

RC 2172019A0002/CBI/ACU-VI/AC-II/New Delhi
CC No. 61/2019
CBI Vs. Sudesh Kumar

10.09.2020

Matter is taken up through Video Conferencing (Cisco Webex), hosted by Reader of the Court Sh. Davinder Singh Bisht.

Present (on screen): Sh. Parmod Singh, Ld. PP for the CBI with IO/Inspector Savita.

Accused Sudesh Kumar on bail with counsel Sh. Harsh K. Sharma.

Sh. Davinder Singh Bisht, Reader, Sh. Kripal Singh Sajwan, Sr.P.A, Ms. Gurmeet Kaur, PA, Sh. Hardeep Singh, Ahlmad and Sh. Manish Kumar, Asstt. Ahlmad are also present through Video Conference.

Vide separate detailed order announced through Video Conferencing, accused Sudesh Kumar has been discharged of all the allegations contained in the chargesheet. Bail bond and surety bond stands discharged. Original documents of surety be returned to him as per rules. In terms of Section 437-A Cr.P.C, accused is required to furnish bail bond of Rs.50,000/- with one surety in the like amount.

Bond and surety bond furnished. Same is accepted. FDR be retained on record.

File be consigned to record room after necessary compliance.

Copy of order be given dasti by way of email to Ld. PP for CBI at his request.

Screen signed copy of the order be sent to the Computer Branch for uploading the same on the official website of the Court. The signed copy of order shall be placed on record as and when physical hearing of the Court resumes.

HARISH Digitally signed by
KUMAR HARISH KUMAR
Date: 2020.09.10
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(Harish Kumar)

Special Judge (PC Act) CBI-20,
Rouse Avenue District Court,
New Delhi/10.09.2020

**IN THE COURT OF SPECIAL JUDGE (PC ACT) (CBI-20), ROUSE AVENUE
DISTRICT COURT, NEW DELHI**

Case No. CBI 61/2019
CNR No. DLCT110001472019

In the matter of:-

Central Bureau of Investigation

Through its Director,
Plot No. 5-B, CGO Complex,
Lodhi Road,
New Delhi 110 003.

..... **Complainant**

VERSUS

Sudesh Kumar

(Head Constable, CBI, AC-II, New Delhi)

S/o Sh. Ram Kumar

H. No. 554, Sector-7

M.B.Road, Saket

New Delhi

..... **Accused**

RC No. 2172019A0002/CBI/ACU-VI/AC-II/New Delhi
P.S CBI, ACU-VI, AC-II, New Delhi.
U/s 342/380 IPC and Sec. 15 r/w section 13(2) r/w
13(1)(a) of PC Act, 1988 as amended in the year 2018.

Date of FIR	:	13.02.2019
Date of filing of Chargesheet	:	04.04.2019
Arguments concluded on	:	14.08.2020
Date of order	:	10.09.2020

Order on charge

1. Vide this order, I shall dispose of question as to whether there are *prima facie* sufficient ground on record to frame charges against the accused in respect of different offenses alleged against him by the prosecution.
2. As per charge sheet present FIR bearing RC No.

2172019A0002/CBI/ACU/VI/AC-II/N Delhi was registered on the basis of written report/complaint of Sh. Ashok Yadav, Dy. SP, CBI, AC-II, New Delhi against accused Sudesh Kumar who was working with CBI, AC-II, as Head Constable.

3. It is stated that during the course of search conducted at the residential premises of Wg. Cdr. Y. S. Tomar at W-4C, Western Avenue, Sainik Farms, New Delhi on 02.02.2019 in another CBI case bearing No. RC 2172019A0001/CBI/ACU-VI/AC-II/New Delhi, accused Sudesh Kumar was deputed by the search team leader Sh. Ashok Yadav to secure the backside of the said premise where servant quarters were built. While securing the said backside of the said premise accused Sudesh Kumar saw a lady servant of Sh. Y. S. Tomar removing a bundle from the window of the bathroom of the house of Sh. Y. S. Tomar. The said bundle contained Rs. 6 lacs. Accused threatened the lady servant, locked her in the servant room and removed the bundle from the bathroom window. He hid the amount of Rs 6 lacs from the eyes of search team clandestinely, thereby committed theft and criminal misconduct as public servant.
4. It is further stated that said criminal misconduct of the accused came to the light when Sh. Gaurav Kumar S/o Wg. Cdr. Sh. Y. S. Tomar informed Sh. Ashok Yadav pointing towards the accused, a member of search team, that accused had stolen huge cash, in a bundle, which was being removed from the window of the bathroom of the said premise. On being confronted accused disclosed the places where he had hidden the stolen money. On his disclosure and in the presence of independent witnesses Rs. 2 lacs was recovered from the scrap lying at the backside of the premise and Rs. 4 lacs was recovered from under the sofa in the bed room at the first floor.

5. Report/complaint of Sh. Ashok Yadav was annexed with a Memo dt. 02.02.2019, stated to be prepared at the spot, recording the incident of theft, criminal misconduct etc. of the accused Sudesh Kumar, which memo was duly signed by Sh. Amit Kumar Rathee, Sh. Ashok Yadav, Rajesh Singh, Shakti Singh members of search team, Sh. Gaurav Tomar and Mrs Manisha Tomar, son and wife of Sh. Y. S. Tomar, Ms. Shyam Kaur and Ms. Sunita, the lady constables from Delhi Police who were summoned during raid and by the accused himself.
6. Following the facts contained in the report/complaint of Sh. Ashok Yadav read with memo dt. 02.02.2019, present FIR was registered under Section 342, 380 IPC read with Section 15 read with 13(1)(2) read with 13(1)(a) of Prevention of Corruption Act, 1988 (in short PC Act) as amended by P. C. (Amendment) Act, 2018. Thereafter, investigation was undertaken and charge-sheet was filed.
7. In the investigation it came out that a regular case bearing RC No. 2172019A001ACU-VI/AC-II/CBI/New Delhi was registered on 02.02.2019 u/s 120B IPC r/w Section 7, 7A and 7B of PC Act against Sh. V. S. Rathore, Inspector CBI, ACB, Ghaziabad; Sh. Ranveer Singh, Tehsildar in Uttar Pradesh, Sh. Sunil Dutt, ASI, CBI Academy, Ghaziabad; unknown officials in Uttar Pradesh and other known persons. In view of the allegation in the said FIR a trap was laid on 02.02.2019 against Sh. V. S. Rathore. During trap proceedings it was disclosed by Sh. Ranveer Singh that the amount had been collected from the residence of Sh. Y.S. Tomar at Sainik Farms, New Delhi. Thus, IO of the said case issued an authorisation u/s 165 Cr.P.C. in favour of Sh. Ashok Yadav, Dy. SP, CBI, AC-II for conducting the search of the residential premise of Sh. Y. S. Tomar at W-4C, Sainik Farms, New Delhi on 02.02.2019.

8. Investigation revealed that after receiving authorization Sh. Ashok yadav, Dy. SP along with CBI team consisting of Sh. Amit Rathee Sub Inspector, accused Sh. Sudesh Kumar HC, Shakti Singh PC and independent witness namely Sh. Rajesh Singh, Manager (Electrical), STC, Janpath, New Delhi reached at the said premises at around 10.30 AM. The purpose of visit was explained to Smt. Manisha Singh W/o Sh. Y.S. Tomar and Sh. Gaurav Tomar S/o Y.S. Tomar, who were present at that time at the house. The premises of Y.S. Tomar consisted of residential building, annexe, large lawn area in the front side and one servant quarter in the backside of residential building.
9. Investigation further revealed that accused Sh. Sudesh Kumar, Head Constable, was directed by Sh. Ashok Yadav, Dy. SP to secure the backside of the main house and to check whether there was any exit point etc. Sh. Shakti Singh Police Constable was asked to keep an eye on the front side of the said house. Sh. Amit Kumar Rathee Sub Inspector was asked by Sh. Ashok Yadav, Dy. SP to arrange two lady police constables from Neb Sarai Police Station Delhi Police.
10. Investigation further revealed that during the course of search proceedings Mrs Manisha Tomar W/o Sh. Y.S. Tomar took permission to go to the washroom. On being rendered permission, she went to the washroom attached to the bedroom on the ground floor of the house. Investigation revealed that at the backside of this washroom there was a servant quarter occupied by a lady servant, Mrs. Manju and her family. The name of the husband of Mrs. Manju is Sh. Sandeep who is school bus driver residing in the said house alongwith his family members. The servant quarter as well as bathroom portion is behind the house.

11. Investigation further revealed that on 02.02.2019 when accused Sudesh was asked to secure the backside of the premises, Mrs. Manju W/o Sh. Sandeep was near her toilet. It revealed that Smt. Manisha Tomar called Smt. Manju from her bathroom and gave her (Manju) a white carry bag/bundle which contained Rs. 6,00,000/- from bathroom window. As soon as Ms. Manju took the packet in her hand, Sh. Sudesh Kumar, Head Constable, CBI, AC-II, reached there and took the said carry bag/bundle from Mrs. Manju. Mrs. Manju could not check the contents of the said white carry bag/bundle. They both walked for 15-20 steps and reached near the servant room of Mrs. Manju. It revealed that Sh. Sandeep Ram, husband of Mrs. Manju, was washing his hands at that time. Mrs. Manju informed him that Manisha Tomar was trying to give her a carry bag/bundle but this man had taken the packet. Sh. Sandeep Ram, husband of Smt. Manju, asked him about the matter. At this stage, Sh. Sudesh Kumar, Head Constable, CBI, AC-II informed him that there was CBI raid going on in the home and thereafter, Sh. Sudesh Kumar, Head Constable, CBI, AC-II asked Manju to go inside the servant room. Thereafter, Sh. Sudesh Kumar, Head constable bolted the door from outside. Investigation revealed that Smt. Manju remained locked in her room for approximately 10 minutes.
12. Investigation further revealed that Smt. Manju and Sandeep Ram both informed Sh. Joydeep, a family friend, who was also present during the search proceedings to the effect that Mrs. Manisha Tomar gave carry bag/bundle to Manju from the bathroom window and the same was taken by accused Sh. Sudesh Kumar, Head Constable, CBI.
13. Investigation further revealed that during the period when the lady constables from Delhi Police had not arrived, the search of the premises started from the vehicles lying outside the house. When the vehicles were being searched

accused Sh. Sudesh Kumar, Head Constable came near to Sh. Gaurav Tomar and informed him that a packet of his mother is in his possession. But at that time Sh. Gaurav Tomar was not aware about the incident of Sh. Sudesh Kumar having taken the carry bag/money from the lady servant Mrs. Manju, thus he did not give attention to his version.

14. Investigation further revealed that two lady constables from Neb Sarai Police Station also joined the search team at the spot and they were asked to remain present in the drawing room of the said premises with Mrs. Manisha Tomar. Accused Sh. Sudesh Kumar, Head Constable, CBI was also directed by Sh. Ashok Yadav to remain present in the drawing room with lady constables and Mrs. Manisha Tomar. Sh. Ashok Yadav, Dy. SP, CBI, Sh. Amit Rathee, SI, Sh. Shakti Singh, Police Constable conducted the search in presence of independent witness at the office of Sh. Y.S. Tomar which was in annexe building of the premises. After completion of the search of the said premises, the search team reached the main residential building of the premises in the same campus.
15. Investigation further revealed that the main building consisted of two floors/storey. On ground floor there were two bedrooms. Out of which a window of the bathroom attached to the room occupied by Sh. Y.S. Tomar opened towards the backside of the house where servant quarters were situated. It revealed that a room at ground floor was exclusively used by Smt. Manisha Tomar. On the first floor there were two bedrooms occupied by sons of Y.S. Tomar i.e. Mr. Gaurav Tomar and Mr. Nirav Tomar.
16. Investigation further revealed that the search at the room of Smt. Manisha Tomar was conducted by Lady Constables, accused Sh. Sudesh Kumar HC in presence of Smt. Manisha Tomar and independent witness. After that Sh.

Ashok Yadav, Dy. SP, independent witness and Shakti Singh, PC conducted search of room of Sh. Y.S. Tomar. During search, they found cash amount of Rs. 30 lacs wrapped in paper kept in a jute bag. Besides that CBI team also found cash of Rs. 3 lacs in loose currency in the room of Sh. Y.S. Tomar at various places. The above said cash of Rs. 33 lacs was taken into possession by the CBI team and handed over to Sh. Shakti Singh, PC and independent witness.

17. Investigation further revealed that in the meantime Sh. Ashok Yadav, Dy. SP directed Sh. Amit Kumar Rathee, Sub-Inspector to conduct search at the two rooms of the first floor of the house. It revealed that search of the first floor was conducted by Sh. Amit Rathee, Sub-Inspector in presence of Sh. Gaurav Tomar S/o Sh. Y.S. Tomar. After that Amit Kumar Rathee, Sub-Inspector came down and informed that he had not found anything incriminating at the first floor. Thereafter, all team members, independent witness in presence of Manisha Tomar gathered in the drawing room and started counting the cash/money. It revealed that Mrs. Manisha Tomar and Sh. Gaurav Tomar requested Sh. Ashok Yadav, Dy. SP for allowing them to do their own personal work in the house. At that stage, only Sh. Gaurav Tomar was allowed to go to his room at the first floor.
18. Investigation further revealed that in the meantime Sh. Joydeep Das had informed to Gaurav Tomar that accused Sh. Sudesh Kumar, HC had taken a packet from Mrs. Manju W/o Sh. Sandeep. It revealed that Sh. Gaurav Tomar came down to the drawing room and requested Ashok Yadav, Dy. SP and Sh. Amit Rathee, Sub- Inspector to come out of the house. Sh. Gaurav Tomar alleged that the search team had stolen cash from his house. The CBI team offered personal search of all team members to Sh. Gaurav Tomar. Sh. Gaurav and CBI team came out of the building. Gaurav Tomar told that he

specifically knew which team member had stolen the cash.

19. Investigation further revealed that Sh. Gaurav Tomar pointed out towards accused Sh. Sudesh Kumar, Head Constable, CBI who was standing outside at a distance. Sh. Gaurav Tomar told to Sh. Ashok Yadav, Dy. SP that a carry bag containing Rs. 6,00,000/- was forcibly taken by Sudesh Kumar from Smt. Manju, maid servant.
20. Investigation further revealed that when Sh. Ashok Yadav, Dy. SP, Sh. Amit Rathee SI and Sh. Gaurav Tomar were enquiring/ discussing about the theft of the money in question, they observed that Sh. Sudesh Kumar was coming downstairs from the first floor. Sh. Ashok Yadav, Dy. SP informed accused Sh. Sudesh Kumar about the allegation of theft of cash against him. Initially, Sh. Sudesh Kumar, Head Constable, flatly denied and then Sh. Gaurav Tomar confronted him and alleged that Sudesh Kumar, HC, CBI locked his maid servant. On this Sh. Sudesh Kumar Head Constable admitted that he had hidden the cash in the said house and also admitted that he can recover the said amount. Investigation revealed that on the disclosure of Sh. Sudesh Kumar, Head Constable amount of Rs. 2,00,000/- was recovered in the scrap lying at the backside of the house. Sh. Ashok Kumar, Dy. SP and Sh. Gaurav Tomar were present at the time of recovery of cash of Rs. 2,00,000/-.
21. Investigation further revealed that on the disclosure of accused Sh. Sudesh Kumar, Head Constable another amount of Rs. 4,00,000/- (denomination of Rs. 2000/- in two bundles) was also recovered under the sofa lying at the first floor. Sh. Ashok Kumar, Dy. SP, Sh. Amit Rathee, Sub Inspector and Sh. Gaurav Tomar were present at the time of recovery of Rs. 4,00,000/-.
22. Investigation also revealed that when Gaurav was making allegations of theft

before Ashok Yadav, Dy.SP and Amit Rathee, SI, at that time Sudesh Kumar went upstairs without any reason.

23. Investigation further revealed that during the course of recovery of Rs. 2,00,000/- and Rs. 4,00,000/- (total 6,00,000/-) the independent witness and the team members were informed about the incident of theft by accused Sudesh Kumar who were present in the drawing room at the ground floor at that time.
24. Investigation further revealed that a search list dated 02.02.2019 was prepared with regard to search proceedings at the premises of Y.S. Tomar at W-4C, Western Avenue, New Delhi. Apart from the search list, a separate memo dated 02.02.2019 was also prepared about the incident of theft on the part of accused Sh. Sudesh Kumar, HC. The details about the disclosure have been mentioned in the said Memo dated 02.02.2019. The said Memo was signed by all the team members and witnesses including accused Sh. Sudesh Kumar, HC.
25. Investigation further disclosed that while Rs. 2,00,000/- were recovered from the backside on the disclosure of accused Sh. Sudesh Kumar, at the spot, Sh. Gaurav Tomar had dialed on 100 number and made complaint about theft. In this regard, Sh. Vinay Kumar, Sub-Inspector from Neb Sarai Police Station reached at the spot i.e. residential premises of Sh. Y.S. Tomar. However, till the time SI Vinay Kumar arrived, remaining amount of Rs. 4,00,000/- was also recovered. In view of the recovery of theft money, Sh. Gaurav Tomar took back his complaint.
26. Investigation further revealed that during the course of search, total cash amount of Rs. 39,00,000/- were found in the premises. A search list was

prepared by the team leader Sh. Ashok Yadav, Dy. SP. Regarding the source of fund of Rs. 39,00,000/- found at the premise, it was explained that said amount was the school fee proceeds of Rabinder Nath World School, Gurgaon from 01.01.2019 to 01.02.2019 and which was handed over to Mrs. Manisha Tomar by two vouchers dt 24.01.2019 and dt. 01.02.2019. Search team having satisfied with the explanation returned the said the amount to Gaurav Tomar under his undertaking that he would produce the said amount in court as and when required. In this regard, Sh. Ashok Yadav also mentioned a note in the search list dated 02.02.2019.

27. Investigation further revealed that Sh. Gaurav Tomar that he had deposited the amount of Rs. 34,00,000/- in Bank account of Rabindra Nath World School Gurgaon on 04.02.2019. The bank account statement of Rabindra Nath World School, Gurugram maintained at OBC, DLF-III, Gurugram revealed that an amount of Rs. 34,00,000/- deposited in School account on 04.02.2019 as fee collection of quarter December/January/February 2019 and balance amount of Rs. 5,00,000/- was personal money of Wg. Cdr. Y.S. Tomar (Retd.), Manisha Singh, Gaurav Tomar, Neerav Tomar and Joy Deep.
28. Accused Sudesh Kumar, Head Constable was chargesheeted for the offences U/Sec. 380 IPC, 342 IPC and Section 15 r/w section 13(2) r/w Section 13(1) (a) of the PC Act, 1988 alongwith the substantive offences thereof.
29. In the supplementary charge-sheet, it has been mentioned that investigation revealed that other team member of the search team had no role in the theft, wrongful confinement etc. of Rs. 6 lacs as committed by accused Sudesh Kumar.
30. Arguments in detail have been addressed on point of charge. Defense

stressed that no offense is made out while prosecution stressed that all offenses as stated are made out.

31. Ld. Counsel for accused Sh. Harsh Kumar Sharma has submitted that there is no sufficient evidence to frame charge against the accused. He submitted that there is only bald oral allegation which on proper scrutiny are found at variance thereby contradicting each other. He has referred to statements of different witnesses to contend that sequence of event narrated by witnesses makes the case of the prosecution completely unbelievable.

32. Ld. Counsel for accused submitted that as per memo dt 02.02.2019 accused was directed to secure backside of the premise and when lady constables from Delhi Police joined the search team at the premise then the search began with the search of vehicles lying outside and Sudesh Kumar was involved in the search of vehicles which means he had returned from back side. After completion of the search of vehicles accused Sudesh Kumar was directed to remain in the drawing rooms of the house alongwith the lady police constables and Mrs. Manish Singh. As per memo rest of the team commenced search from the office room of Sh. Y. S. Tomar which was in a separate building in the premise. After completing search in the office, the team started search of the house. During the search of the bed room of Sh. Y. S. Tomar, cash wrapped in bundles and loose form were recovered. Similarly, cash was also recovered from the bedroom of Sh. Gaurav Tomar and Sh. Nirav Tomar. He submitted that it has been stated that the team members gathered in the drawing room after completing the search of all the rooms in the house to count the cash recovered during the search and while counting was under process accused Sudesh Kumar went outside a few times. Ld. Counsel for accused contends that if incident narrated in memo is taken into the account then the alleged theft, confinement etc. took place when every

one was busy in counting of the money in the drawing room. But, he submits, perusal of charge-sheet shows that investigation revealed that during the course of search proceedings Mrs Manisha Singh took permission to go to the washroom and on permission she went to the washroom attached to the bedroom on the ground floor of the house. Investigation further revealed that when accused Sudesh was asked to secure backside of the premise, Mrs Manju w/o Sandeep, the lady servant living in the servant quarter, was near her toilet and Smt. Manisha Singh/Tomar called Smt. Manju from her bathroom and gave her (Manju) a white carry bag/bundle which contained Rs. 6 lacs from bathroom window. As soon Ms. Manju took the packet in her hand, accused Sudesh Kumar reached there and took the said carry bag/bundles. Thus, as per investigation the alleged theft, confinement, criminal misconduct etc. took place when accused Sudesh Kumar had gone backside to secure backside. He thus contended that if narration mentioned in investigation is believed then narration recorded in memo dt 02.02.2019 cannot be believed and *vice versa*.

33. Ld. Counsel for the accused submitted that in the memo dt. 02.02.2019 there is no mention of Mrs. Manisha Singh going to bathroom with the permission simultaneously at the time when accused Sudesh was asked to secure backside. He submitted that if both the events i.e. accused going to backside for securing it and Mrs. Manisha Singh going to washroom did not take place almost simultaneously then there was no occasion for accused to see Ms Manju receiving carry bag containing Rs. 6 lacs and then snatching/taking the same from her.
34. Ld. Counsel for accused further submitted that Gaurav Tomar had stated that when vehicles parked outside were being searched accused had told him that he (accused) was in possession of packet of his mother. Ld. Counsel for

accused submits that this statement is absurd and preposterous that accused himself came to Gaurav Tomar and told him about being in possession of packet of his mother Mrs Manisha Singh. He submitted that first a thief cannot himself disclose this for any reason nor it could be believed that accused would have disclosed this fact to extort money or some reward. He contended that this part of statement of Gaurav Tomar exposes the falsity of the entire case and same cannot be trusted. He further contended that conduct of Gaurav Tomar is also not above board as upon coming to know of such disclosure Gaurav Tomar should have raised the alarm then and there by raising the issue with search team leader.

35. Ld. Counsel for accused further contended that admittedly CBI did not seize the money i.e. Rs. 33 lacs recovered from the rooms and Rs. 6 lacs allegedly recovered at the instance of the accused as Tomars allegedly properly explained the lawful source of their possession. Shri Harsh contends that Tomars explained that amount of Rs 39 lacs recovered from their home was actually the proceeds of Rabinder Nath World School, Gurgaon whose bank account Sh Y. S. Tomar and Mrs. Manisha Tomar were authorised to operate. He further contended that it has come in investigation that sum of Rs. 40 lacs and sum of Rs. 34 lacs were handed over by school to Mrs Manisha Tomar vide two vouchers dt 24.01.2019 and 01.02.2019 respectively and they were cash proceeds of school fees 01.01.2019 to 01.02.2019. Though only Rs. 39 lacs out of Rs 74 lacs was recovered but no effort was made to recover the remaining amount nor any explanation has come as to where remaining amount went missing. Besides Ld. Counsel for the accused had contended that Mrs Manisha Singh knew it very well that it was not tainted money and she had proper explanation for such possession then there was no reason for her to try to hide money from coming into eyes of the search team. He put question as to why she would try to hide money when she had proper explanation for the entire money found at her house? Hence, he submitted

that story of theft, criminal misconduct etc. has been concocted to prevent being questioned on legal parameters the conduct of search team leader in releasing the recovered amount to Tomars.

36. Ld. Counsel for accused has further submitted that the alleged recovery of Rs 6 lacs at the instance of accused cannot be proved as the amount has not been seized nor was *panchnaama* of currency notes recovered prepared. Further, on the next day though it was claimed that Rs. 34 lacs were deposited in the bank account of the above mentioned school but where is the remaining Rs 5 lacs. At least Rs. 5 lacs could have been seized for the present case at least to show that Rs 39 lacs were recovered. He further submitted that even the white carry bag which allegedly has the cash amount of Rs. 6 lacs was also not seized. He submitted that alleged recovery at the instance of the accused cannot be proved without the recovered cash and the white carry bag which allegedly had Rs 6 lacs. With bank deposit slip at best prosecution can prove that Rs 34 lacs were recovered but it cannot prove that Rs. 39 lacs were recovered as there is nothing on record about missing Rs 5 lacs.
37. Ld. Counsel for accused Sh Harsh Kumar Sharma further submitted that as per prosecution story Ms Manju had seen the official who allegedly taken/snatched the carry bag from her and confined her in her room but surprisingly neither did she point out the official who had taken the money from her nor IO got conducted the identification parade of the accused. He further submitted that entire memo dt 02.02.2019 was prepared on the basis of hearsay statement. Perusal of the statement of Ms Manu, Sh. Joydeep, Sh Sandeep and Sh. Gaurav Tomar recorded under Section 161 CrPC shows that alleged incident of theft and confinement was first reported to Sh. Joydeep who in turn reported the same to Sh. Gaurav Tomar and Sh. Gaurav Tomar reported the same to Ashok Yadav Dy. SP. Admittedly Ashok Yadav did not

ask Ms Manju to identify the official who allegedly snatched the carry bag from her nor she had pointed out the official to Joydeep as is clear from the statement of Ms Manju. The alleged official was also not got identified from Sandeep husband of Ms Manju who had also allegedly seen the official. Ld Counsel contended that even if it is assumed that accused would be identified by Ms Manju and her husband Sandeep for the first time in the court then such identification is a very weak piece of evidence and cannot be relied upon.

38. Ld. Counsel Sh. Harsh Kumar Sharma further contended there is no material at all to support framing of charge under Section 342 IPC. He contended that Ms Manju in her statement under Section 161 Cr PC did state that said official put the latches but her statement is not reliable as her husband in his statement under Section 161 CrPC stated that he did not see the said official putting latches on the door of their house thereby causing illegal confinement of Ms Manju. It has been further contended that Ms Manju in her statement under Section 164 CrPC did not utter a single word about her alleged illegal confinement. He further submitted that her statement under Section 164 CrPC be given precedence over her statement under Section 161 CrPC. Hence, he submitted that no charge under Section 142 IPC could be framed.
39. So far as charge under Section 15 r/w 13(2) r/w 13(1)(a) of PC Act is concerned, Ld. Counsel for accused has submitted that bare reading of provisions Section 15 r/w 13(2) r/w 13(1)(a) of PC Act and applying to the facts alleged, no offense under the said provision is made out. Hence, he had submitted that no charge could be framed for the said offense. Ld. Counsel for accused has further submitted that even if all the materials as placed by the prosecution is taken to be proved then also it will remain in the realm of doubt as to whether accused has done the offense alleged against him. Hence,

he submitted that accused may be discharged.

40. Ld. PP for CBI Sh. Pramod Singh submitted that incident of theft, criminal mis-conduct etc. were recored in the memo dt 02.02.2019 and the said memo had been signed by the accused himself which amounts to his confession/admission. He further submitted that memo dt 02.202.2019 is not hit by Section 25 of Evidence Act. He further submitted that amount of Rs. 6 lacs has been recovered at the instance of the accused and this fact has also been admitted by accused in Memo dt 02.02.2019 by signing the same. He had further submitted that merely because currency could not be seized therefore same would not wash off the incident of recovery of amount of Rs. 6 lacs at the instance of the accused. He further submitted that eye witnesses namely Sh. Ashok Yadav, Sh. Amit Kumar Rathee and Sh. Gaurav Tomar have specifically stated that amount of Rs 6 lacs was recovered at the instance of the accused Sh. Sudesh Kumar. He further submitted that in order to prove recovery testimonies of eye witness if reliable can be acted upon even if recovered articles is not available for any reason whatsoever. He has further submitted that at the stage of framing of charges evidence and material is not required to be minutely scrutinised and court has to *prima facie* satisfy itself that material on record do suggest commission of offense by the accused. He further submitted that evidence collected do *prima facie* show that accused had committed the offense of wrongful confinement, theft in dwelling house and criminal misconduct being public servant as defined under PC Act. He has further submitted that whether the incident took place when accused had gone backside to secure it or during the search, same can be clarified only during the trial. He submitted that charges are required to be framed.
41. While exercising powers under Section 227 of the Code of Criminal Procedure, for considering the question of framing of charge, the Court

undoubtedly has power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. If the material placed before the Court discloses grave suspicion about the commission of offense by the accused, then the Court would be fully justified in framing charge and proceeding with the trial. It was noted in the case of ***Union of India v. Prafull Kumar; 1979 SCC (Criminal) 609*** that the Court cannot act merely as a post office or a mouth piece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, but it should not make a roving inquiry into the *pros* and *cons* of the matter and weigh the matter as if it is conducting the trial.

42. Hon'ble Supreme Court in ***Sajan Kumar v. CBI; (9) SCC 368*** laid down the principles for consideration of charge. It observed that the test to determine the *prima facie* case would depend upon the facts of each case. Where the material placed before the Court discloses grave suspicion, the Court would be fully justified in framing the charge and proceeding with the trial. Before framing the charge, the court must apply its judicial mind on the material placed on record to satisfy that the commission of offence by the accused was possible. Further, if two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Court would be justified to discharge the accused. At this stage Court is not to see whether the trial would end in conviction or acquittal.
43. In the case of ***Govind Sakharam Ubhe v. State of Maharashtra***, CrI. Appeal No.18 of 2009 decided on 11.06.2009 after considering the various judgments on the point, Hon'ble Bombay High Court summed up the law at the stage of 227 CrPC. It stated that the case has to be set aside after sifting the material collected by the prosecution that there is ground for presuming that the accused has committed the offence or that there is no sufficient

ground for proceeding against him. The inquiry must not be directed to find out whether the case will end in conviction. Though roving enquiry is not permissible but the court has to consider whether the material collected if accepted as it is without being subjected to cross examination would give rise to strong and grave presumption about the commission of offence by the accused. However, if the scale as to the guilt and innocence of the accused are found balanced then the court must proceed with framing of charge. There is no question of giving benefit of doubt to the accused at this stage and to discharge him. This can be done only at the conclusion of trial but if two views are possible and the court is satisfied that the evidence gives rise to some suspicion but not grave suspicion it would be well within the right to discharge the accused.

44. In the light of these principles, the material on record has to be considered to see if it gives rise to grave suspicion of the commission of offence as alleged against the accused.

45. It is the allegation against the accused that he wrongfully confined Ms. Manju in her room by latching the door of her room from outside. Witness to this incident is Ms. Manju and her husband Sandeep. Ms Manju in her statement under Section 161 CrPC stated that when Manisha madam asked her to hold a carry bag then the man from CBI raiding team who has come to backside, took the carry bag from her and accompanied her to 10-15 steps and then she told the fact to her husband Sandeep who was washing his hand outside. She further stated that her husband when asked the man as to what was the matter then the man said there was raid of CBI and then he asked her to go inside the room. She further stated that when she entered in the room then that man latched the door from outside and after 10 minutes the door was found opened but she did not know who opened the door.

46. Sandeep, husband of Ms Manju, in his statement under Section 161 CrPC stated that his wife told him that when Manisha madam from her bathroom was asking her to hold something then a man came there and took away the packet from her (Manju). He further stated that man also came following his wife and asked his wife to go inside the room and asked him (Sandeep) to accompany him. He further stated that he did not latch the door of his room nor did he see the said man latching the door.
47. Investigation Officer (IO) got Ms Manju's statement recorded under Section 164 CrPC also. Ms. Manju in her statement under Section 164 CrPC did not speak a word about her illegal confinement. It is matter of record that neither Ms Manju nor her husband Sandeep ever pointed out to Ashok Yadav or to the IO the man who had latched Ms. Manju or taken away the packet nor did IO get test identification parade done of accused from Ms. Manju or Sandeep.
48. Except Ms. Manju and Mr. Sandeep there is no witness to the alleged offense of wrongful confinement but Sandeep had not stated anything worth to suggest commission of offense of wrongful confinement and Ms Manju also did not support the same in her statement under Section 164 CrPC and thus there is no grave suspicion that accused had committed the offense of wrongful confinement and accordingly no sufficient ground to frame charge against accused under Section 342 of IPC.
49. So far as offense u/s 15 read with 13(2) read with 13(1)(a) of PC Act is concerned, it is necessary to look at the provision which is as under:-

Section 13 Criminal misconduct by a public servant. — (1) A public servant is said to commit the offence of criminal misconduct,—

(a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant

or allows any other person so to do; or

(b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2.—The expression “known sources of income” means income received from any lawful sources.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine.

Section 15 Punishment for attempt. — *Whoever attempts to commit an offence referred to in clause (a) of sub-section (1) of section 13 shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to five years and with fine.*

50. Perusal of Section 13 (1)(a) of PC Act shows that a public officer is said to have committed offence of criminal misconduct if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do. Thus, entrustment of property to the public officer or property coming under his control as a public servant is one of the essential ingredient. Now coming to the facts of the present case the alleged sum of Rs. 6 lacs was neither entrusted to accused by Ms. Manisha Singh/Tomar nor by Ms Manju nor by any officials of the search team. In the present case it has been alleged that accused took away the alleged money from Ms Manju stating that there was CBI raid. Accused did not take away the alleged money from Ms. Manju stating that he was the member of the CBI raiding team and therefore she must handover the packet to him nor did Ms Manju handed over the alleged money to him as a public servant. Hence, hence it can also not be said that accused came under the control of alleged sum as a public servant. Thus, it is seen that necessary

ingredient i.e. entrustment of property or property coming under the control of accused as public servant is conspicuous by its absence and therefore there is no material/ground/evidence to frame charge under Section 15 r/w 13(2) r/w 13(1)(a) of the PC Act.

51. Now coming to the question as to whether there are sufficient evidence/ground to frame charge against the accused under Section 380. In order to sustain the charge of theft, amongst other, it is necessary to show existence of a “moveable property” which was stolen. In the present case the “moveable property” is currency note amounting to Rs 6 lacs. The eyewitness Ms. Manju from whom the carry bag was allegedly taken did not know the contents of the carry bag. Her husband also did not know the contents of the carry bag. It has been alleged that currency note amounting to Rs 6 lacs was recovered at the instance and pointing out of the accused i.e. Rs 2 lacs was recovered from the scrap lying in the backside and Rs 4 lacs was recovered from under the sofa on the first floor.
52. Admittedly neither Rs 39 lacs nor Rs 6 lacs out of Rs 39 lacs were seized in the present case. In the seizure memo dt. 02.02.2019 it has been stated that entire amount of Rs 39 lacs was returned to Sh. Gaurav Tomar as both Mrs. Manisha Tomar and Sh. Gaurav with due documents explained the source of money as school fee collected for the last quarter of 2018-19. Further, as per this seizure memo it has been mentioned that “*search started around 1100 hrs. Cash amounting to Rs 39,00,000/- was found which was returned to Sh. Gaurav Tomar under acknowledgement*”. Thus, in this seizure memo it has been claimed that searched amount was Rs. 39 lacs, however the case of the prosecution is that search amount was Rs 33 lacs and Rs 6 lacs was not the search amount but was recovered at the instance of the accused which was allegedly stolen by the accused herein. Further, in the seizure memo it has been claimed that source of entire amount of Rs 39 lacs was school fee

collected during the last quarter of 2018-19. In the present charge-sheet it has been claimed that Rs 34 lacs was deposited in the bank account of the school and balance sum of Rs 5 lacs was the personal saving of Mrs Manisha Singh/Tomar but nothing has been collected to show the source of Rs 5 lacs nor about the existence of Rs 5 lacs with Mrs. Manisha Singh/Tomar nor the same has been seized.

53. It is worthwhile to note that for the offense of theft, existence of moveable property is *sine qua non*. It is further worthwhile to note that fungibility property of the currency note cannot be pressed into service in the case of theft. Same currency note/notes or duly prepared panchnaama is required to be produced in the case of theft of currency note or recovery of currency notes. That's why seizure of moveable property i.e. currency notes is important both to prove existence of currency notes and its recovery. Best evidence rule requires that best evidence be produced. Allegation of recovery of non-perishable stolen movable property at the instance or pointing out of thief must be supported by production of recovered moveable property.
54. In the present case it has been explained by prosecution that since no FIR was registered then, therefore currency amounting to Rs 6 lacs recovered at the instance of the accused was not seized. This is an absurd explanation as there was nothing which prevented the Search Team Leader to report the matter to the senior officer of CBI from the spot itself and got FIR registered with CBI then and there and if registration of FIR with CBI was not possible then he could have got the FIR registered with local police and this way at least the amount of Rs 6 lacs could have been seized. CBI particularly search team leader Sh. Ashok Yadav Dy. SP acted in very unprofessional manner, unbecoming of an officer of his rank.

55. In the present case theft of currency notes amounting to Rs. 6 lacs by the accused is believed to have been committed by him because he allegedly got recovered the amount from the place where he had hid the money. Mrs Manisha Tomar who had allegedly handed over the carry bag to Ms Manju did not see accused taking the carry bag from Ms Manju. Ms Manju and her husband did not know the contents of the carry bag nor did they pointed the person who had allegedly taken away the carry bag from her. Thus, the theft is believed to have been caused by accused because he allegedly got the theft money recovered but neither the theft money is available nor their identity is available nor is there anything on record to show its availability. Further, initially it was claimed that amount belonged to the school and subsequently it has been claimed that amount of Rs 5 lacs is personal amount of Mrs. Manisha Singh/Tomar.
56. Conscious of the fact that this Court has not got to see if the material placed on record is sufficient to result in conviction of the accused rather it has got to see if the material collected leads this court to grave suspicion regarding the commission of offense by the accused. However, keeping entire things in mind as discussed above this court does not feel inspired to entertain grave suspicion that accused committed theft in dwelling house thereby stealing sum of Rs. 6 lacs in the manner as alleged.
57. In view of the above discussion and reasoning this Court does not find sufficient ground to frame charges against the accused in respect of any of the offenses as alleged in the chargesheet and accordingly, accused Sudesh Kumar is hereby discharged of all allegation made in the present charge-sheet.
58. Bail bond of the accused and surety bonds of the Surety stands discharged.

Original document of Surety, if any, be returned to him as per rules.

59. In terms of Section 437A, discharged accused Sudesh Kumar is required to furnish bond of Rs 50,000/- with one surety of like amount. Needless to say that such bond and surety shall remain valid for a period of six months from the date of acceptance.
60. File be consigned to Record Room after necessary compliance.

HARISH
KUMAR
(Harish Kumar)
Special Judge(PC Act)(CBI-20)
Rouse Avenue District Court
New Delhi/10.09.2020

Digitally signed by
HARISH KUMAR
Date: 2020.09.10
16:08:32 +05'30'

Pronounced in open court through Video Conferencing.
(Order contains 24 pages)