (Chetan Shrivastava)</u>**

36.1. Against **A-8**, the prosecution's allegation is limited to his participation

in a criminal conspiracy and to his cheating the authorities in the manner discussed above. He has been chargesheeted for offences under section 120B read with 204, 420, 471, 468, 477A of IPC and Sections 8 & 9 of the PC Act. He has also been substantively charged with the offence of cheating, punishable under Section 420 of the IPC.

36.2. So far as Section 420 of IPC is concerned, it is already held above that the ingredient of that section is not fulfilled. That leaves us with the charge of criminal conspiracy against **A-8**.

36.3. Even that criminal conspiracy against **A-8** is sought to be inferred only from the act that **A-8** signed a few such letters in which the inflated capacity of **TSPL** was mentioned. Besides, there are no allegations against **A-8** that he was in any manner a part of the conspiracy that came into existence. The approver has not alleged any role on the part of **A-8**.

36.4. Mere writing of those letters by **A-8**, who was an employee of **TSPL,** cannot indicate his participation in the conspiracy. As mentioned above, in addition to **A-8**, other officials of **TSPL** also wrote similar letters to the Embassy personnel, noting the inflated capacity. That could have been because the company, at some point, decided to increase capacity, which later did not fructify for whatever reason. Even if one were to assume that **TSPL** falsely created documents purporting to show an intention to increase capacity without any actual intention to do so, that would not indicate a conspiracy between **A-8** and others.

36.5. Qua **A-8**, it is claimed that his name is included in an internal company email dated 09.06.2011 sent by **A-6**, in which the name of **A-8** appears among other officials of **TSPL**. This email forwarded a copy of the

"strategic issues" and requested the addressees, including **A-8**, to attend a planned meeting to finalise or establish the detailed action plan for these strategic issues, as advised by the Group Director – Projects, i.e., **A-7**. No specific allegations are made against **A-8** in the approver's statement. Therefore, in addition to signing certain letters, the prosecution alleges that the endorsement of the internal company email to **A-8** indicates his participation in the communication loops related to project planning.

36.6. The said e-mail dated 09.06.2011 is an internal e-mail of **TSPL**, written by **A-5** to various officials including **A-8**. In that e-mail, the relevant portion of the Minutes of Meeting was enclosed. The said MoM does not reflect anything that suggests that **A-8** was in any manner aware of or consented to the common object of the criminal conspiracy, or that he participated in any manner that reflects his meeting of minds with the other accused persons. Qua **A-8**, all that is mentioned in the MoM is that the points discussed in the meeting relating to the performance of SEPCO included that the Project team should work out monthly/ bi-monthly milestones and that SEPCO should work out a schedule in discussion regarding the completion of the unit, and the responsibility for those two items was assigned to **A-8**. Those two items do not even indicate any knowledge by **A-8** qua the agreement to offer or pay a bribe, or the resultant conspiracy.

36.7. Accordingly, in the absence of any material against **A-8** to show that he was in any manner involved in the conspiracy, he cannot be charged even for the offence of criminal conspiracy. **A-8 Chetan Shrivastava is consequently discharged.**

37. The **following charges are made out against the remaining seven accused persons. Charges be framed accordingly** as mentioned below**.**

Accused no. **Name of Accused**	**Charged/ Discharged** (If charged, under Sections)
A-1 **S. Bhaskararaman**	**Charge** U/s 120B r/w Section 204 of IPC and Section 8 & 9 of the PC Act. **Also,** for substantive offence u/s 204 of IPC r/w 120B. **Also,** for substantive offence u/s 8/9 of the PC Act of 1988 r/w 120B.
A-2 **Karti P.** **Chidambaram**	**Charge** U/s 120B r/w Section 204 of IPC and Section 8 & 9 of the PC Act. **Also,** for substantive offence u/s 8/9 of the PC Act of 1988 r/w 120B.
A-3 **TSPL**	**Charge** U/s 120B r/w Section 204 of IPC and Section 8 & 9 of the PC Act.
A-4 **BTL**	**Charge** U/s 120B r/w Section 204 of IPC and Section 8 & 9 of the PC Act.
A-5 **Viral Mehta**	**Charge** U/s 120B r/w Section 204 of IPC and Section 8 & 9 of the PC Act.
A-6 **Anup Agarwal**	**Charge** U/s 120B r/w Section 204 of IPC and Section 8 & 9 of the PC Act.
A-7 **Mansoor Siddiqi**	**Charge** U/s 120B r/w Section 204 of IPC and Section 8 & 9 of the PC Act.
A-8 **Chetan Srivastava**	**Discharged.**

Announced in open court
on the 23rd day of December 2025.

DIG VINAY SINGH
Digitally signed by DIG VINAY SINGH
Date: 2025.12.23 10:32:23 +0530

DIG VINAY SINGH
SPECIAL JUDGE (PC ACT), CBI-09 (MPs/MLAs CASES),
RADC, NEW DELHI *(m)*