

REFRESHER COURSE FOR CBI COURTS

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PROGRAMME REPORT

PREPARED BY:

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**NATIONAL JUDICIAL ACADEMY**

## Session 1: Trial of Special Crimes

Speaker: Justice G.M. Akbar Ali, Former Judge of Madras High Court

Dr. Geeta Oberoi (Director In-Charge, NJA):

I was thinking before we start introducing the objective of this conference why not to have a brief introduction of all of you beginning from here so that all of you also know each other, is it a good idea?, (very good idea ma'am) so that during tea time you can start away your conversation otherwise during tea time you will take time introducing each other and meanwhile all others will join us, those who are late their trains are late their flights are late. So shall we start sir from you..but you don't have to stand you can sit there is a mic provided on everyone's table, just take the mic and introduce yourself by sitting only.

Participating Judges:

1. Myself Brajesh Kumar Pandey, special judge CBI from Lucknow, Court No. 11
2. Myself Hemant Mahajan from Bombay, special judge CBI
3. I am S.S Das I am from Amravati District, Bombay
4. I am P.C Das, special Judge, Gauhati
5. M. Venkataramana Principal CBI Judge Hyderabad
6. Very good morning to all of you, I am Jiyirmai, Principle CBI judge, from Visakhapatnam, Andhra Pradesh
7. I am Preeti Singh from Madhya Pradesh CBI Judge
8. I am Vikram Singh, special Judge CBI, Ahmedabad Gujrat
9. I am Special Judge, CBI Court Bangalore
10. Mai Sudha Mehta, special Judge, CBI, Jaipur, Rajasthan
11. Good morning, Mr. M. R. Suthar, Special CBI Judge, Jodhpur, Rajasthan
12. Good morning I am Pankaj Kumar Jain I will join on next week for this post
13. I am V. Sofana Devi, CBI Judge Madras
14. I am M. M. Krishnan, CBI Judge, Madras
15. Hello I am Ajay Kumar Jain Special Judge CBI, New Delhi
16. Good Morning I am N. J. Nayi, Chief Judicial Magistrate, Ahmedabad Gujrat
17. Good Morning I am Saumyabrata Sarker Special Judge CBI Court Asansol, West Bengal

18. Pehle to aap sabhi ko suprabhat, mai Arunendra Singh, CBI Judge, Patna, Dhnyabaad
19. Good Morning everybody I am Saravjeet, Special CBI Judge, Patna
20. Myself Rajiv Ayachi from Indore
21. Good Morning I am Pune Ram Special Judge CBI, Simala, Himachal
22. I am Rizwan Ahmed, Special Judge State Vigilance, Hazaribagh, Jharkhand
23. Good Morning myself Anuj Kumar Singhal Special Judge CBI from Dehradun  
Uttarakhand
24. Good Morning myself Rakesh Kumar Yadav Special Judge CBI Panchkula Harayana
25. Good Morning, Balvinder Singh Mann, Patilala Punjab CBI Magistrate
26. Good Morning to all I am M.K Nagpal, Special Judge CBI Tis Hazari Delhi

Dr. Geeta: I would like the panelist to introduce themselves

Justice Akbar Ali: .....now I am Senior Advocate in Supreme Court....

Good morning everybody myself Manoj Gorkela I practice in Supreme Court as a senior standing council and I work as a Union Of India council since last eight years, I travelled forty six countries of the world, I was a guest lecture of Colombia University, ....and it was my great opportunity to attend International Court of Justice in Netherland, I visited there, visited Harvard Oxford various universities of the world, it is the first time I got opportunity to visit National Judicial Academy to share my views share my experiences, to India's top Academy National Judicial Academy, thank you so much

Dr. Geeta: Introduce yourself programme coordinator

Good morning everyone, I am Ruchi Singh, I am a Law Associate here at NJA and I am the programme coordinator for your conference so if there is any concern I am always there at your helpdesk. Also I have designed the conference with the help of my Director and I have also prepared the reading material and everything for you, so anything and you can just come to me and I will be at your helpdesk. Thankyou.

Last year we had two conferences for Presiding Officers of CBI Courts, one was P 845 and another was P 872. How many of you attended these conferences, you were there..anyone else ..so all of you are coming for the first time..no you are coming for the second time..as a

CBI Court Judge....no no not at NJA but in our last CBI Court Conference. Now last year we collected what kind of problems are faced by CBI Courts and the problems that were given to us are like these:

Insufficient infrastructure in CBI Courts, in Himachal Pradesh CBI Court Judges are entrusted with other cases also, CBI officials due to fear of senior officers seize all unnecessary documents and witness, IO's filing charge sheet without submission order and reports of FSL, no assistance is given to public prosecutors, every order is challenged and stays are granted by High Courts, Media pressure is very high, frequent change of public prosecutor and procedure prescribed for passing order of attachment is cumbersome.

Are these problems there? They are still there..and Justice Akbar Ali says that they will continue, they will remain over there, so actually that means we have to learn to live with our problems..because we can voice out our problems..we can say that ya these are our problems..and as human beings as professional we have to learn how to tackle with our problems..some suggestions also came..like recommendations like..revision against the order passed by special judge should not be entertained by High Court except when substantial justice has to be done to parties or requirement of sanction under section 19 of Prevention Of Corruption Act should be thought about because it acts as a shield for honest persons and sword for the corrupt person so there are off course..it's not our problems will continue but issue is that we know our problems so this year..why I am saying this is because last year we had two conferences but this year we have this conference and only one conference for CBI Courts so you will most probably in your role as CBI Court Judge..will not get chance to come to NJA, Bhopal so with this limited opportunity for four days..and again limited opportunity..if you see that how we have changed the programme schedule..you have only four hours class room interaction..we have widened the tea gaps the coffee gaps..I don't know most of you have come to NJA it used to be fifteen minutes it has been now increased to thirty minutes so that you have more consultation with each other than classroom consultation..also we have made it mandatory that you have library readings..whenever we say judges have you read no..they say we have so much time..we don't get time to read..we reach our homes at eight nine ten o clock and next day case preparation file preparation we never get time to read..so we thought to overcome this problem we thought that atleast in NJA Judges must get time to read so that is why library

reading. Computer skills reading...because now that everybody...the way that evidence is tendered..its dimension changed every police man goes and searches for mobile phones..yes..so every gambit of this is changed..its more from documentary we are moving to electronic evidence..therefore one hour we should sit and understand what kind of progress is happening what kind of software are there, learn from each other, many of you are experts....in many programmes we have seen that some of you are more knowledge than any one of us..some of you are master trainer..trained by E-Committee of the Supreme Court..any one of you master trainer...very good excellent sir..so as a master trainer..sir your name..so as a master trainer judge Vikram Singh can help you to understand with Ubuntu...so he can help you one hour to sit and understand nuances of Ubuntu software...what happened Sir..Sir doesn't seem to be very happy... Delhi Judges...Sir you want to say something...don't get afraid..they are our own research fellow they are coming to attend the programme to take notes..so don't get disturbed by them..judges don't come late...judges all have come..now..we have this limited sixteen hours session..not even sixteen but fourteen..the objective of these fourteen hour should be capacity development..problems are there we know they are there..but then in these fourteen hours we have to understand how we all together...it is one country after all from Kashmir to kanyakumari...how we all look at these issues..are there any convergence points..are there subtle difference..how can we close down and narrow down these differences on our point of view..this is what this four day conference is all about..it is all about learning from each other..it is about I have this point of view..you may have some other point of view..atleast I should be aware about this point of view.. this conference is all about on particular issues what kind of decision making we do for that we have called experts who will be encouraging interaction amongst you and knowing your view point..so this is what I had to say..with this I give it to Hon'ble Justice Akbar Ali who is now practicing and is really doing very well I must say

Justice Akbar Ali:

..... In fact I was not comfortable when I entered into this hall because you all are too away..you are not closer to me..so I just wanted closer contact so that we can talk to each other...I know that trial of special crimes..you know that is the first session I know very well I confess before the CBI Judges I am not going to teach you..how to conduct a trial...you all know..is it right..by the time everybody knows how to conduct a trial..but somebody rightly

pointed out that..as to sessions of the training programme of the CBI court judges..about the outcome of the two training programmes..everybody knows..I am first..first of all can I know which of the Courts have more than 300 cases pending..can I know..any of your courts CBI Courts..more than 300 cases..can I know....no..250..no..200..no...100 no...100 cases..when we talk about these 100 cases I know that the volume of this 100 cases is equivalent to the volumes of thousand five hundred cases...which is pending in a regular court..right.....I know that..see the moment..the CBI courts comes you know it is a heavy weight champion in our courts..two type of judges are posted in CBI courts..for your information..one is the unwanted or another is the most wanted..se because we expect the CBI Courts..as everyone sitting here knows that we are dealing with some sort of sensitive issues.....

.....I know each and every case is a bulkier case..because the moment we come to CBI..you know volumes volumes and volumes..and nothing more..I know some of the cases..okk can you can you tell me that how many of your courts that you have oldest cases may be five years old..somebody..( stayed matters by High Courts)..okk lets not deal with that all..stayed matters..positive attitude (I will be very happy if my matter is stayed) so that is one aspect..so we have the oldest case of ten years old we have the youngest case of five years old..we have all..within this somebody was telling me this morning while having the breakfast..all we do to expedite the trial..speedy trial the formation of the special court itself is for speedy trial formation of CBI court as session court anywhere is for speedy trial of the cases but we know that very well that it is not so..it is the slowest train that is the passenger train be it anywhere in the country. So coming back to the issues of trial in the CBI Courts we know that what are the special crimes that we also deal..I need not to teach you that is most of the cases are of prevention of corruption act..ninty percent..hundred ..hundred percent..ok...sometime it might be money laundering cases also..anyone is dealing with money laundering cases..no..okk..sometime it is special crimes..like murder trials..any dealing with such cases.. sometime CBI goes into the investigation..anyone special sensitive murder cases..like the Aarushi's case where we have the IPC offences investigated by the CBI..so we know that in all these types of cases we have problem..we have problem in conducting the trial and most particularly the PC act cases are hundred percent cases..some of the things that we must understand....don't worry I am not going to teach you the provisions..but may just that we will be refreshing the provisions..how these provisions are to be kept in mind..so that we have it in our minds..as special judges and we have

offences and penalty within the act..see one thing I would like to tell you about specially the PC Act is it categorizes the offences ..it categorizes the act..it categorizes everything..so ultimately you see the full picture of how to deal with the group of persons..specially the public servants and how to go about it..and it also gives enormous powers to the investigating agencies..one is sanction and another is confession..and it gives enormous powers to the investigating agencies so that the case can be disposed of very quickly that's one thing..may be sometime it acts the other way also..but anyways just going through these some of the provisions from seven to eleven..and then twelve to eighteen and .....presumption and everything..we will come to one area which is going to the dominating one..as tomorrow also we are going to deal with all that that is expert evidence..as we talk of trial of CBI cases..agree..?? there are volumes of documentary evidence as well as electronic evidence so the electronic evidences now a days it is going to be more cumbersome that is how are we going to evaluate these electronic evidence..and how are we going to rely upon these electronic evidence..experts will be talking to you about how to use electronic evidence how to rely upon them about cyber crimes and so on..but as a judge had I been in your place how I am going to deal about trial in a bank fraud cases.....

How many of you have bank fraud cases??

Everybody has..okk how many of you have a bank fraud case of disproportionate asset of the manager or taking bribery?

Ok....only fraud cases no disproportionate asset cases..anybody else.....

How do you approach a case.. disproportionate asset case..can anybody tell me that..somebody please...yes sir..you..

Participating Judge: ( Income first then the period)..

Participating Judge: (not properly explained property)

Participating Judge: (sir personal income versus the accumulation of huge income)

Participating Judge: (unexplained income..)

...anybody...ok all..everybody was right..you know all that we have to see in the disproportionate asset case is.....what as a trial judge..how you approach the

case may be there may be trunks and trunks of documents..all of us now how we submit our income tax we know that what is the opening balance for every year all of us have an opening balance if on 1/1/2015 if I start my opening balance..u know for whole twelve months we know what is our income..we know our closing balance..but the closing balance will be affected by one or two factors..because there will be investments during the period..we call it expenditure..so income account and the expenditure account so during the income all these expenditure minus..what will be my closing balance. so what happens in these cases is when they have an opening balance when they have income account when they have an expenditure account also..and at the closer of the year their closing balance does not tally with any of these..right..there is only a simple balance sheet..that is what happened in Jayalalitha's Case in Karnataka..what was the income what was the expenditure what was the property associated..what was the closing balance..what was the explanation..I do not know how many of you have read that judgment of thousands and thousands of pages but really that judge has done real good homework of writing that thousand page judgment..how many of you have read..how many of you have gone through..just maybe I will tell you that charges were there where A1 as a public servant in affairs of state having accumulated this worth of crores crores ninty six crores of properties..in the name of two three four..and in the firms under establishment..then the second and third charges comes to the two three four..I just wanted tell you that this charge of so and so..accumulating assets..so and so..this charge the burden is on whom to explain the assets..can anybody understand..can anybody explain..see I will put it this way..see I am charged that my opening balance was this my income was this my expenditure was this and at the end of the year my assets were this..difference between my asset and my income if it is going to be disproportionate to my income then I am asked to explain..how do you explain for somebody's asset..can you tell me?

Read section 26 please: because the initial burden.....you are saying twenty six sir..no I am saying twenty..

Special Judges appointed under Act 46 of 1952 to be special Judges appointed under this Act Every special Judge appointed under the Criminal Law Amendment Act, 1952,, for any area or areas and is holding office on the commencement of this Act shall be deemed to be a special Judge appointed under section 3 of this Act for that area or areas and, accordingly, on and from



such commencement, every such Judge shall continue to deal with all the proceedings pending before him on such commencement in accordance with the provisions of this Act.

Participating Judge: till section 20 ( c) it is available presumption and then form 20 clause..its not available..Therefore the burden will be on the prosecution to prove..

Justice Akbar Ali: see how many of you agree that the burden will be on the prosecution and not the accused..please explain..somebody was telling..me that source cannot be shown..somebody was telling me that..we had different definition on that..how many of you..

Participating Judge:.....

Justice Akbar Ali: Section 13..reads as..section 13 (e) ...

Criminal misconduct by a public servant.—

(1) A public servant is said to commit the offence of criminal misconduct,—

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation.—For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

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

You know why I am taking this before the trial court..forget about the prsecution forget about the charges..I said as trial judge in a special court..what is our role can we just sit own..is it true that the entire proceeding is controlled by the CBI prosecutor..do you agree..

Participating Judge: no no.....

Justice Akbar Ali:

it's not controlled or it's not that somebody is sitting over my head and watching the entire proceeding..if I do something against the CBI..I be under a scanner...or something..as such..fear physiologies..you do not feel

Participating Judge:..no..not always.....

Justice Akbar Ali..

first of all let me tell you that we are all above fear physiologies..we are being posted to CBI Courts because ..as I have been telling that you are being waited there..you are selected there because for specific purpose of handling these types of cases where the national importance is involved because .where resource is involved of the country we all are sitting in that position..because you are the trial court that we are out of this fear physiologies...but I have to tell you that there may be some sort of pressure ..like somebody was telling me some sort of thing such as media pressure..so first of all let us throw away such things that we are under some sort of pressure or fear physiologies...because of the CBI..because as a judge of the district court as a judge of the High Court I know that sitting there as the judge of the CBI Court..the moment CBI comes..the moment CBI comes..the moment CBI initiates the chargesheet we know very well that they think they are right..do you agree with it....they think that they are right..do you agree with it..they think that all their cases should end up into..

Participating Judge:.....conviction...

Justice Akbar Ali:

yaa right..conviction.....all their charges has to be accepted..m sorry to say..I don't want to say so but in CBI courts the CBI prosecutors are preparing a charge just as a list..they frame the charges and give it to the court and they say that these are the proposed charges..right..?? they think it as a proposed charge..like in a civil court the plaintiff files a draft issue and the defendant files a draft issue and the judge picks up number one form here and number two from there..so that trial issues are framed..do you agree on proposed charges.....how many of you agree..

Participating Judge: yes they do like.....

Justice Akbar Ali..:

Firstly secondly thirdly..and so..they do it this way because the language I know..( laughs) but they give a proposed charge a definite proposed charge saying firstly..one pages or two pages and then the secondly two or three pages..am I right?? But the problem is..we must understand..that unless we go through the charges..that's what happened in this case that is what I was telling you that the charges were framed by a court in Tamilnadu..and translated by a court in Karnataka they missed the word accumulated asset in your name..said the word...somebody' name if it is in your name then the burden lies on you..if you accept their .....they are not public servants..then need not be shown any source at all..see as a trial judge in a special court starting from.....how we first of all face the CBI prosecution and another may be facing the witness..there might be hundreds of witness..even the punchnama will run into pages..each and everything is bulkier..so how will you take it..somebody can share your experience..somebody please I know that it going to be famous case..any judge from Delhi.....?

You know why I am calling the Delhi Judges because most of the cases in this country are...all the sensitive cases are pending only in Delhi..or the prosecution only in Delhi..right sir?

Participating judge: Any scam anything..mostly in Delhi.....

Participating judge: Ministries are in Delhi.....and.....

Justice Akbar Ali: may be more CBI Courts must be in Delhi. How many CBO Courts are in Delhi??

Participating judge: Twenty seven...

Justice Akbar Ali: Is there any other state where are so many CBI Courts

Participating judge:...No..not any

Justice Akbar Ali.....if one judges of CBI Court in this country does a ...see I was again coming to Delhi...what is your best practice..to deal with bulkier documents..

Participating Judge:

In Common Wealth Scam there might be 500-600 pages of a document but the relevancy shall be of 5-6 pages for the specific issues. There should be issue based selection of the document. The discrepancy has to be identified from the relevant document. A suggestion to combat such cases was to leave the matter for the prosecutor to scrutinize and submit a report/brief or pinpoint the documents but it was pointed that scrutiny will lead to inference from certain facts and the matter relevant may not necessarily be covered.

Participating Judge:

It was also pointed out that the disposal of older cases is certainly a tedious task. In most of the case, the Investigation Officer must be dead and the prosecutor spins around everywhere in search for certain evidence. Even for such matters, 5 witnesses are brought forward to testify each fact.

Justice Akbar Ali:

So can we take it that we have to look into the issue regarding the chargesheet..can we take it that we have look into the particular issues involved in the particular case so that we can avoid all that is unwanted and concentrate..so that we can tackle the bulkier documents..do you have any other suggestion..yes..yes..

So we can ask the prosecutor to scrutinize the document before their final report and cut short the bulkier document and cut short the irrelevant part..see one thing is that if there is going to be hundred documents..or hundred pages of one document..like in a tender there might be so many agreements..so many cases..so we are only considering the offer or the...so that we can consider only those pages..so one way of tackling this is to pin point those documents and important parts

Participating Judge:

In newer cases this is happening but in older cases we do not know here the problem is lying because the IO is there he is.....only the IO knows what is the offense..the public prosecutor knows nothing it is for the judge to find out everything..

Justice Akbar Ali: It is for the judge to do all the homework..( laughs)

Participating Judge:

In DA cases, through admission denial of documents it cut shorts the controversy like a property that a person has brought a sale deed, which he cannot deny. He can cut short the evidence .Secondly, they do not file any witness calendar that proves only limited witness for specific issues otherwise CBI prosecutors have to be dictated that more witnesses will cause chance of contradiction. Before that at the stages of charge you can say that your CBI has very strange practice of relied upon documents and un relied upon documents..and the crime files in the CBI office..and the accused goes on saying that he should be given the un relied documents..and there is revision in the High Courts.,and Supreme Courts..so un relied documents can be returned and the maal khana will be released so that the accused can also have a look into the documents after all... Thirdly, the agency has relied and unrelieved documents in the case file kept in the branch, the accused keeps on filing applications for the copy of unrelieved document that may be favorable to him so that he has a chance of fair trial, so it should be given as they have right for revision in HC and SC.

Participating Judge:

exercising power under S. 294 of Cr. PC is a good practice for bulky documents. There was 300 documents submitted but 270 was admitted. So there is no need to examine at least ninety witnesses in the case..it was tried for five or six months..

Justice Akbar Ali: how many of you agree that that if we exercise 294 admitted documents shall..later the accused will not take it as the first thing in an appeal before the High Court..its a good practice?..may be..see whatever it is..we take it that we can ask the public prosecutor to scrutinize the documents before the filing of the chargesheet as one of our learned judge was telling that let us keep the calendar of the witnesses or the synopsis or something like that..in ordinary cases there will be witnesses and the prosecution will be saying that these people will be saying about these facts..these people will speak about these documents..that is how we get the list of documents but here again there are hundreds of witnesses..so they have to do something about it..and as the learned judge says that..which are all undisputed documents that is there are no disputes at all..like the learned judge says that what do we do of cases where the IO has also expired..what to do..we have to see somewhere these many cases..and you will be dealing with these cases later where the main accused who is a public servant died..there are many hurdles in a trial..U know there are many things..each and every case in a trial court..like everybody was

sharing their experiences..if you read a particular case and you know where is the crux of the matter..what is to be proved and what not to be proved or may not be proved..where the evidence lies..so that you apply your own procedure..when somebody was telling me that no no the prosecution is not willing the prosecution is producing the prosecution is insisting..and so on then I go back to my first question that are we governing the trial or the prosecution is governing us..or weather somebody else is governing the trial..are you in control of the trial or somebody else is in the control of the trial..that is the very first question I asked because the problem with the CBI is that they think that they are the masters..and they know each and everything..in each and every case they bring before the court they are hundred percent sure that it will result into conviction..

Having accepted or having selected..the High Court has selected anyone as CBI Court judge, then it's not an ordinary thing because you are going to deal with very sensitive matters or in the roots of the matters..to do the justice..so it may be..you also know that in ninty percent of the cases or may be in seventy percent its only that technical defenses its only the technical defense that is available to the accused..in many of the cases in fair amount of cases some of the accused have been involved innocently and many of the cases..see I always have the spectrum..like this that at one end of the spectrum we have black colour that is the person who will always do the wrong..and get away with it..that may be ten or fifteen or twenty percent..at the other end of the spectrum I have a green colour that is the person who can't do any wrong..he cannot think about anything wrong..you have the spectrum..slowly the spectrum of green goes to yellow and then orange..goes to again the black colour..see that the middle portion I always say ...they may fall this way or they may fall that way..as long as they are falling the green side they are happy..as long they are falling on the red side or the black side they are worried..we know that all these black sheet..the moment we sit over a matter we know who is at the black end we know...we don't need any evidence now..do you agree with me? Agree with that? See we all know that we all are bound by rule of law..we are all bound by evidence..but there is something called intuition..right? what has gone wrong in this particular matter..who has done the wrong we know..so all that we have to do is going with the procedure of law..if it is not proved against a particular ok..who am I to convict the person or anything..or the moral grounds..if I don't convict what the media will say about it..or if I don't convict what my district judge will write about me..or what my administrative judges will write about me in the ACR..what the people will think

about me..if somebody thinks what the people will think and doing something you are doing injustice..do you agree with me? You need a lot of courage to do justice..you agree with me? How many of you? In any matter either to acquit or to convince..see sitting here as a CBI Judge in the trial court..or special courts..as director was telling us..that the IO's filing charge sheet without submission order and reports of FSL, no assistance is given to public prosecutors, every order is challenged and stays are granted by High Courts..see one thing....we handle the work of research as lawyers to our juniors or interns but we cannot do that as a judge..do u agree with that? Because we are not given that power to ask somebody to do all that researches and give it to us we will have to do it ourselves..so on these background see ultimately we are going by the rule of law, we are going by the evidence we are going by the documents what is being collected by the prosecution..another thing that I have to tell you is that we have to be very clear about where the presumption lies in the favour of the prosecution and where the presumption lies in then favour of the accused..but we always rely that the prosecution's initial responsibility is to establish the offense but there has been an amendment in the money laundering act which is going to be in the matter of arrest..if the arresting authority feels that the person has been guilty of the offense he can arrest..the word itself in the proposed amendment is “ the word guilty is there”

Apart from all this..see it is also being covered in your other sessions..electronic evidence I just wanted to say something about this electronic evidences..how the government has brought in the definition of expert in section 45 of the Indian Evidence Act..as has been defined in section 45 of Indian Evidence Act

Opinions of experts.—When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identity of handwriting] [or finger impressions] are relevant facts. Such persons are called experts.

This is more important..when an expert evidence comes before you for trail..just one question we will be asking that is how did you deduce this evidence..

I will give you an example of a case there was a case against an accused that he has forwarded some indecent material and indecent messages to the complainant and that his laptop was seized

and the hardware was extracted and it given for expert opinion and the experts found these are all the things and gave the opinion that in this hardware we found all these obscene photographs or materials or whatever were those..then it was found out ...after seizure of this hard disk..later many of the evidences were put into the hard disk..is it possible? It is possible.....see there are cases as such how do you deal with that..see here the duty of the expert is to bring to notice when was the last date that the hard disk was used..luckily in this case the defense council was able to bring this to notice..what was the date of seizure..what was the last date of data entry into the hard disk and what was the datas that were entered later into the hard disk..and he was able to demonstrate and there was something like tampering done with the evidence..see these are the barriers where we have to be little careful..I wanted to refresh your memory of the evidence act 47 a, it's about electronic signature: it is Opinion as to digital signature where relevant

“When the Court has to form an opinion as to the digital signature or any person, the opinion of the Certifying Authority which has issued the Digital Signature Certificate is a relevant fact”.

See I think they compare the electronic signature to find out its authenticity..then we have 65a, 65 b..and say all about electronic gadgets..also this morning director was telling us that now everything is your mobile..so we have to be little careful..there are cases you know very well.....but there is voice superimposition etc..so these are new types of evidences that will come to your courts so you must be aware of..

Every expert must have an observation note of the computer and you must insist on the observation note..not just the report..if the report submitted by the expert must contain the method used by the expert..

1. Observation notes of the computer expert not usually sent to court, thus court is unable to effectively review the findings of the expert.
2. The Report submitted by the expert does not contain the methodology employed to arrive a particular conclusion.
3. Instead of providing a complete picture of the evidence recovered, the reports usually mention that the “relevant data” is “extracted and put in a soft copy”.



4. The Court is not provided with material by which it can verify the direct evidentiary value of the “relevant data” that is so extracted as it was present in the original.

5. The Expert usually does not endeavor to demonstrate the manner in which the findings were arrived at during their deposition. They just reproduce the report that is marked as exhibit.

6. In Digital evidence, the expert after examination is to pack up the material in a manner that will ensure its preservation throughout the trial. In current cases, the experts pack the devices in newspaper parcels. There is a high chance that the electronic devices would be completely unusable by the end of the trial.

7. The manner of packing up the devices also influences the capability to demonstrate the findings before the court during trial.

8. The Expert can provide a copy of the software used to extract the evidence along with the report to the court.

Anyone is dealing with DNA in their court? Anyone..yes...

Each person's genetic makeup contains DNA. This differs from individual to individual. DNA can be obtained through blood, saliva, semen, or hair. This helps in identifying a person. If a drop of blood or a strand of hair is found at a crime scene, it can be compared to a person's known DNA to see if there is a match, thereby linking the person to the crime.

I wish you all the best..

Dr Geeta: Lets break for tea..we meet at 10.30 again

## Session 2: Framing of Charges by CBI Courts:

Speaker: Justice G.M Akbar Ali

Dr. Geeta:

Welcome back all of you now we have second session on framing of charges by CBI Court.. offcourse this session will also be taken by honourable justice G.M Akbar Ali and he has this problem for you..all of you can read this? Is this readable? Yes..? can you all read this ? take five ten minutes for reading this?..

This session had started with discussion of the following problem.

### Problem-1:

“Mr. Ram (A-1) was working as Branch Manager at Punjab National Bank Coimbatore from 23.8.2000-1.9.2002. During this period he came into contact with Mr. Amit(A2) C.E.O of Apple Inc. and Mr. Laxman M.D of Golf INC (A-3). A 1 entered into a criminal conspiracy with A 2- A 3 to cheat Punjab National Bank.

24 applications were received for availing consumer loan of 1,00,000 each in the name of employees of Mr.Amit and Mr.Laxman’s companies. These loans were sanctioned by A-1 without verifying the genuineness of the applicant within his powers and funds were deposited into the account of the applicant companies. During an audit it came to light that 11 applications proved that the applicants (employees) are non-existent. Thus A-1 had misused or abused his official position by illegal means as in charge of the branch.

In pursuance of Criminal Conspiracy each accused had committed the following illegal acts. The Branch manager had never seen and verified the applicants but fraudulently and dishonestly attested the photos attached to the applications. He never verified the end use or checked the security but dishonestly certified verifying the same. A-2 and A-3 fraudulently and dishonestly submitted false documents to get the loan from the bank using fictitious names of employees when there were no such in their companies. They also submitted false documents to show that the fictitious employees were working under them.

Thus, A-1 Mr. Ram misused his official position, fraudulently and dishonestly entered into criminal conspiracy A-2 and A-3 in order to cheat Punjab National Bank and fabricated records and used the same as genuine and cost a wrongful loss to the tune of Rs. 11, 00,000 and corresponding wrongful gain to themselves and thereby committed offences punishable under section 120 b read with 420, 467, 468 and 471 IPC and 13(2) read with 13(1) of Prevention of Corruption Act 1988. Frame charge?”

Problem-2:

“Mr. Vijay while working as a public servant in the capacity of Manager, NLC had accumulated properties and pecuniary resources in his name to the tune of Rs.45, 00,000 which is disproportionate to his known sources of income.

Investigation disclosed that during the check period from 1.4.04-25.3.10 Mr. Vijay and his family members had acquired Movable Assets in the form of fixed deposit and credit balances. Mr. Vijay was also found to be in possession of hard cash to the tune of Rs.10, 00,000 which was seized from his possession.

On investigation it was revealed that Mr. Vijay had demanded bribes from several engineers and contractors and falsely enriched himself on several occasions. At the end of the investigation excluding certain assets acquired before the check period it was evidentially established that Mr. Vijay was in possession of Rs. 30,00,000 disproportionate to his known sources of income which amount to the commission of punishable offences. Frame Charges?”

Problem-3:

Kavitha, being a public servant was working as an Examiner in Chennai Customs during the period 19.2.2010-24-6-2010. Her basic duty is registration/inspection examination of goods which are imported/exported through M/s NERO Container Freight Station, Chennai.

On 11.5.2010 Ramu, Rajendaran, were directed to go to clear goods in M/s NERO CFS Chennai to clear goods. Ms. Kavitha while working as an examiner in Chennai Customs entered into a criminal conspiracy with Ramu and Rajendaran to commit criminal misconduct and to indulge in corrupt practices for accepting illegal gratification as motive or reward in the matter of registration of goods, inspection/examination of goods and clearing import consignments. She

demanded bribes from companies for performing her official duty while Ramu and Rajendaran abetted the commission of offence i.e. accepting illegal gratification and obtaining valuable things without consideration by Ms. Kavitha employed as Examiner in Chennai Customs. During a surprise check all of the above said employees were caught and all unaccountable goods and cash were recovered from their possession.

Justice Akbar Ali:

before I go to the slide can I say something..before we go to the next session of framing of charges..I thought that..ofcourse I have not asked any questions from you..anybody..right..I just..can you..do you have any question from that earlier session..something to be discussed..or just..anybody..anyhow..I have..one of the learned judge has asked me a question during tea time..you know sometimes the CBI gives you compact disk..the CD..right..which contains evidences..right? it is an evidence...Is the accused entitled for a copy of it?? Entitled??

Participant Judge: Yes..he is..

Justice Akbar Ali: what if you give him a copy of the CD? Ofcourse you are already having the CD with you all that you have to do is write a CD and give it to him..right...? what will happen if accused tampers with the CD? what will happen to the copied CD..no..that is..I am not saying that what is given to you in the shield cover..no no that is not tampered in the court.....

Participant Judge: The copies also coming along with the CFL SFL for the accused also..CFL gives it in a shield package and all things are mentioned on it..so...the seal is of the CFL and the copy for the accused is also sent along with it..yes..

Justice Akbar Ali: so the learned judge says that whatever CD is produced by the prosecution itself is in exhibit..the learned asked what if no copies were available??

Participant Judge:.....if the accused tampers the copy..we don't have to do anything with it..we rely on our own copy..so whatever he does with that we have no issue

Justice Akbar Ali: yes sir please....one second sir..so ultimately you can that he is right..where the Compact Disk is available under the seal also..there are two situations..furnishing the copies to accused also then no problem at all we can furnish the copies..right??

Participant Act: the evidence act provides for all the procedures..we are provided the hard copies also..if it is in PDF..

Justice Akbar Ali:

The learned judge says that the outcome of these reports might be two things only some of the reports by the forensic labs which is coming in the sealed covered that is the original and the copies also they provide for the accused so that is ok..and some of the documents which are in the CD form which are relied upon by the prosecution..if it is going to be in the PDF form most probably they will have it only in the PDF form..and we can make a copy of it and give..and you can change the PDF format to word format..ok.....

Participant Judge:.....soft copy.....

Participant Judge: sir what we can do..my brother will know better because he is the master trainer of ubuntu..what we can do in ubuntu is that there is an MBS value of every CD and if we make a copy of that then that will have the same MBS value and if anybody will enter anything or delete anything then that MBS value will change..now if we give a copy to the accused then we can note down the MBS value and if he tampers with that the MBS value will change.....

Justice Akbar Ali..yes sir please..yes Mr...Utirapathi...

Participant Judge: what I did was I dismissed the application.....

Justice Akbar Ali..

That is the easiest way what the learned judge did was the easiest way..anyhow..so anyhow to put it simply these are the small problems that you are going to face each and everyday so it's only about your application of mind and according to that you can prove the evidence and everything..so if you are supposed to furnish all the copies to the accused then you are supposed to furnish all the copies to the accused.....because otherwise fair trial is not going to happen.....

So ultimately we come to one conclusion that we cannot say that there are full proof methods of proving anything or that there is full proof method..inspite of these electronic evidences also..see electronic evidences has its own advantage and disadvantages also..but ultimately as CBI Court

judges you have rely on evidences to come to any conclusion..we will stop with that and go to the next session that is framing of charges..so the charges that I saw was framing of charges under Cr.P.C. is there any other provisions..and we have special provisions to frame charges in CBI cases i.e the PC Act..one is section seven, eight, nine, ten and so on..and sometime it is coupled with IPC evidences..sometime it is coupled with special acts..so the problem comes only in these areas..another thing is that as I was telling you in the morning that the CBI gives you chargesheet of pages and pages..narrating each and every evidence..again also they are giving the proposed chares..i.e the firstly, secondly, thirdly..and so on..they expect us to accept the charges whatever comes in during the trial..but whatever it is basically we have to understand the small small things where problems come..so that is why theses problems are there..these are small small cases..one is related to the bank fraud.... (discussion on problem 1)

The accused thereby committed offences punishable under section 120 b read with 420, 467, 468 and 471 IPC and 13(2) read with 13(1) of Prevention of Corruption Act 1988....so this is the simplest of any charges..so can you say how to frame a charge under 120 b in this matter..can somebody..just say that how the charges will be on 120 b?....yes..please

Participant Judge: sir if it satisfies the test under section 10 of the evidence act then it can be...

Justice Akbar Ali: 120 b against?

Participant Judge: against anyone who is involved in that.....

Justice Akbar Ali: Mr. Ram (A-1) was working as Branch Manager at Punjab National Bank Coimbatore from 23.8.2000-1.9.2002. During this period he came into contact with Mr. Amit(A2) C.E.O of Apple Inc. and Mr. Laxman M.D of Golf INC (A-3). A 1 entered into a criminal conspiracy with A 2- A 3 to cheat Punjab National Bank. .. Thus, A-1 Mr. Ram misused his official position, fraudulently and dishonestly entered into criminal conspiracy A-2 and A-3 in order to cheat Punjab National Bank and fabricated records and used the same as genuine and cost a wrongful loss to the tune of Rs. 11, 00,000 and corresponding wrongful gain to themselves and thereby committed offences punishable under section 120 b read with 420, 467, 468 and 471 IPC and 13(2) read with 13(1) of Prevention of Corruption Act 1988....

So what do you say of the other provisions ...420, 467, 468 and 471..how they will go against whom it will go...?

Participant Judge: conspiracy will come..

Justice Akbar Ali: than what will be the substantive charge against A1..?

Participant Judge: 420, 467, 468 and 471..read with section 120 b can be.....

Justice Akbar Ali:...see the charges has to be..first of all we have to start with 120 b ..because the charges will have to ...first of all comes is criminal conspiracy..i.e 120b because the charges have to be read with criminal conspiracy...

Participant Judge: after 120 b it will be all the section 420, 467, 468 and 471..read with section 120 b..

Justice Akbar Ali:... that will be the offences but when it comes to the substantive offences..what are the offences committed then it will be 120b..13 (2) and 13(1)..

Participant Judge: A1 substantive and the remaining read with 120b.....

Justice Akbar Ali: non public servant will come under 120b read with 13(2)..see...then can we say that..the first charge will be 120 b read with all..then it comes to the substantive offences..2 and 3..may be created with 467, 468 and 471..because A1 is not a party to that..because A2 A3 are parties to it..because either will be a substantive charge..then 13(1) and 13(2) will be again for A1 because A1 here is a public servant who has misappropriated and is guilty of misconduct..we have already framed a charge for no public servant..see but the problem I have seen in the prosecution case is that many time it is some sort of repetition..when I need not frame a particular charge because it is already been covered under 120 b..then the substantive charge must be framed..when we cover the 120 b for the offences it has to state what is the substantive charge against...you agree with that.. unless the substantive charge is not framed it will not be covered..what will happen to substantive charges when the offences continue? So the best way to look at it..we cannot create 120 b..when there is meeting of mind it comes..otherwise we cannot bring it..without 120b the non public servant cannot be brought in.....that's why they

are coming.. but substantive charges against non public servant is also IPC offences because.....again we go to the next one..

Now this is also a disproportionate asset case..he has purchased property in the name of his wife and daughter..and he has to satisfy the accounts..and charges are under 18 of PC Act..this is a simple case of disproportionate asset.....

Mr. Vijay while working as a public servant in the capacity of Manager, NLC had accumulated properties and pecuniary resources in his name to the tune of Rs.45, 00,000 which is disproportionate to his known sources of income.

Investigation disclosed that during the check period from 1.4.04-25.3.10 Mr. Vijay and his family members had acquired Movable Assets in the form of fixed deposit and credit balances. Mr. Vijay was also found to be in possession of hard cash to the tune of Rs.10, 00,000 which was seized from his possession.

On investigation it was revealed that Mr. Vijay had demanded bribes from several engineers and contractors and falsely enriched himself on several occasions. At the end of the investigation excluding certain assets acquired before the check period it was evidentially established that Mr. Vijay was in possession of Rs. 30,00,000 disproportionate to his known sources of income which amount to the commission of punishable offences. Frame Charges

Now this is again a case involving a custom officer..and again its 120 b.. Kavitha, being a public servant was working as an Examiner in Chennai Customs during the period 19.2.2010-24-6-2010. Her basic duty is registration/inspection examination of goods which are imported/exported through M/s NERO Container Freight Station, Chennai.

On 11.5.2010 Ramu, Rajendaran, were directed to go to clear goods in M/s NERO CFS Chennai to clear goods. Ms. Kavitha while working as an examiner in Chennai Customs entered into a criminal conspiracy with Ramu and Rajendaran to commit criminal misconduct and to indulge in corrupt practices for accepting illegal gratification as motive or reward in the matter of registration of goods, inspection/examination of goods and clearing import consignments. She demanded bribes from companies for performing her official duty while Ramu and Rajendaran abetted the commission of offence i.e. accepting illegal gratification and obtaining valuable



things without consideration by Ms. Kavitha employed as Examiner in Chennai Customs. During a surprise check all of the above said employees were caught and all unaccountable goods and cash were recovered from their possession.

It involves seven, eleven, thirteen...also because it involves other non public servants also....so again it will be gain 120 b..see why have taken this case is..see I have a classic charge in my hand..from a court in Chennai here what we found was that..after the charges..the prosecution has filed proposed charges..very classically under firstly secondly thirdly fourthly and it is the exact replica of..the proposed charges of the prosecution....i can say that there are huge possibilities...see I do agree that many times the prosecution proposes charges so aptly and we have to follow..right? there are many times it happens..but at the same time we can look into the matter and we can also put in our input also..see...the charges..i read the second charge.....

I will read the charge the first charge it goes up to three pages..see what I would like to impress upon the august gathering of the judges are..in our conscience .....

Participant judge:.....

Justice Akbar Ali: see why I am touching this point is its almost..everyday we are dealing with this problem..

Participant judge: there are sometime eight nine ten or more accused and there are no direct evidence that is why the difficulty is there.....

Participant judge: moreover sir there is no harm in framing lengthy charges because it is only a wastage of stationary nothing more than that..

Justice Akbar Ali: As I am holding the example of this ..the first offence charged under 120 b read with 7, 11, 12 and 13 I (d) of PC Act..I can't read because there are two pages of facts again I have the second charge of only 7..against accused number 1 for demanding bribery..then again the facts are repeated..the third charge is under section 11 and the fourth is under 12..and the fifth charge is against A1 for 13 (1,2)..my endeavour will only be to see as a judge..because the CBI prosecution even the charges they would say that it is approved by the director..himself and I am only imagining that the director is going through each and every charges pending in every court room..which may not be true..yes learned judge do you want to say something..okk

so the problem that we are facing here is not just the offences...the problem that we are facing is not the accused but the problem that we are facing is the prosecution itself..do you agree with it? Because many hurdles come from the prosecution itself..when I was talking to the learned judges they were expressing that they expect us to be in state...how are we going to come out of it..and do substantive justice ...can anyone give a satisfactory answer to this?...while framing the charges..we have problems when other IPC offences are also included..we are going to discuss..only two cases Sajjan Kumar Case..then the Anwar Case and then one case came to the Supreme Court later i.e the Jitendra Singh case..you know..

There the question before the court was what happens in the case of special offences..and the IPC offences..what happens when the public servant dies..you know very well..whether the special court of CBI Court can continue with the trial..against the non public servant..

So you get the point..when there are two sets of accused one is public servant and another is non public servant..there are two situations one is before framing of the charge the public servant dies and another is after framing of the charge the public servant dies..you that when public servant is alive you will frame charge for both..the public servant as well as the non public servant..what is the position when..the public servant dies before you frame the charge..and what if he dies after framing of the charge..which case it will continue...

Participant Judge: the special court has to transfer the case to magistrate's court..because only IPC cases will remain..if the public servant dies the case is to be transferred to magistrate's court..

Justice Akbar Ali: so I want you to look at this case the Jitendra Kumar's case.....this case is..

We are, in Criminal Appeal No so and so, concerned with the question whether the Special Judge, after framing charges against a Public Servant under 13(2) read with Section 13(1)(b) falling under Section 3(1) of the PC Act and against private persons for offences under Sections 120-B, 420, 467, 468, 471 IPC can go ahead with the trial of the case against the private persons for non-PC offences, even after the death of the sole public servant. In other words, the question is whether, on the death of the sole public servant, the Special Judge will cease to have jurisdiction to continue with the trial against the private persons for non-PC offences. Further question raised is that, assuming that the Special Judge has jurisdiction under sub-section (3) of

Section 4 of the PC Act to proceed against the private persons, is the Special Judge duty bound to try any non-PC offence, other than the offences specified under Section 3 of the PC Act against the accused persons charged at the same trial.

we are concerned with the question as to whether the Special Judge has jurisdiction under Section 4(3) of the PC Act to try non-PC offences against private persons when no charges have been framed against public servants for trying a case for offences under Section 3(1) of the PC Act, since they died before framing of charges under the PC Act or IPC.

We have two conflicting judgments, one rendered by the Delhi High Court, which is impugned in Criminal Appeal No. ....filed by the State through Central Bureau of Investigation (CBI), New Delhi and the other rendered by the Bombay High Court, which is challenged by a private person in Criminal Appeal No.... Delhi High Court seems to have taken the view that en public servants and non-public servants are arrayed as co-accused and some offences are under the PC Act coupled with other offences under IPC, on death of a public servant, the offences under the PC Act cannot be proceeded with and the trial Court has to modify and/or alter and/or amend the charges. Bombay High Court has taken the view that once the jurisdiction is vested on a Special Judge, the same cannot be divested on the death of a public servant and that if a private person has abetted any offences punishable under the PC Act, he can be tried even without the public servant, in view of the separate charge levelled against such private person by the Special Judge.

So there are two sets of questions..can special judge try it? It's a well researched judgment by Justice RadhaKrishnan..

Thus, offences under Sections 7, 10, 11 and 13 of the PC Act can be committed by a public servant though an offence under Section 7 can be committed also by a “person expected to be a public servant”. On the other hand:

- Section 8 uses the words “whoever...”, simpliciter, without using any other qualifying words.

- Likewise, Sections 9 and 12 also use the words “whoever...” simpliciter.

Thus, an offence under Sections 8, 9 or 12 can be committed by any person, who need not necessarily be a public servant. Such an offence can, therefore, be committed by a public servant or by a private person or by a combination of the two. It is thus clear that an offence under the

PC Act can be committed by either a public servant or a private person or a combination of both and in view of the mandate of Section 4(1) of the PC Act, read with Section 3(1) thereof, such offences can be tried only by a Special Judge.

For example:

- A private person offering a bribe to a public servant commits an offence under Section 12 of Act. This offence can be tried only by the Special Judge, notwithstanding the fact that only a private person is the accused in the case and that there is no public servant named as an accused in that case.

- A private person can be the only accused person in an offence under Section 8 or Section 9 of the said Act. And it is not necessary that a public servant should also be specifically named as an accused in the same case. Notwithstanding the fact that a private person is the only accused in an offence under Section 8 or Section 9, it can be tried only by a Special Judge.

Thus, the scheme of the PC Act makes it quite clear that even a private person who is involved in an offence mentioned in Section 3(1) of the PC Act, is required to be tried only by a Special Judge, and by no other Court.

Moreover, it is not necessary that in every offence under the PC Act, a public servant must necessarily be an accused. In other words, the existence of a public servant for facing the trial before the Special Court is not a must and even in his absence, private persons can be tried for PC as well as non-PC offences, depending upon the facts of the case.

We, therefore, make it clear that it is not the law that only along with the junction of a public servant in array of parties, the Special Judge can proceed against private persons who have committed offences punishable under the PC Act.

Sections 3(1)(a) and (b), it may be noted, deal with only the offences punishable under the PC Act and not any offence punishable under IPC or any other law and Section 4(1) of the PC Act makes it more explicit.

Section 4(1) of the PC Act has used a *non-abstante* clause. It says, “notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, the offences specified in sub-section (1) of Section 3 shall be tried by special Judges only”. Consequently, the offences referred to in Section 3(1) cannot be tried by

the ordinary criminal court, since jurisdiction has been specifically conferred on a Special Judge appointed under Section 3(1) of the PC Act. Sub-section (2) of Section 4 also makes it clear, which says that every offence specified in sub-section (1) of Section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or, where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government. A conjoint reading of Section 3(1) along with Sections 4(1) and (2) would make it amply clear that only the Special Judge has got the jurisdiction to try the offences specified in sub-section (1) of Section 3 committed by a public servant or a non-public servant, alone or jointly.

In other words, an accused person, either a public servant or non-public servant, who has been charged for an offence under Section 3(1) of the PC Act, could also be charged for an offence under IPC, in the event of which, the Special Judge has got the jurisdiction to try such offences against the public servant as well as against a non-public servant. The legal position is also settled by the Judgment of this Court in *Vivek Gupta v. CBI and another* (2003) 8 SCC 628, wherein this Court held that a public servant who is charged of an offence under the provisions of the PC Act may also be charged by the Special Judge at the same trial of any offence under IPC if the same is committed in a manner contemplated under Section 220 of the Code. This Court also held, even if a non-public servant, though charged only of offences under Section 420 and Section 120B read with Section 420 IPC, he could also be tried by the Special Judge with the aid of sub-section (3) of Section 4 of the PC Act.

So inspite of a death of the public servant you have to proceed for the non public servant you get the point??..but the contrary if the charges are not framed and the public servant dies..you are not in the position to try any case of the offence under section 3(1) a of the Act..no..not necessarily for the PC offences..it is for the IPC offences..the IPC offences have to go back to the regular courts..that is what is the finding of the court in this judgment..ok..

A Special Judge exercising powers under the PC Act is not expected to try non-PC offences totally unconnected with any PC offences under Section 3(1) of the PC Act and in the event of a Special Judge not trying any offence under Section 3(1) of the PC Act, the question of

the Special Judge trying non-PC offences does not arise. As already indicated, trying of a PC offence is a jurisdictional fact to exercise the powers under Sub-section (3) of Section 4. Jurisdiction of the Special Judge, as such, has not been divested, but the exercise of jurisdiction, depends upon the jurisdictional fact of trying a PC offence. We are, therefore, concerned with the exercise of jurisdiction and not the existence of jurisdiction of the Special Judge.

We may now examine whether, in both these appeals, the above test has been satisfied. First, we may deal with Criminal Appeal No. .... CBI, in this appeal, as already indicated, submitted the chargesheet on .... for the offences against A-1, who is a public servant, as well as against non-public servants. Learned Special Judge had, on .... framed the charges against the accused persons under Section 120B read Sections with 467, 471 and 420 IPC and also under Sections 13(1)(d) and 13(2) of the PC Act and substantive offences under Sections 420, 467 and 471 IPC and also substantive offences under Sections 13(1) (d) and 13(2) of the PC Act against the public servants.

Therefore, charges have been framed against the public servants as well as non-public servants after hearing the prosecution and defence counsel, by the special Judge on ....in respect of PC offences as well as non-PC offences. As already indicated, under sub-section (3) of Section 4, when trying any case, a Special Judge may also try any offence other than the offence specified in Section 3 and be charged in the same trial. The Special Judge, in the instant case, has framed charges against the public servant as well as against the non-public servant for offences punishable under Section 3(1) of PC Act as well as for the offences punishable under Section 120B read with Sections 467, 471 and 420 IPC and, therefore, the existence of jurisdictional fact that is “trying a case” under the PC Act has been satisfied. The Special Judge after framing the charge for PC and non-PC offences posted the case for examination of prosecution witnesses, thereafter the sole public servant died on ..... Before that, the Special Judge, in the instant case, has also exercised his powers under section (3) of Section 4 of the PC Act and hence cannot be divested with the jurisdiction to proceed against the non-public servant, even if the sole public servant dies after framing of the charges. On death, the charge against the public servant alone abates and since the special Judge has already exercised his jurisdiction under sub-section (3) of

Section 4 of the PC Act, that jurisdiction cannot be divested due to the death of the sole public servant.

We can visualize a situation where a public servant dies at the fag end of the trial, by that time, several witnesses might have been examined and to hold that the entire trial would be vitiated due to death of a sole public servant would defeat the entire object and purpose of the PC Act, which is enacted for effective combating of corruption and to expedite cases related to corruption and bribery. The purpose of the PC Act is to make anti-corruption laws more effective in order to expedite the proceedings, provisions for day-to-day trial of cases, transparency with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been provided under the PC Act.

Consequently, once the power has been exercised by the Special Judge under sub-section (3) of Section 4 of the PC Act to proceed against non-PC offences along with PC offences, the mere fact that the sole public servant dies after the exercise of powers under sub-section (3) of Section 4, will not divest the jurisdiction of the Special Judge or vitiate the proceedings pending before him.

We are, therefore, inclined to allow Criminal Appeal No..... and set aside the order of the High Court and direct the Special Judge to complete the trial of the cases within a period of six months.

We may now examine Criminal Appeal .....where the FIR was registered on 2.7.1996 and the charge-sheet was filed before the Special Judge on 14.9.2001 for the offences under Sections 120B, 420, IPC read with Sections 13(2) and 13(1) of the PC Act. Accused 9 and 10 died even before the charge-sheet was sent to the Special Judge. The charge against the sole public servant under the PC Act could also not be framed since he died on 18.2.2005. The Special Judge also could not frame any charge against non-public servants. As already indicated, under sub-section (3) of Section 4, the special Judge could try non-PC offences only when “trying any case” relating to PC offences. In the instant case, no PC offence has been committed by any of the non-public servants so as to fall under Section 3(1) of the PC Act. Consequently,

there was no occasion for the special Judge to try any case relating to offences under the PC Act against the Appellant. The trying of any case under the PC Act against a public servant or a non-public servant, as already indicated, is a sine-qua-non for exercising powers under sub-section (3) of Section 4 of PC Act. In the instant case, since no PC offence has been committed by any of the non-public servants and no charges have been framed against the public servant, while he was alive, the Special Judge had no occasion to try any case against any of them under the PC Act, since no charge has been framed prior to the death of the public servant. The jurisdictional fact, as already discussed above, does not exist so far as this appeal is concerned, so as to exercise jurisdiction by the Special Judge to deal with non-PC offences.

Consequently, we find no error in the view taken by the Special Judge, CBI, Greater Mumbai in forwarding the case papers of Special Case No.....in the Court of Chief Metropolitan Magistrate for trying the case in accordance with law. Consequently, the order passed by the High Court is set aside. The competent Court to which the Special Case No..... is forwarded, is directed to dispose of the same within a period of six months. Criminal Appeal No. .... is allowed accordingly.

Participant judge:

I have a query suppose in a DA case..after filing of chargesheet the accused dies unfortunately and there are various properties of the accused which have been seized attached under that criminal law amendment ordinance 1944 now the family members of the accused say that these properties belong to us and you try this case and after trial it will be proved that he is innocent and the properties belong to us..and otherwise they will be confiscated and sold in the proceeds will go to the state..so why can't we have a fiction like in the case of the company it is an artificial person and we draw a fiction that it is a real person in the sense that it has all rights and liabilities..so why can't we have a fiction in the sense that we cant conduct the trial in the name of the person..by creating a fiction..they say that our father was innocent so why don't you clear it and the properties will also have to be reattached in our favour as per section 5 and 6 of the PC Act..so what will be your take on this..



Justice Akbar Ali.. I will throw it open for discussion..he is a public servant he died..and what is the position of the assets now..have you ever gone through such a problem in your court..?? yes sir..

Participant Judge: .....

Justice Akbar Ali: I was looking at the provision of appeal and then the court can continue..see one second I will argue for the legal heirs of the accused..ones charges abates..right that means that you have not proved the charges..there is no offence at all..you cannot accuse the person so then why do you call my property..? can anybody answer this? Yes sir any other answer..

Participant judge:.....in 2011 we had a similar discussion on this question, in some of the states only district judge is empowered to direct attachment of the property..

Justice Akbar Ali:

now we are concerned with a person accused of some offenses..and on his death the offence abates..we have the same trial but we have another trial there is a property involved which according to the prosecution now belongs to the public..can we say that on the death of the person what is abated is the offence and also simultaneously can we say that his property has got released now..

Participant judge: sir there are two facets in this case.....one is the offence part other is the property part after death no doubt the offence is abated but what about the property..property in normal case would go to the legal heir so..let an explanation be brought forth..as to whether this is explained unexplained what is the status for that part it....

Justice Akbar Ali: again the learned Delhi Judge will not agree..because he will say that unless the guilt of the accused is proved you can't..

Participant judge: even in that case where would will the jurisdiction lie..weather it will be special court....which judge will try

Participant judge:....confiscation cannot be ordered unless guilt is proved.....

Participant judge:...legal heir must be given this duty to explain as to where from this property is obtained....

Justice Akbar Ali: ..where is the provision you tell me the provision..or you tell me the precedent

Participant judge:...in Cr.P.C there is no provision..your lordship this controversy was earlier raised in Orissa also..and it was suggested that this is a grey area which badly requires the revisit of the provisions of Cr.P.C...if this state continues..people will acquire disproportionate assets and after their death the offence abates and the property will be enjoyed by their legal heir.....

Justice Akbar Ali: as a court we have to look into these cases judicially....

Participant Judge: I have a query sir..

Justice Akbar Ali: I very much welcome it all..but when we look at all of these supreme court judgment..these are also debatable..all these judgments are to be under some sort of critics..but ultimately it lays down the law..and we are bound to follow the law

Participant Judge: chargesheet has been filed both against public servant and non public servant and the public servant dies before filing of the F.I.R..what will be fate of the chargesheet in case of non public servant?

Justice Akbar Ali: if we follow the Jitendar Singh case then the special court cannot frame charges..special judge cannot frame charges against the non PC offences against the non Public servant..I mean..case will be sent to the magistrate..

Participant Judge: sir can I raise a question..sir in almost in all cases in West Bengal one tactics we are facing by the defense council a petition under section 39 of Cr.P.C. for discharge of the accused during framing for the charge..and the law point raised in that application is that as per provisions of 154 Cr.P.C first F.I.R is to be lodged before the officer incharge of the police station..now the question is whether S.P CBI is the officer incharge of the police station..this question is raised...

Justice Akbar Ali: see that's why I wanted to refer to two judgments of the Supreme Court..the Sajjan Kumar Case's guideline and the Prafulla's case guidelines and later the Anwar

judgment...three judgment of the supreme court will give you the right answer when the 227 can be invoked by the trial judges..thank you..

Dr. Geeta: we come back at 12 after a short break..we can have more discussions while having tea coffee also..

### Session 3: Collection of Evidence by CBI Courts: Primary v secondary evidence

Speaker: Manoj Gorkela ( Advocate, Supreme Court of India)

Two problems were given in this session to participating judges:

#### Problem 1

##### Facts of the case

Council of Architecture an autonomous body constituted under Architecture Act, 1972. [Hereinafter called as an Act] Where the Central Government as empowered under Section 44 OF The Achitecture Act, 1972, framed the Council of Architecture Rules, 1973 and these were published in the Gazette of India on 20/02/1973.

This Act provides for the registration of architects and for matters connected therewith. It also regulates all architecture colleges and recognized it.

The Council of Architecture prescribed the Revised Minimum Qualification and Experaince for teaching posts in Degree level Technical Institutions.

On, 20/04/2004, An advertisement published for the post of “Principal” in Lukhnow College of Architecture. Apart from 10 years of practice, the mandatory qualification for applying to the above said post was that the candidate should possess a Ph.D degree.

Mr. Sharma is a qualified architect and is registered with the Council of Architecture and in the year 1984 obtained a Bachelor’s degree in the first class division. He was also gold medalist. In the year 2000 the petitioner obtained a Post Graduate degree of Master of Architecture. Also, he was serving as Assistant professor in Lukhnow College of Architect.

Mr. Sharma is in practice since 1984 and continued to do so till 2004 and was working as Architect

In 2004 the petitioner paid Rs. 5 lacs to Ashwood University, America and obtained an online Ph.D. degree on the basis of his experience as he wants to secure the post of principal in the above College.

Thus, to secure the job of principal in the Lukhnow College of Architect, Mr. Sharma submitted his documents to the concerned authority on the basis of his practical experience.

After submission of the above documents to the concerned authority, the University has appointed Mr. Sharma to the post of "Principal" and according to which his pay scale get advanced.

On 15/10/2007, the Council of Architecture received a complaint from one Mr. Prakash in respect of Mr. Sharma as to his getting post of the Principal by furnishing wrong and misleading particulars (tampered and artificial made degree) which clearly made out a case of professional misconduct. Also contend that there is no such University exist in the name of Ashwood University.

After listening to the complaint, Council of Architect made FIR against alleged misconduct, which was rejected to register by Police officers.

Thus, Council of Architect filed complaints Under Section 156(3) of Cr.PC before magistrate. Further, Magistrate gave direction to Police to register the case and investigate the same and make arrests also.

However, the investigation made by Lukhnow Police was not proper and made unnecessary delay of 9 months in filing the final report and wasted the time.

Thus, Council of Architect being aggrieved by this behavior filed Writ Petition before High Court under Article 226 of the Constitution of India and prayed that this is a very complicated case and important case in the Architecture filed as a very big organization is engaged in illegal work of forgery and forged degree distribution and requested for CBI investigation. Consequently, the High Court allowed the prayer.

Further, after investigation by CBI, CBI filed the chargesheet under Section 173 of Cr.P.C. before CBI Court, where the said chargesheet was against the Council of Architect and no charge made out. After this whole story, Registrar of Council of Architecture had filed a protest petition before CBI Court, and proved each and every contents of chargesheet to be false. Registrar gave documentary evidence of University affiliated to them and list of Ph.D. colleges/ University acceptable to required post. Moreover the documents submitted by Registrar were the true copy of the original, relying on which CBI court issued process and framed charges against Mr. Sharma under Section 420, 468,471 of Indian Penal Code 1860. Then trial takes place.

#### Council of Architecture/ Prosecution submission

On 23/04/2004 even though Mr. Sharma did not possess any recognized Ph.D. degree and other necessary qualification then also he applied for the above said post by furnishing misleading information.

On 24/06/2004 Mr Sharma was appointed to the post of principal of Lukhnow College of Architecture.

On 22/11/2006 it was now established that the said Ashwood University is not recognized by the Council of Higher Education Accreditation or by the US Department of Education. This fact is apparent from the E-mail dated November 22, 2006 received from the Association of Indian Universities. The fact that the said Ashwood University is not recognized by the Council of Higher Education Accreditation or by the US Department of Education. This fact is apparent from the letter dated 06/12/2006 received from the Association of Indian Universities received from the Association of Indian Universities.

The alleged misconduct is amounts to professional misconduct because Mr. Sharma applied for the post of Principal, based on a Ph.D degree obtained by him from Ashwood University, America, and as the said Ph.D. Degree is not recognized and the said University is not approved affiliate by Council of Architecture. Mr. Sharma had deliberately submitted his degree to obtain the post of Principal and get advanced in the pay scale of the Principal.

30/01/2008 the Council of Architecture after being satisfied that there is a prima facie case of professional misconduct was made out against Mr. Sharma, issued notice to Mr. Sharma informing him that an inquiry will be held against him by the disciplinary committee.

#### Accused/Mr. Sharma's submissions

Mr. Sharma contented that he is a qualified architect and is registered with the Council of Architecture. Mr. Sharma in the year 1984 obtained a Bachelor's degree in the first class. He was a gold medalist. In the year 2000 the petitioner obtained a Post Graduate degree of Master of Architecture.

In 2004 the petitioner obtained online Ph.D. from Ashwood University, America and the said Ashwood University gave a Ph.D. degree on a practical experience basis. Thus the degree is genuine. He also contented that he doesn't have an original copy of the said degree and he requested to the University to give him original copy but he was not provided with it. Though this is the true copy of original degree and this is not forged document nor obtained by illegal means.

#### Point of determination

1. Whether the Ph.D. degree of Mr. Sharma is forged?
2. Whether the copy of the Ph.D. degree is Primary or Secondary Evidence? And whether it is admissible or not?
3. Whether Mr. Sharma is guilty of an offense Under Section 420, 467, 468 of Indian Penal Code, 1860?

#### Relevant Provision

62. Primary evidence

Primary evidence means the documents itself produced for the inspection of the Court.

Explanation 1—Where a document is executed in several parts, each part is primary evidence of the document :

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2- Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest ; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

#### Illustrations

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

### 63. Secondary evidence

Secondary evidence means and includes—

- (1) certified copies given under the provisions hereinafter contained;
- (2) Copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies.
- (3) copies made from or compared with the original ;
- (4) counterparts of documents as against the parties who did not execute them;
- (5) oral accounts of the contents of a documents given by some person who has himself seen it.

#### Illustration

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine copy of the original, is secondary evidence of the original.

## Problem 2

### Facts of the Case

The Transport Department was constituted in 1945 under the provisions of Section 133 A of the Motor Vehicles' Act 1939.

State Transport Department of Government of Uttarakhand through vide order dated XX/2009 under Recruitment Rules, 2006 issued a notification for appointment of 25 Drivers (Group C Operational Staff) in the State Transport Department of Government of Uttarakhand.

The minimum eligibility qualification for the post of Driver were fixed up to High School passed (Matriculation Passed) from any board.

Thus, several requests and application for the 25 vacancies came across the State of Uttarakhand for the said post. However, this 25 vacancies get filled. Out of 25 posts 3 Driver was appointed from Uttar Pradesh and 2 from Delhi.

Before appointment as Driver under the State Transport Department of Uttarakhand Government, An affidavit from all the Drivers received, complying with the legitimacy of documents submitted to the Transport Department for the securing the post. Also, Transport Department received undertaking that if any document found to be false and dubious then his service is liable to terminate at any time without notice/ assigning any reason also Criminal Case will be initiated against that Driver.

Thus, all the 25 Drivers have submitted their Affidavit/ Undertaking that they are fit to do the job and also will be liable for all the consequences if documents related to their appointment found to be dubious.



However, One RTI activist namely Mr. A asked in RTI, certificates and all the detail information regarding the appointment of Drivers in the State Transport Department, Government of Uttarakhand. Consequently the said query replied and all the certificate has been provided to Mr. A.

Later Mr. A (RTI Activist) wrote letters to concerning Boards, who issued those Matriculation Certificate and asked them that Whether those Certificates has been issued from that Board or not? Thus, after receiving all the certificate, it is found that out of 25 certificates, 20 certificates were genuine and over 5 certificate found to be forged.

It is pertinent to note that out of those 5 certificates, 3 certificate were belongs to the Uttar Pradesh State Government and 2 from Delhi, CBSE. In all this 5 certificates the concern authority stated that no entry has been found in perusal to above certificates. This submission in the form of report has been made to the RTI activist and Director of Transport Department.

Thus, after examining the above report, the Director had filed an Application before the Hon'ble High Court for CBI Investigation to find out people involved in this misconduct and to ascertain Whether Selection Committee or Staff is involved in above recruitment.

However, CBI investigated the said matter and found the document similar to the other original documents. So, CBI deeply entered into the investigation and started checking each and every document. After examining the several documents the CBI came to the conclusion that student's had appeared in the matriculation exam. But their entry as to allotment of the certificate was not found in the Register. Also allotment register were very old in which entry cannot be adjusted. Further, in 2 (two) register evidence that the students' appeared for the exam found by CBI as well as admit card of the student's appeared in the said exam. Thus Conclusion made by CBI, that there is no entry in allotment register. All the five names as and an entry of issued Certificate were misplaced in the Register. Moreover the certificates were similar as compared to other original documents and no tampering found. All the five Drivers were having certified and attested copy of the Certificates issued by the Board.

#### Prosecution Submission

1. That, the accused/ drivers, Mr. W, Mr. X, Mr. Y Mr. Z and Mr. B were appointed as Bus driver and allotted the post of driver subject to the condition that he would be on probation for a period of two years as per the provision contained in the Uttrakhand State Transport Department Service (Group 'C'- Operational staff) Recruitments Rules, 2006 and that during the period of probation, his services are liable to be terminated at any time without any notice/ assigning any reason.
2. That the appointment of the applicant was also subject to the verification of his character and antecedents, certificates of educational/ technical qualification/ caste certificates (SC/OBC's) and driving license.
3. That the certificate of Matriculation submitted by the applicant, being issued from the Secretary, Central Board of Higher Education, New Delhi and State Board of Uttar Pradesh was sent for verification on dated --/08/2011 that the Central Board of Higher Education and State Board of Uttar Pradesh identified as a fake certificate. As the entry of the said certificate in allotment register were not found and all the five entries were misplaced. Also the record of the said certificate not found. Merely appearing in the exam does not prove certificate to be genuine and legitimate. CBI only adduced the evidence that students' appeared in the exam. But whether they passed or fail in the exam cannot be ascertained through the register entry. Thus the certificates submitted by the driver are dubious.
4. Moreover, drivers don't have an original copy of the matriculation certificate, thus this drivers' did fraud and cheated to transport department, thus they should be charged under Indian Penal Code, 1860.
5. That since the accused/ drivers did not meet the basic educational qualification requirements for the post of Bus Driver as per the recruitment rules, the service of the accused/ driver was dismissed with immediate effect.

Accused/ driver's submission.

1. That, the accused/ drivers, was appointed as Bus driver and allotted the post of driver subject to the condition that he would be on probation for a period of two years as per the provision contained in the Uttrakhand State Transport Department Service (Group 'C'- Operational staff) Recruitments Rules, 2006 and that during the period of probation.

2. The Certificate submitted to the State Transport Department for recruitment in the said post indicated that all drivers had appeared at the time of examination.
3. It is submitted that all the drivers have their admit card and also appeared in the exam which is concluded by CBI.
4. Moreover, the said certificate is the genuine and certified and attested copy of the original documents and no tampering to the certificate has been found by CBI.
5. That, drivers have lost their original documents related to passing the there matriculation exam. Also Board also misplaced their same documents.
6. Thus, it is Board mistake by which the drivers are suffering. Thus, even we cannot apply for the original copy also. Thus we are not liable for any forgery of documents and not being in possession of original copy of the certificate.

#### Points Of Determination

Judges in the case have to decide Whether drivers in the case should be charged or not?

Dr Geeta: In the two problems that are given here the first one the architect one is not relevant to CBI..the second problem..the Uttarkhand Transport thing one..is related..the second problem has every one read..i think we will discuss the second problem because that is related to CBI Court..

Manoj Gorkela: first one is also of CBI Court..yes yes.....

Participant Judge: is the process of CBI investigation going on.....when the CBI investigation has come out..that is not there..

Dr Debashis: the word “that” should go away..

Dr. Geeta: there are lot of mistakes actually...the word used must be possession and not passion

Mr. Gorkela: see it’s my experience one matter was U.P Power Corporation v state of U.P..it’s a very famous matter in the Supreme Court decided by the Supreme Court’s Division Bench..by Justice Dalwir Bhandari and Justice Deepak Mishra delivered the judgment..in state of Uttarakhand..the matter is decided by Allahabad High Court..the same matter is decided by the Lucknow Bench..problem is this..if similar problems come out and opinions are

different..suppose two judges..are sitting in Allahabad High Court Bench and two Judges are sitting in Lucknow High Court Bench..and the opinion is different then its referred to the larger bench or the constitutional bench..when we argue one matter in Supreme Court if we submit there four five judgments....what happens in CBI Courts..when same situation comes before different CBI courts what is the observation of one judge..and what is the observation of another judge..so different judges different opinions or one opinion..so if suppose similar case is filed...my motive is to decide this..by giving this hypothetical situation the similar opinions come or different opinions come..

Dr. Geeta: Mr. Gorkela please stop there..so what do you want them to do..do you want them to give your opinion..? on what subject..?

Participant Judge: do we have to decide whether drivers in the case are liable?

Dr. Geeta: Mr. Gorkela can you say whether the driver should be charged or not

Mr. Gorkela: see the certificate is issued..investigation report is that he lost his original certificate and when CBI investigated ..the board..two boards are there one C.B.S.E board and one U.P. Board..they examine them and the old register..they have lost the register also..but they have the copy of the admit card..one admit card one attested copy of the marksheet they have..and at that situation can we frame the charges..the chargesheet has already been filed...what is the court's opinion about the attested copy of the marksheet..some evidences they collected from the board..C.B.S.E board and the U.P Board..

Participant Judge: the marksheet itself is primary evidence because it is forged secondly the original marksheet were with them.....

Participant Judge: the offence is that the register is not showing his name..it's not an offence..if somebody doesn't enter my name in the register then I am not to be blamed...it's no offence..

Mr. Gorkela: but we have the admit card we have a copy of the admit card..and we..yes..no no as per the RTI report U.P board has said that this is not our certificate..and C.B.S.E also says that we are not able to find it out in our register..yes..it is the issue of the prosecution and finally if suppose CBSE board secretary says we did not issue the certificate..not from our office..we only see our certificate..we don't see where he got exam...If CBI secretary report that the certificate is

not from our office either his certificate is genuine or not..I am the managing director of transport department, shall I remove him or when investigating officer investigating the whole issue some point he have that the admit card is genuine..he went there the place where the examination is conducted..some evidence is there..the issue is this type of situation what observation and when we ask him you produce original certificate..When he selected for the driver post they all don't examine the original certificate..why because he already given affidavit and this will happen in different different stages..i examine different cases I have seen situations where evidences from examination centre, admit card centre, copy of the admit card..situation is this director already given RTI report...this certificate is not..our register has not maintained this certificate..we will see our register only..CBSE Board has one office in Delhi

Participant Judge.....

Gorkela : Yes yes yes

Dr. Geeta Let Ma'am speak

Participant Judge : There is no evidence as to what happens to the admit card...there must be some exam..there is no record that this person failed or pass..The prosecution has to bring a case.....What about the prosecution from where the prosecution gets the document.....

Participant Judge: There is the attested copy of the document..but where is the offence...they will give the secondary evidence

Gorkela: NO..issue is this..when you write an RTI for any authority

Participant Judge:...I have done my Law in 1983 if somebody losses my register..what is my offence....They have not made the entry..

Participant Judge: This does not raises a presumption if record is not available by the university..that is not a presumption that the documents are forged or tampered.....

Participant Judge: And you are saying admit card is there.....

Gorkela: No after investigation..we need your opinion only.....

Participant Judge: No opinion..no opinion.....

Participant Judge: merely by submitting a document or producing a document ipso facto does not make him guilty of an offense unless it is proved by the prosecuting agency that he is the person who is instrumental in making those documents..unless it is proved by the prosecution we cannot presume a person to be guilty..it has to be proved..merely by holding the document does not mean that I have created the document..false or fabricated documents..

Participant Judge: in this case charge should be framed against the drivers because the prosecution's allegation is that the drivers have submitted theft certificate.. and the accused persons say that they have submitted genuine certificates ..there is nothing on record to show that the drivers have passed matriculation examination..even during the investigation the drivers did not produce the original certificate..who has prepared the attested..copies of the certificate? And there is nothing to show that the drivers have passed matriculation certificate..the prima facie matter is so that they have submitted the theft documents..the purpose of framing charge is just to say that the actus reas committed is an offence or not..during the trial it will be decided whether they have committed an offence or not?

Participant Judge: the issue will be how did the CBI come to the conclusion that the document is forged when the original is not there..when the board says that no it is not from our board..then they come to the conclusion that it is forged..how the court would believe that..the original has to be first there it has to be believed then only the court would come to a conclusion that it is not forged..the basic ..the basic..

Justice Akbar Ali: for your benefit I will just read section 463..i.e forgery let us go to the offence..then I think that we can come to some conclusion..

Forgery.— [Whoever makes any false documents or false electronic record or part of a document or electronic record, 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, commits forgery.

Here is the case that I see as a judge..a certificate is said to be forged..right..? a certificate is said to be forged...so how do you say whether it is a forged document? If the original is there with some authority..and the authority says that this is not my document then it is a forged document..false document..suppose the authority says that I cannot say anything because my originals are not with me..will you prima facie make out a document as a forged document unless the CBI proves in other way the printing material or the signature..or anything..which does not belong to the person who actually has produced the document..right?? will you agree with me..yes..because the certificate always goes back to the issuing authority..ones the issuing authority says that my originals are not available to compare this document then the genuines of the document is a burden for the prosecution to prove... but the problem here is I only look upon the evidences produced by the CBI number one is the alleged forged certificate number two is the preparation report from the authority who is..who says that we cannot verify because our documents are not there so we cannot verify...when the register is available and it does not show an entry at all..we are here only to analyse the evidence and come to a conclusion..what are the evidences in favour of the accused and what are the documents that are against the accused..the evidences that are against the accused are..the certificate itself which he says is genuine...and the prosecution says is not genuine..another thing is that the authority is not able to say whether they issued the certificate or not because they verify with their own record..they only call out from the register..and say that so and so has passed the examination.....do you expect them to keep a copy of that?....they have a register from the register only they have incorporated the certificate..so that's how the evidence is..to be analysed

Participant Judge: I have done this case which is a similar case of an insurance agent who was appointed as a ..on the basis of a forged marksheet ...the board had a register in which it is written appeared seat number everything..all detail is there in the whole register and pass and fail is also stated there..whether he has passed or he has failed the register itself shows..

Justice Akbar Ali: so the original or the source..if the source does not reflect i.e what is produced then we need not call it as a forged document...see I am only putting this question to you when my record relating to this particular employment..whether he has given the marksheet or not this certificate does not reflects which is in form of the certificate produced by the possessor ..will you call it a genuine document or a forged document..can you presume something and say.....

Participant Judge:...when a marksheet is lost we apply to the university or anybody..how do they give us another marksheet ...on the basis of that register entries are made..where the seat number and everything is there..so if that resisted does not reflect..that means that is a forged document..or marksheet..that is it..

Participant Judge:...faulty investigation I will say..faulty investigation in the sense that..suppose register..the university doesn't has that register ok that is..circumstances is that in both these universities

Justice Akbar Ali: see what is in favour of the accused is two points one is history is available but entries are not available that is one..and the registry itself is not available..the entry is not available to verify..then the benefit has to be given to the accused..when the registry is available..then it should be verified..if they say registry is available totally they cannot compare with anything..ya ok..that is important..so...

Participant Judge: Faulty investigation I would say..faulty investigation in the sense that suppose the university doesn't have that register ok..the investigator can go to the school..go to the college whether you possess..that he passed in that year or not? Whether any secondary evidences are there or not? See circumstances are there that..any secondary evidences are there or not..see there are two universities..and the registers are missing..so it may not be the matter of coincidence that all those facts are missing..there can be chance of manipulation..because I can understand that the Delhi University misplaced the register..but again there is a misplaced register..so everywhere these applications are there that there are missing register..so now we cannot decide that...

Participant Judge: the school also maintains who passed or who failed because they also.....they should say passed or failed otherwise benefit of doubt should go to accused...

Participant Judge: but some restriction has to be drawn because we are at the stage of charge not final trial..so at the stage of charge grave suspicion is sufficient to take the charge..matter is admitted..

Participant Judge: admission ke evidence milne se ye nahi mana ja sakta hai ki usne pass kiya hai ya fail..pehla point ye hai..isme ye proved hai ki pass hone ki koi evidence humare pas nahi hai



dusra..ye evidence pakki hai ki unhe certificate issue nahi kiye gaye the..kyunki register me unki entry nahi hai aur teesra unhone apne faide ke liye ye certificate pesh kiye hain aur unko faida hai..unke naukari mili hai to isse presumption ye hai ki ye forged unhone banaya hai..ho sakta hai usme conspiracy ho board walo ki kyunki wo as it is banaya hua hai..aur certified copy ke naam pe inko issue kar diya hai..

Dr. Geeta: I think now we should go to second case and decide also..we have fifteen minutes..ya..yes..no...we will do that ..we have a session for that..now in this session let's do our second case and discuss about that..

Participant Judge: In second case the chargesheet can be filed because the original document is no where there..nobody knows that the original is in existence or not..it's an offense

Participant Judge: there is no evidence that the certificate is certified by the authority..original hi nahi hai na..it's not there..

Justice Akbar Ali: how many of you can say that it can be prosecuted..

Dr. Geeta: the Ph.d degree case..

It is incumbent upon the authority to examine that the Ph.d degree is issued by which institution..the institution is accredited or recognized or not..it is not on the part of Mr. Sharma to tell him whether I have obtained this degree from a particular university which is recognized by you or not..it is for the institution to look after..

Participant Judge: actually we don't know ki revised minimum qualification kya hai..

Mr Gorkela: first matter is the transport matter second is fake Ph.d degree..this degree is recognized in Singapore but it is not recognized in India..the issue is this if the person is a topper of B.Arch and M.Arch..and then he just takes online Ph.d degree..if you submit some amount..as per your experience they will give you ph.d degree this degree is not recognized by the council of architecture..

Participant Judge: Mr. Sharma has produced his degree from...to the authorities..the authority had all the occasions to check up whether this particular degree is recognized or not...as per their

parameters or not..he has produced the document now if the authorities come to the conclusion that it's not recognized..your candidature is cancelled..there is no question of forged document..

Dr. Geeta: you know what is happening..now a days when we do selection and all..you know people whom we have selected on website..within ten days RTI applications start coming..give us the original documents ..qualifications and eligibility of all selected candidates..now whose task is it..? and if you don't give reply..after thirty days..I am going to appellate authority I am going to this authority..its' happening and it has become a usual procedure and these things will be very usual cases that we will be facing up..because as an institution we are facing ..we are flooded with such enquiries....if people are selected how they are selected.....no we facing they do..they go to police station....

Justice Akbar Ali:

let us understand the facts of the case a little more..here is a person who has applied for a post saying that I am possessing the recognized qualification that is one..which is Ph.d..so he applies because of his credentials..and also the Ph.d..and he is appointed, now whether the Ph.d is recognized or not is one type of question..which you all answer..if that Ph.d is recognized from an unrecognized university.....so ones if it recognized from a university which is not recognized by the higher studies department then the disqualification automatically comes..he is to be disqualified..that is what everybody says..but have you known that this Ph.d which I have obtained is not a regular Ph.d..and having known that I am posing my Ph.d as a qualified ....certificate..having known that I am going to cheat you and obtain a post..one second..no no..no ..one second..I am only projecting the problems which we are facing daily.....these are the cases going on..because CBI is inquiring the matter..we have to find whether there is an intention of committing an offence ....what you are saying that its only a disqualification is entirely a different matter..it's only a disqualification for me..is only a situation but there is also a situation whether intentionally I want to do..I have committed an offense ....

Participant Judge:

One situation akin to this is we often see Russian MMBS degree which is not recognized by MCI in India..but saying that having a MBBS degree from Russia you are not competent to et job in India..is one thing and saying that since you are having a Russian MBBS degree you have

fabricated a forged document is..different..and you should be prosecuted for it..both are totally different..

Justice Akbar Ali: see having per se a degree is not an offense that we agree

Participant Judge: facts does not disclose whether it was obtained...the selection and appointment procedure takes a long period where he..has applied the university has all the occasion to verify it..there after issue him appointment letter or call for an interview..but the university did not do..it is only after RTI was filed university realizes that this document was issued from this university .....does not fall within recognized university..and so has produced a forged degree..

Dr. Geeta: I think we should break for lunch and have good food...and have discussion over there..then we come up at 2..lets break for lunch..

#### Session 4: Scrutiny and Evaluation of Evidence

Speaker: Debashis Nayak, Director, Asian School of Cyber law

Justice Akbar Ali: before the director comes..I think we are already on time..and Mr. Debashis Nayak is here and he is the director at Asian School of Cyber Law..where they conduct certificate courses on cyber law..you can introduce yourself please...

Dr Debashis:

...happened into academics for long time..side by side I also practiced law..my area of specialization are these..cyber laws..cyber crime investigation..cyber forensic..and so..in early part of my career I was assisting the law enforcement agency in lot of cases as an expert witness..but that phase was may be a couple of years ..after that I switched exclusively to practice..now what we have here today ..the topic to discuss..I know there will be a lot of questions because..there are lots of issues that legislation has thrown of..lots of issues that courts are yet to clarify..if I talk of what is the search and seizure procedure in these kinds of cases there is no law no rule..no regulation which says....except in like NDPS Act, there exist certain procedure.

At an absence of a promulgated law by the Supreme Court of the High Court typically what everybody is doing is following a certain standard which is followed across the world.....if it is questioned that which provision of law says that you must take steps one two three four ther is no answer to it..because...

At presently, the procedure followed is a standard that is practiced and accepted throughout the world. There is no specific provision that specifies that these steps should be taken for the said matter. It is an emerging area, it is the court will have to lead.

There are two cases by the SC which put some light but leave many things unanswered. But before start, the nature of a cybercrime has to be understood. How will you define a cybercrime?

Cybercrime is an illegal Act when a Computer is used as tool or target or both, or Electronic Evidence. The definition for a computer as in IT Act is very broad, Even in 2009 Amend, the definition for communication device also came up. Now the def. of a computer and communication device includes all devices. Even a smart LG TV connected to internet also becomes computer.

To differentiate a cybercrime, He gave the following illustration- A throws a computer without the slightest provocation on you. Is it a cybercrime? It is not a cybercrime. Therefore, Cybercrime is something deals with data and information liking hacking into your computer. It is not an act with physical hardware.

Information can be data, software or data base. All most all the cybercrimes are mostly done for the purpose to deriving the said information and it was therefore, the need for a new legislation had come because it cumbersome to apply the same laws for intangible property as the concept of property and possession has changed.

If it is said that a book or music that was composed by A has been stolen by B does not mean that B is depriving A from possession. It only means that it has been illegally copied by B. Therefore, transfer of information does not exclude A from possession and certain characteristics of property. Hence, Theft under IPC is not attracted and need for Copyright Act and S.66 of IT Act comes into the picture.

Let's go to physical crimes, people have started to use tablets, mobiles and computers instead paper, diaries and files which is used as a conventional mode of documentary evidence presented in the court. In these circumstances, information gets stored into such devices. How it has to presented in court of law is certainly a question? How do you extract the information? All these question shall be dealt.

Information by nature is intangible and easy to tamper. If an electronic document is corroborative to evidence to be proved before a court, usually it gets tampered when produced before the court because it happens due to the lack of proper knowledge how to deal with the information or document in a drive or flash disk. For eg., as in case of a murder case, a bullet or a knife with which the murder has occurred is produced before a court in original whereas for information in hard disk, the original is never sent to the court. It is a clone or copy is sent because dealing with the drive will certainly tamper the information. The copy is made in a manner that there is no information difference from the original without losing any bit of information. Then, the original is stored. The copy also includes expert report too. The moment original document is stored and not exhibited so necessarily the copy or clone over which the expert report that is talked about is secondary evidence. When talking about secondary evidence S. 65 of the Evidence Act comes to the picture but only applies for documents. The evidence in hand is inside the electronic device, and then what is the legal status of the information in the said device so that it becomes admissible in court? therefore, Sec. 65A was inserted into the Evidence Act.

Now in this background, lets look into certain cases, as to how we can go about electronic evidence:-

### Compromising Evidence

In the U.S. Doorframe Case, the FBI had seized certain devices from a hacker's house in New York City. When the devices were checked at the lab the folders in the disk were all corrupt. So leaving the case futile with no evidence, the officials went back to the house and reinvestigated. They found electromagnets on the doors leaving burned the information.

### Logic Bombs

It is actually certain algorithms that are fed to the computer which in the background do all the damage. A clever criminal can insert a setting that when the computer is set to shut down at the same time in the background the data that is present in the hardware may be deleted. It actually a set logical process that triggers certain command at the users instance. For the user it may be normal shutting down the computer.

Admissibility of the evidence which is not collected through illegal method is certainly a different question not more than the extent whether it is relevant or not has been established? Interesting fact, unless a certain procedure is strictly followed the allegation relevancy of the evidence stands. The defence usually takes the route, the SC has effectively laid a lot of precedence. The proposition stands that procedure of procuring the evidence does not have much relevance.

How do u prove the copying authentic?

The computer forensics process include the following

- Acquire
- Authenticate
- Analyze
- Document

Authenticate

It is the report by using the hash function that integrates the software. It is mathematical algorithm that takes input of variable length and gives output of fixed length. Like if an input is given, there would be output with a hash function, if even if there has been tampering of the document of even coma, the hash function will be different.

If with the original, the copy has same Hash output function then document stands to be same, if not, then the data has been tampered( length would be same not the sequence).

Typically, the procedure after seizure, seal it and send it to the forensic, make a copy and start analyzing the info in the clone. By making hash function and store the original. Even in the

expert report, the software that have been used to analyze has to be specifically been mentioned. The prosecution has to prove if there is any difference in the hash function if at all when compared between the original and clone.

Thus, Using hash functions to ensure authenticity of image. If acquisition hash equals verification hash, image is authentic.

Second, it is to Document. There is Chain-of-custody log, when the no. of evidence has been transferred or changed like in instance when sent to the state forensic lab to analyze a voice recording but does not have the infrastructure to study it. Then, it sends to another agency, so leg actually records the evidence changing hands. It actually tracks evidence from source when it is seized to courtroom.

The five “Ws” of chain-of-custody log that can very much handy. They are as follows:-

Who – took possession of the evidence, What– description of evidence, Where – did they take it to, When – time and date and Why – purpose for taking evidence. These can be essential to determine basic information for investigation. Every report should be accompanied with this record for authenticity and transparency.

Now let us look into a case-what kind of evidence should be collected?-

The Omega Case

On July 31, 1996, The Servers of CNC department in Omega Corporation are booted. There is Message flash saying file server is being fixed. Subsequently system crashes. Even the storage backup tapes were not found. All programs got deleted, manufacturing halts. All programs and code generators destroyed. It affected 25, 000 products to customize 500, 000 designs. It took 34 years of growth and all the information lost in 1 year because of a network administrator who was not happy with the job. He was fired because of non – cooperation. Network Administrator’s house searched. Computers, CDs, motherboards, 500 disks, 12 hard drives, 2 formatted backup tapes. Backup tapes were labeled 14/5/96 and 1/7/96. The cause of deletion, a six line program

System Log that was found:-

30/7/96 (Trigger Date)

F: (Accessing the server)

F:\LOGIN\LOGIN 12345 (first user logs in with supervisory rights and no password)

CD\PUBLIC (gives access to the PUBLIC directory, a file system area)

FIX.EXE /Y F:\ \*.\* (Run code, A=Yes, All files)

PURGE F:\ /ALL

It was actually the FIX.EXE/YF:\ \*.\* (Run code, A=Yes, All files) was a setting that was included to erase all the data. In common parlance, a user will have no clue as to what actually is being done by the computer in the background.

The evidence that was seized by the agency included all items seized from the suspect's house: CDs, HDD, formatted Back up tapes, etc.

But what is needed to establish guilt beyond reasonable doubt?

- Correct procedure having been followed by IO
- The function of the 6 line program (Expert Opinion)-there should be clarity and should remove all doubts in a the mind of the court.
- The fact that it could only have been installed by the suspect. It trace only brings you to the computer and not to the person, so it has to be proved that it can only be done by the suspect.

As we come to Internet based crimes, whether it may be DNS spoofing, Web defacement, FTP attacks, Bogus Websites, Web spoofing, Website based launch of malicious code, cheating and fraud. It was reported by the FBI that the amount that is derived through a cybercrime is much more than Drug crimes. With an example, A is a person living in the middle-east and his sons are living in the US, He wants to shift to India. He goes to a particular Bank which has 3-4 crores rupees of his life saving. He wants to send money in USD to his son, studying in the US. The bank says that A would have to sign an A2 form under FEMA as per RBI regulation after



signing the document, the money can be transferred. The bank then asks to leave four blank cheques and A2 forms so that A does not have to come back again and again from the middle east. Since for 20 year, A has account in that bank, so certainly there is a trust.

In the first month, an email comes from A to transfer 2500USD to his son account. Similarly, an email comes in the second month but for third month, the same email directs the bank to send the money to another account about 28000USD. The son is no more the beneficiary. Even for the fourth month this happens.

A after some months visits the bank and they ask him to pay an interest amount for 36 lakhs as there was Over draft. It is 36 lakh with just two emails, think of the whole population in India, so this is really a great problem.

Lets get familiar with certain internet works, the Information travels in data packets. Files get broken at their source then, reassembled and “joined” at the destination. The file can take various routes before it reaches the destination because the all packets are able to reach the user, even if some routes are congested.

What is Server basically? It’s a software programme that can install in a laptop or bigger computer. Usually, data to be computed by the server requires a much larger computer.

For an internet crime, Internet Service Providers (ISP) is an indispensable. It provide access to the Internet and also provide direct connection from a company's networks to the Internet. It connect users through POP (points of presence).Each user is given a unique IP address when he logs on to the Internet that is necessary trace the crime. Typically, the internet line comes through telephone line through the router, when email is used router takes over. Every protocol is bound to a port. Think of a situation of accessing a website that is of a different country is shown on the monitor in 30 millisecond and this is the beauty of information.

The Internet Protocol (IP) Address is a 32 – bit address separated by periods. Each field can contain a value between 0-255, known as octets. To trace IP’s, Internet backbone has to be very much understood in common parlance. It is referred to the central network that linked all parts of the Internet. It mainly consists of optic fiber cables. Now consists entirely of ISPs and private networks. It is actually router has to configure the path for the data to move and reach.

Lets come to a Domain Name System, It is actually an intermediary that translates the name to IP Address. We actually write the name of the website and not the IP address like www. Hotmail.com,so this name is translated to the IP address by this intermediary. It allows independence from knowledge of physical location of host. A resolver grants access to the system when the necessary requests are given to it.

Even IP address, can only trace a suspect computer. At instances, even the IP address can be changed through certain software like by using proxy servers. If a cybercrime is committed in India using proxy server, it can certainly shows an IP address belonging to another country. Now the log generated would be foreign server. Unless and until, the foreign proxy server gives you the address of the Indian IP address which used to generate the foreign website, no investigation can be proceeded.

If at any instance we do not have the correct IP address and time, the probability of landing to a wrong person is more. It can referred to a case, Shivaji Maharaj Orkut case, at this instance the investigation agencies landed up in arresting the wrong person. It was a case of Orkut, a social networking website. Somebody uploaded a fake photo Shivaji on Orkut saying that he was incompetent. That moment, a case was registered as it hurt the feelings of Maharashtrians. Orkut gave the IP address to authority and was found to be belonging to Airtel. Then, Airtel was requested to deliver the information as to whom the IP address on this date and time. They delivered address of a person living in Bangalore. Pune Police went and raided the house and arrested him. It was only on the basis of IP address without any corroborative evidence.

The Pune police again requested Airtel to analyze and verify the information that was delivered to them. The service provider responded that the information so delivered was wrong. They actually delivered the address of the person using the IP address at 11:32 PM and not 11:32 AM. Now they even found corroborative evidence. But what about the person arrested for two months? The State Human Rights Commission gives a showcause notice to Assistant Commissioner. Therefore, Evidence must be scrutinized first otherwise it can certainly lead to very scary state of affairs.

The criminals today have become sophisticated in their own way. It can be said that if I need to commit a cybercrime even at some instances like the guys who kept electromagnets at the doors. He will not be in a situation to leave any trace. Even in which country's jurisdiction does not incriminate the said offence? The cybercriminal will use that country's IP address and no one catch him for that matter. The computers are becoming obsolete, now it's coming to mobile but even it would be complex. The scrutiny methodology shall differ from certainly a computer to mobile.

Look at a possibility, if Flipkart earns 10 Crores of Business a day, a cybercriminal gives threatening to the said Flipkart to crash the website for 48 hours. At least a loss of 10 crore would be there. The cybercriminal would also demonstrate for 30 second by crashing the website. So they would think how much is asked by the cybercriminal? 1 crore. They would be immensely willing to give it to him. Where is kidnapping, ransom and killing? Not required. Even app that is used in our phones that strangulates the location through normal telephone lines as used by new taxi cabs like Ola cabs etc.

Android and Microsoft phones are used by everybody. Does anybody read the terms and conditions while downloading an app? Nobody. It says that you have given the right to extract, use, communicate and advertise through your contacts like true caller. Even a flash light using torch app uses such terms. In such case, evidence becomes really complex and difficult to comprehend.

## Day 2

### Session 5: Search And Seizure Of Digital Data

Speakers: Nisha Menon, ( Forensic Expert) Dr. Harold D'Costa (CEO, Intelligence Quotient Security System)

Ms. Nisha Menon started the session by illustrating the frame work of the topics being dealt by her as namely regular forensic sciences, QDE, finger printing, video examination and forensic tape authentication. These are very much commonly used methods. Any basic application basic science for the purpose of law is forensic sciences. It basically stands on the Locards principle, that whenever two things meet, they leave traces of each other. Every criminal can be connected to his crime by contact traces carried from the scene of crime or left by him at the scene of crime.

Now moving to QDE (Questioned Document Examination), What actually is Questioned Document Examination? Any document that is doubtful, alleged or doubt in a legal dispute.

1. A "questioned" document is any signature, handwriting, typewriting, or other mark whose source or authenticity is in dispute.
2. The types of documents that come under the examiner's purview include wills, contracts, letters, threatening photos, lottery tickets, passports, voter registrations, drivers licenses, cheques, tax returns, sales receipts, torn pieces of paper ,photocopies, carbon paper, charred paper, faxes etc.

Photocopies' having tampered the original signature is one of the most common activity but it is highly complicated for experts to analyze the matter. Now moving to scope of QDE, it includes the following: Handwriting analysis, Signatures and initial analysis, Writing and disguised writings, Alteration, Erasure, Obliteration and over-writings, Sequence of strokes in a handwritten or printed matter, Digital written document analysis, Identify different types of paper, ink, water-marks, copymachines, printer cartridges, stamp impressions etc.

Later, She explained certain facts that are very much common malpractices as through the following pictures. It is to show in which all forms there can be forgery, alteration etc and the relevancy of the scope of QDE.

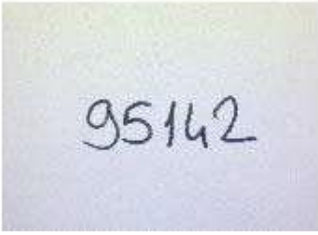


Figure 1 Viewed by the "naked eye"



Figure 2 Viewed at 665 nanometers  
Infrared luminescence

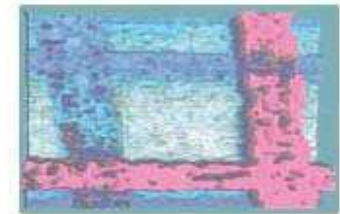
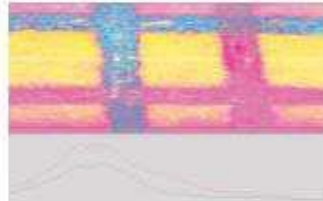
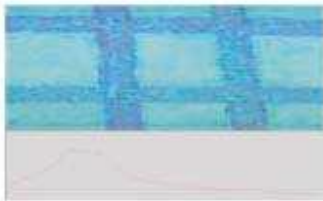
In the above picture, Figure1, shows a manuscript marking 120/ 80 but when it was analyzed the original marking was 170 /90 and it was altered later to 120/80. The white mark in Figure 2 shows that it was actually made later.



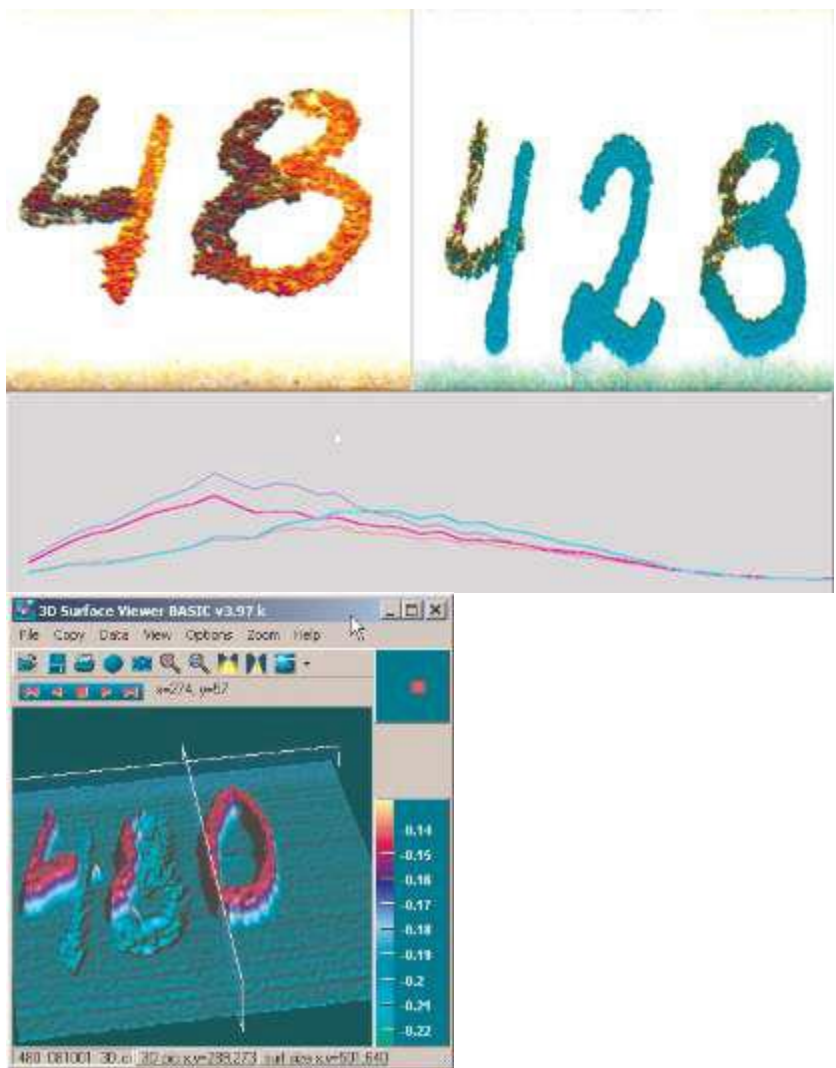
Similarly it can be marked for the above diagrams. Where 9 is actually not mentioned in the original manuscript. Through the third picture, it can be highly understood that 9 was mentioned later on.



The above picture illustrates revealing concealed or masked writing.



For the above picture, the stroke sequence determination using micro-hyperspectral measurements in intersecting areas is done. Pink line is being overlapped by blue. It means that blue was added first with pen.



Now through most modern techniques, we can lay down 3D imagery that does give us as to exact results which digit have been altered. It is actually 123 that has been altered and made as 428.

There are certain characteristics of handwriting. Identification of the author of disputed handwriting, and/or signatures is to determine if it is genuine or a forged. It is a proved fact that handwriting is “Brain Writing” controlled by the signals sent by the nervous system through hand. Thus, it is unique to every individual. The neurons get activated and command the neuro muscular system and hand to write so, no two people will have identical handwriting. Factors to consider include the arrangement of the writing on the paper, such as margins, spacing, crowding, insertions, and alignment. The final conclusion must be based on a sufficient number

of common characteristics between the known and questioned writing samples; it is a judgment call made by the expert examiner in the context of each case. A person cannot produce in a mechanical manner exactly what has been written first. There must be some natural variation in the writing of the same person. If two signatures are precisely alike then one of them must be a forged signature.

Handwriting characteristics can be classified into Class and Individual Characteristics. Under class characteristics, it includes general characteristics which may be common to more than one individual. Also similarities between individuals who learned the same type of writing systems is looked into, whereas, individual characteristics are characteristics that are true only to a specific writer. It is a combination of individual characteristics that make handwriting unique to him/her. Penmanship is inclusive thing with everyone who writes like someone writes slowly, fast, takes a pause or fluently so either the penmanship is inferior or superior. Slant quality, pen movement, the pressure and tremors certainly describe many factors about a person based on which we categorise them. Nearly there are 50 categories that experts have to fill and come to a conclusion.

There are numerous types of individual characteristics like Penmanship, Slant, Line Quality, Pen Movement, Proportions, Height, "I" Dot, "t" Crossing, Loops, Pressure, Baseline Alignment, Pen Lifts, Speed, Embellishments, Entry/Exit Strokes, Retracing, Spelling/Spacing, Format, Case.

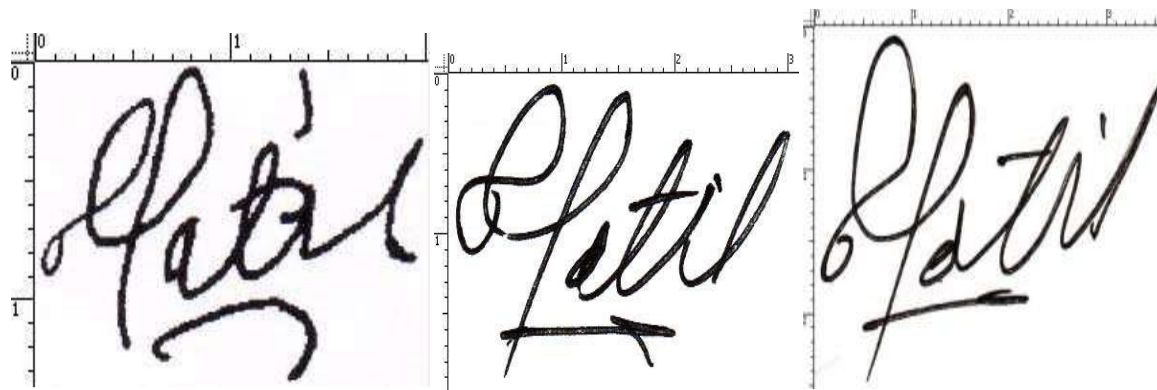
There is a lot of commotion as to what kind of evidence actually has to be collected?

What are standards of comparison? What are the documents to be taken?

It is actually the admitted writing has to be seen in respect of the disputed writing. Slightly earlier, a signature which is admitted is 10 years old does not mean that it is immune from comparison. If the person is present, a specimen signature can be requested from the person in front of the court, wherein, the expert dictates and submitted to the expert.

Standard Comparisons include sample to be analyzed called as Questioned / Disputed. Samples from an individual include collected writing comes from prior to the beginning of the investigation (helps prevent or indicate when a person is disguising their handwriting) known as Admitted/ Known and requested writing is a dictated text using the same type of paper known

as Specimen. As in the following illustration, Please can it be judged whether the signature is forged writing or not? Along with reasons.



Questioned/Disputed Admitted/Known Specimen

It is Forged- The signature has different curves than the admitted and specimen signature.

In regards, to specimen signature, we take 10-15 signatures from the person at different time periods. A break is given at 20 minutes in between as the individual characteristics might get tampered.

Even there are many types of forgery namely:

1. Freehand, Simulated or copied forgery- the above said example is classic case of simulated forgery. It is wherein the a person tries to make a signature and tries replicate a persons signature with practice.
2. Traced Forgery- It is wherein a person applies tracing or carbon paper, to replicate a signature from the original.
3. Forged by memory- It is a type of forgery wherein a person has seen another making signature and through his memory recollects the signature and makes a signature.
4. Forgery without model or forgery by impersonation- It is very crude form of forgery. Any lay man can make it without knowing that how the signature is made.

There is another concept called Disguise Handwriting. A deliberate departure from the normal handwriting habits generally referred to as “Disguise”. Even disguised handwriting will exhibit some of the person’s individual characteristics



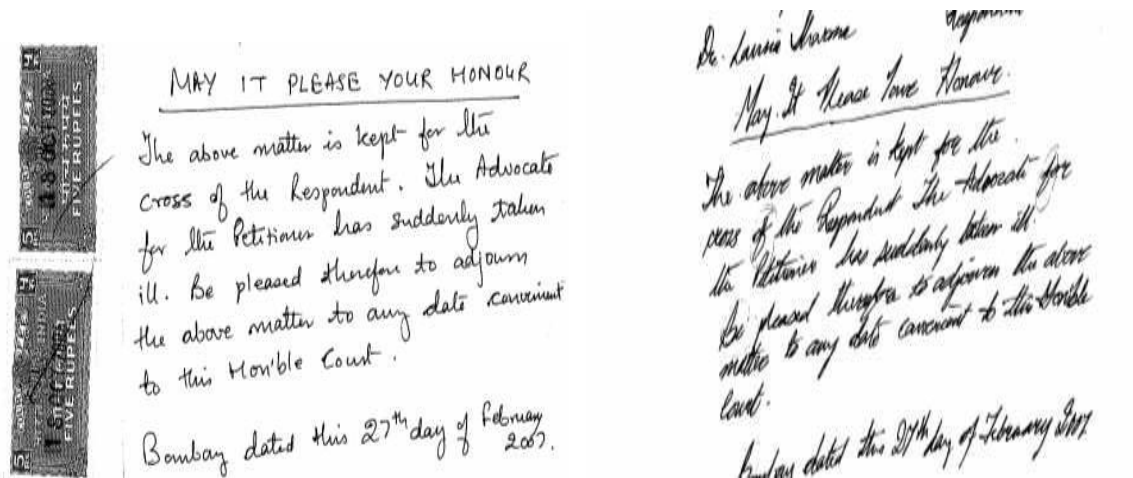


The above signature was made by a person on a sale deed 10 year before. The left hand signature is not the signature claimed by the person but the signatures made on the right can be claimed as the genuine signature. Whether the signature are made by the same person?

The movement of the pen shows that it is a classic example of disguised signature. In this case, the person had brought two expert evidence to the court that the signature stands to be forged but this is made by the same person. There has been a detail recreation of each and every portion of the handwriting that has been mentioned. Since it is actually brain writing, a person cannot manipulate continuously, it may only be to an extent. Especially formation of h and k, stands to be same except a that stands to be different. The marking are the main reason as in the picture.

11/7/2002	Dr. A.R. Maslum	400 → 160	(S)
	Dr. M.L. Jain	300 → 120	
	"	100 → 40	
	Direct (2 p/15)	600 → 0	
	(Blummal Jain)		
	Dr. S.B. Slutty	300 → 120	
	Dr. C.N. Panwar	200 → 80	
	direct	100 → 0	
	Dr. H.H. Kussadia	400 → 160	
	Dr. Nansh Vaghela	400 → 160	
	home visit	1500 → 0	
10/7/2002	Dr. AR Maslum	200 → 80	
	Direct	500 → 0	
	Dr. Chetan Leppal	200 → 80	
	direct (Fu)	200 → 0	
21/6/2002	Dr. Nansh Vaghela	400 → 160	(S)
24/6/2002	Dr. R. P. Sani	300 → 120	
	Dr. A.R. Maslum	400 → 160	
25/6/2002	Dr. Manisha Bhagwat	300 → 0	
	"	250 → 0	
	Dr. Lalit Jain	400 → 160	
27/6/2002	Dr. Nankesh Shrotri	300 → 0 →	
	Direct (Fu)	300 → 0	
	"	400 → 0	
28/6/2002	Direct (hoy pt)	1000 → 0	
	" (Fu)	100 → 0	
	" (Fu)	200 → 0	
	Dr. Lalit Jain	400 → 160	
	direct (Fu)	200 → 0	
	Dr. D.B. Valharia	300 → 120	

Similarly the above document, the above is made by the same person. Whenever a person tries to disguise is they first try to change the slant.



The first picture is admitted document and the second is the specimen document. Also for the above said document, It was actually the slant that was changed by it was actually same person who has made the signature.

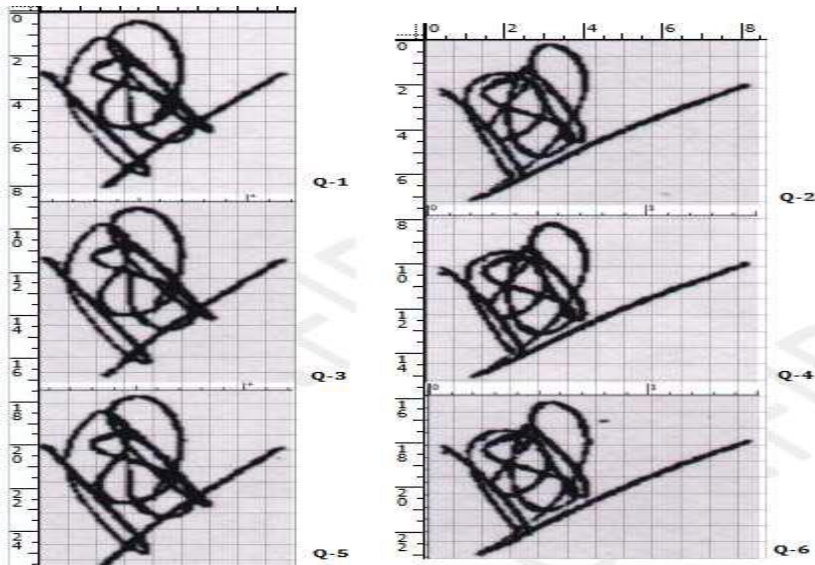


The first two signatures are the disputed signature, K1 and K2 are the admitted signatures and S1 and S2 are the specimen signature. It was in this case that the person actually wanted to analyze

the signature claimed that it was not made by him but it was actually made by the same person cause there was no difference at all.

### LATEST QDE TECHNOLOGY

Any mechanical device, result in wear and damage to the machine's moving parts and leave behind identifying features on a piece of paper. Examiners compare transitory defect marks, fax machine headers, toner, toner application methods, and mechanical and printing characteristics.

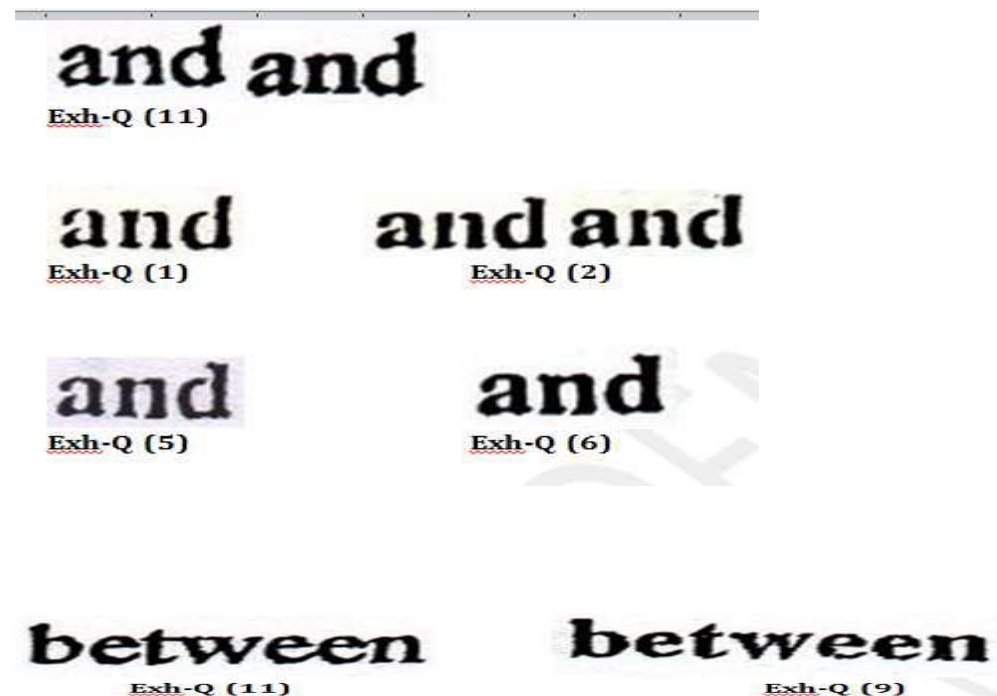


As in the above case, It is a classic case of a signature being forged by a brother who derived the paternal property worth 400 Crores. The signature of the sister was received through a medium of a gift deed that was given by the brother. From the deed, the brother got the signature. The sister gave consensus to register the deed but the brother refused and she went to registrar's

office. Where she found that the paternal property worth 400 Crores had been transferred to his brother without her notice.

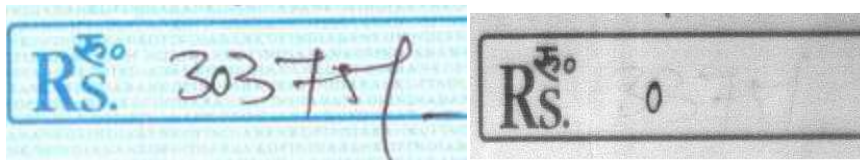
When analyzed, the signature made on the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> page was a cut and paste signature and from another document a signature was cut and pasted on 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> page. It was with the principle of rule and square method.

It is a font analysis of the Computer Generated Document mentioned below.

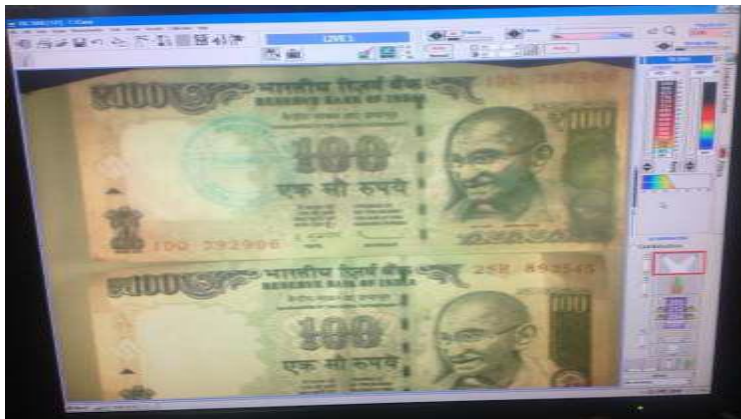


It can easily be found that even through forensic analysis, that each ink of the printer has a different wavelength. Even in case of the font it can be very minutely seen that there have been classic differences in the size and font of the word in all the above instances it can be easily be proved.





The above mentioned picture is of a cheque which actually mention Rs. 3,375 that has been altered and made to naked eye looks like Rs. 30,375. The third picture shows that through forensic analysis that 0 was added later to the cheque. Even if the pen is the same, still we can find out.



The above said picture depicts an example of counterfeit currency.



Exch A



Exh-B

Even stamp impressions can be forged. The presence of Lion emblem in Exh-B which is absent in Exh-A. The difference of font type and style, Defects in Stamps Exh-A & Exh-B.

Through Forensic Stylometry, wherein authorship analysis to determine author of anonymous emails is found. Stylometry determines a pattern of authorship for each individual suspect author in an investigation. The features include character based features, word based features including measures of function word frequencies, the word length frequency distribution of a email, the use of letter and collocation frequencies. The set of authors is reduced from an initial large list of possible suspects.

There is a classic case where an email was sent to RBI and FCC, confidential information known to the top five employees shared with these two organizations. It was shared to two of them. Even the top five people of the company were shortlisted comparing their random previous 500 mails sent by each one of them, which showed that 2 from the five were involved in it. It is a complex mechanism where sentence phrasing, dialogue, punctuation, language and grammar that is statistically analyzed. This procedure is yet to be validated by Science And Technology and is not presently accepted in our legal system.

Important Points to be kept in mind:-

1. Determination of the authorship of a FORGED SIGNATURE produced by tracing or by simulation with suspect forger or forgers cannot be done.
2. Comparison of handwriting of any language can be done.

3. Determination of the authorship of the altered or the overwritten strokes over the original writing.
4. Determination of the authorship of a writing or signature by comparison of its photo state reproduction with the specimen writings of the suspect.
5. Determination of absolute age of INK AND PAPER
6. Determination of the identity of a particular pen or pencil alleged to have been used in producing the questioned document.
7. To determine whether a person is a left handed or right handed cannot be determined
8. Signatures with signatures and Initials with Initials
9. Use of photocopies of the signature.
10. Exhibits required to check alterations.
11. Personality assessment reports based on the handwriting sample do not have any validity in the court of law

### Session 6: Cyber Crime Investigation and Cyber forensic

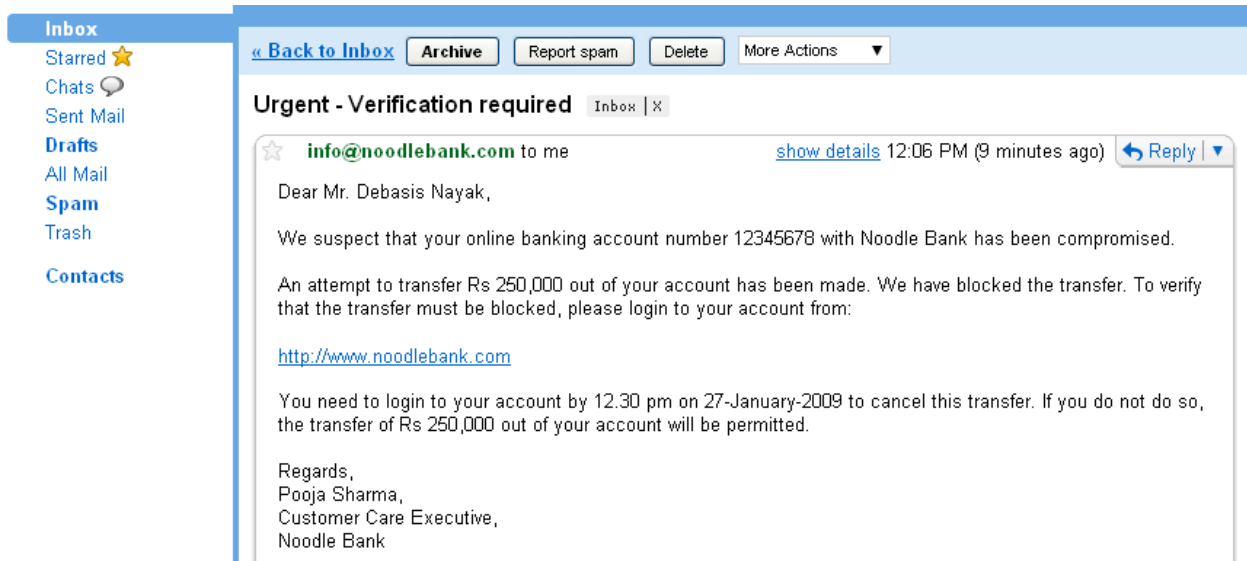
Speaker: Dr. Debashis Nayak

Justice Akbar Ali:

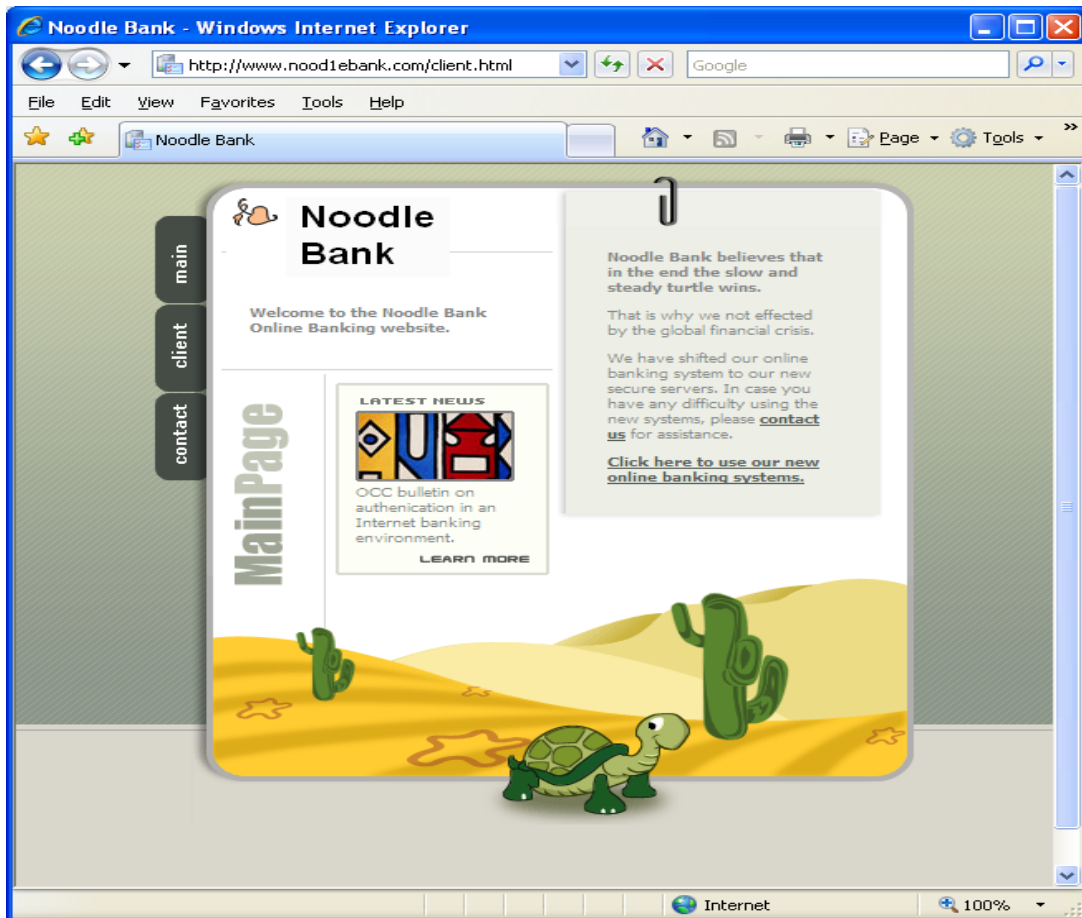
Now just that we had the tea break let us forget about the second tea break..we will continue..it will be fine? Mr. debashis will take an hour..then we have thirty minutes for Nisha and Dr. D'Costa.. fifteen minutes each.. so that we may ask if any question is left..okk..so now till 11.30

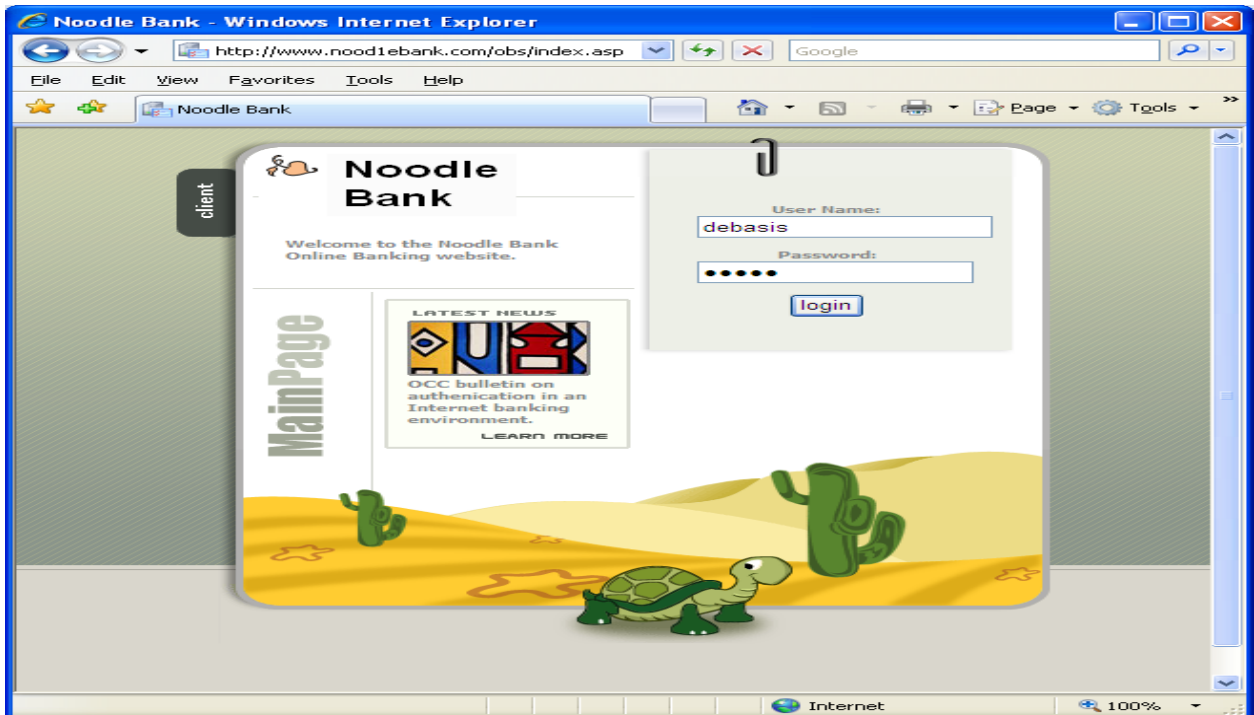
Dr. Dabashis: Welcome back..it was not that technical..now if retain something we can continue from where we left..we are talking of the internet..the email that you see on the screen is a classic phishing email that is there..as you can read on the screen..:

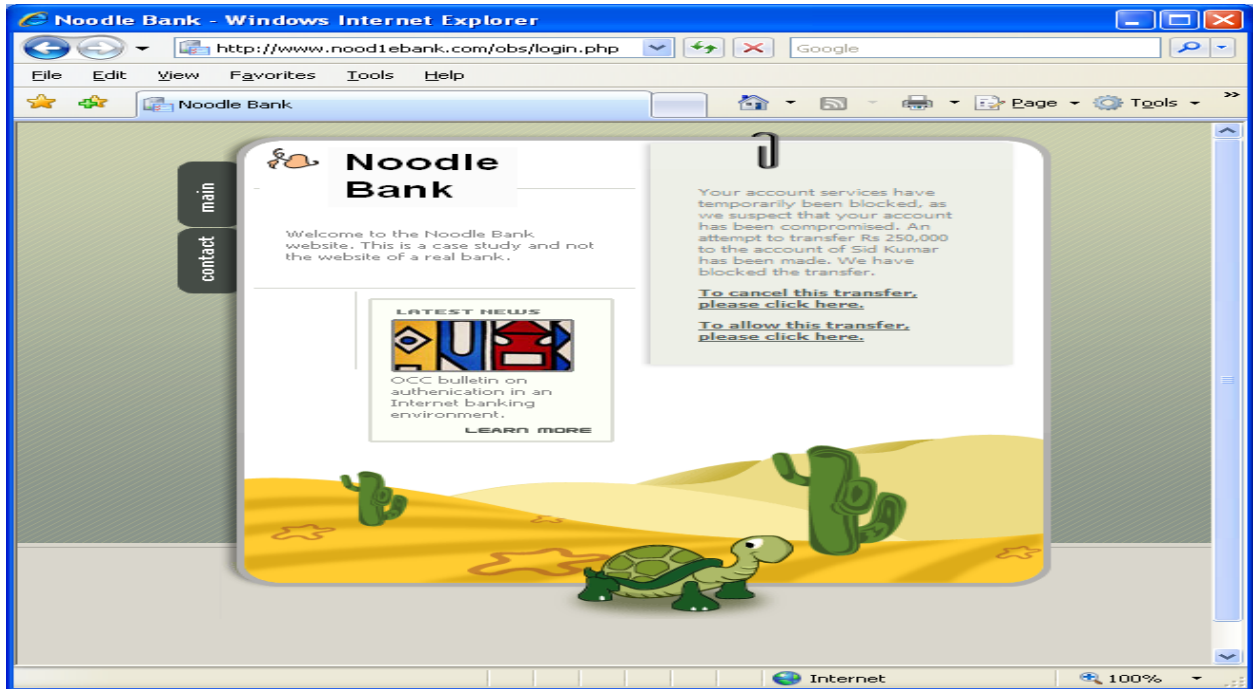




Now the typical reaction of any person receiving such an email is to click on the link..go to the banking site..log in and cancel this transfer which is why I click on the link and I come to the site..this look likes my bank site..I log in.. now look at the slide..







Dr. Dabashis: No see the following slides..now without knowing that the entire website is fake I log out..because if you look at the website one says:

- The link appears as

[www.noodlebank.com](http://www.noodlebank.com) (i.e NOODLEBANK.com)

- But actually it links to

[www.nood1ebank.com](http://www.nood1ebank.com) (i.e NOOD1EBANK.com)

( the other one has replaced the l with 1..but it also looks like the original..there is no way to distinguish and you give your user name and password..which is uncompromised..this happens and then immediately an illegal transfer is made because now the credentials are known..now let me talk about two factor authentication..if you have encountered banking transaction..RBI has made it mandatory that people must use..two authentication mechanism..one is this password another is that one time password that comes to your phone as a number..how do people or criminals get around that..? they have targeted you so they know your details they know your phone numbers.. they know service provider..they go to your service provider with their photographs and your details ...they commit something..known as an identity theft..and they say that our simcard has been stolen so please give us a new simcard..this is done because...large number of simcards are stolen..so the person managing the chaos cannot verify all the details correctly..he looks at the identity card and immediately feeds the address in his system..and finds it correct..and issues a new simcard to him..not to you..because now you have said that your...now he locks your original simcard thinking that it is stolen..now you...will not receive message or calls on your mobile..to figure out that the problem doesn't lie in your phone..but with the service provider takes you twenty four hours..twenty four hours later you go to the service provider to ask why is your phone not working..he says that sir you have given an application to lock your simcard..within those twenty four hours they already receive the one time password on the new simcard..they have used that to log in to your account..transfer the money and then throw the phone away..you get the fraud ..right?? this is a very typical phishing fraud..now in such type of fraud again..we must start with the IP address...because to first find out..where this fake email has come from..because to find out from where this fake email has come from you need the IP address of the source computer ..and therefore this statement that in

all kinds of investigation involving the internet the IP address is a must i.e the correct IP address..now what are the questions or what are the issue son which evidence can be laid..see this.....

## **Evidence in phishing cases**

- Who is the victim's ISP?
- Is there a copy of the email?
- Who is the purported sender?
- What is the domain name and IP address of the suspect site?
- When was the site visited by the complainant and from where?

## **Evidence in phishing cases**

- Is a copy of the website saved or do screenshots exist?
- To which bank acc. were payments made?
- Is there any contact email address?
- Who are the relevant service providers?
- Have headers been examined?

These questions must be answered..now if you look at the evidence act..section 88A..would you please look at it.. reads as..all of you have found that..

88A. Presumption as to electronic messages.—The Court may presume that an electronic message, forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such

message was sent.<sup>3</sup>[88A. Presumption as to electronic messages.—The Court may presume that an electronic message, forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent." Explanation.—For the purposes of this section, the expressions “addressee” and “originator” shall have the same meanings respectively assigned to them in clauses (b) and (za) of sub-section

(1) of section 2 of the Information Technology Act, 2000.

Now let us go to section 65B of the evidence act...now already me and Dr. D’Costa have discussed that..that hash result is calculated..the output is checked and the clone is made..therefore we are talking of the clone hard disk or the contents of the hard disk from which the material has been transferred to a CD or..a printout that had been taken out of that material..all three by their very nature..forms secondary evidence..

Section 65 deals with the...

65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

(a) When the original is shown or appears to be in the possession or power— of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in 1[India] to be given in evidence2; 1[India] to be given in evidence2;"

(g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection. In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible. In case (b), the written admission is admissible. In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible. In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

Section 65B is of similar nature but then the evidence is electronic..What does 65B say..

## **Admissibility of Digital Evidence Sec 65B (Indian Evidence Act)**

- Computer output shall be deemed to be a document if the conditions mentioned in Sec 65B(2) section are satisfied
- It shall be admissible in any proceedings, without further proof of the original
  - As evidence of any contents of the original

## **Admissibility of Digital Evidence Sec 65B(2)(a)(Evidence Act)**

- That the computer output was produced during the period over which the computer was used regularly to store or process information..... by the person having lawful control over the use of the computer

## **Admissibility of Digital Evidence Sec 65B(2)(b)(Evidence Act)**

- During the said period, information of the kind contained in the electronic record..... was regularly fed into the computer in the ordinary course of the said activities;



## **Admissibility of Digital Evidence Sec 65B(2)(c)(Evidence Act)**

- Throughout the material part of the said period, the computer was operating properly or, if not, .....it was not such as to affect the electronic record or the accuracy of its contents;



Whose computer do you think it is..the victim's computer? Computer output were produced during the period..

whose computer?

So..I want to see hands how..many of you think that it is the computer of the accused ? no it is most likely going to be the computer of the forensic scientist's.. I am not going to use the computer of the accused and make a copy of the evidence and transfer it to CD..then the computer of the accused is seized..and sealed..I am not talking of civil cases..i am taking of the criminal...65B(2) talks about secondary evidence only..so when I am talking about making a clone..I am not going to use the accused computer and make a clone..many times this question has arisen that if a certificate is mandatory under section 65B(4) who is going to give the certificate..

Participating Judge: it is the computer of the certifying authority..



Dr. Debashis: exactly..when you going to a crime scene and seizing the accused's computer the service provider has no role..therefore if we look at it with the flow of 65B you may first feel that it is the accused's computer but it is not so..65B by its very nature is secondary evidence..and secondary evidence is extracted by the investigators only..after he has seized and is making the analysis..if we come to the civil side..who is going to lead the evidence..the computer is not seized..so if I am the plaintiff I will give the certificate under section 65b(4)..there is no problem..yes..correct..correct..so the moment we are talking of recorded or copied it is secondary evidence..so yesterday what did we discuss? We discussed first..the original computer is sealed and kept..see if it is primary evidence anyways 65B has no application..you give me point..

Let us look at Anwar v Basheer we will clarify this point..65B by extension applies to secondary evidence which gives electronic record..talking about original evidence then the applicability of 65B is not at all..

Anwar v Basheer:

- Electronic record by way of secondary evidence is inadmissible unless accompanied by cert. at the time of taking the document
- Earlier proposition laid down regarding no mandatory requirement of Cert. in 65B is bad in law and is overruled

Let us go to the very genesis of section 65B:.....

#### Admissibility of Digital Evidence Sec 65B (Indian Evidence Act)

- Computer output shall be deemed to be a document if the conditions mentioned in Sec 65B(2) section are satisfied
- It shall be admissible in any proceedings, without further proof of the original
- As evidence of any contents of the original
- That the computer output was produced during the period over which the computer was used regularly to store or process information..... by the person having lawful control over the use of the computer
- During the said period, information of the kind contained in the electronic record..... was regularly fed into the computer in the ordinary course of the said activities;

- Throughout the material part of the said period, the computer was operating properly or, if not, .....it was not such as to affect the electronic record or the accuracy of its contents;
- The information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

#### Section 65B(4)

- “In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate.....”
- identifying the electronic record.. and describing the manner in which it was produced;
- giving such particulars of any device involved ..
- dealing with any of the matters to which the conditions mentioned in subsection (2) relate,
- and purporting to be signed by a person occupying responsible official position in relation to
- the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate

#### Who will give the Certificate under 65B(4)

In criminal cases, where accused’s computer is seized and his HDD is cloned

1. The cyber forensic analyst cloning the HDD and presenting evidence after analysis of the clone

#### In civil cases

1. The Plaintiff or the Defendant who desires to furnish evidence from his computer

#### Amendment to Bankers’ Books Evidence Act (Contd...)

- Printout/Copy of entry or the book shall be accompanied by
- Cert. by Manager identifying the entry

- Cert. by computer-in-charge giving details of data storage, safeguards and computer where such data is stored
- Cert. by comp-in-charge (manner of affidavit) relating to integrity of printout and computer

### State Vs. Navjot Sandhu

- Parliament attack case
- Laptop, storage devices recovered from a truck in Srinagar
- Laptop contained files relating to identity cards, stickers used by terrorists

### Defense issues

Files created after the laptop was seized

Date setting can be edited

In the absence of verified time setting and concrete proof about the originality of the hard disk, evidence is inadmissible

- Findings
  - If accuracy of computer evidence is to be challenged, burden lies on the side who makes such a challenge
  - User created files and system files, difference
  - Mere theoretical doubts cannot be cast on evidence

### State Vs. Navjot Sandhu (Facts)

- The laptop was deposited in the malkhana on 16.1.2002
- Analysis revealed that two of the files were last written on 21.1.2001
  - one file was last accessed and last written on the same day
- Case diary noting - the laptop was accessed at the malkhana on 21.1.2002.

- While cross examining PW73, a question was put as to how a file could be written without it being accessed.
- The witness answered that the file can be written without being accessed by copying it on a different storage media.
- The learned counsel for the State is justified in his comment that the said answer was not a response pertaining to system files, which are self-generating and self-written.
- There was no suggestion to any witness that the date or time setting has been modified in the instant case so as to facilitate tampering.
- A mountain out of mole hill is sought to be made out by reason of the observation of PW73 that some of the files were last written after the date of seizure and the answer given by PW73 with reference to a general, hypothetical question
- Certificate under 65B(4) is an alternative method to prove electronic record
- Irrespective of the compliance of the requirements of Section 65B
  - there is no bar to adducing secondary evidence under the other provisions of the Evidence
- Certificate containing details in S.Sec (4) of Section 65B may not have been filed
- That does not mean that secondary evidence cannot be given
  - even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely Sections 63 & 65.
- Gist of findings
  - Accessing a suspect computer after date of seizure ipso facto does not render evidence inadmissible;
  - If accuracy of computer evidence is challenged, burden is on party making such challenge;
  - Certificate under 65(B)(4) is not mandatory for making electronic evidence admissible

### Anwar Vs. PK Basheer, SC Sep '14

- Electronic record by way of secondary evidence is inadmissible unless accompanied by cert. at the time of taking the document
- Earlier proposition laid down regarding no mandatory requirement of Cert. in 65B is bad in law and is overruled

### Position of law

- What happens to all those cases where 65B(4) certificates were not furnished because Navjot Sandhu held the field?

### Examiner of Electronic Evidence

Examiner of elec. Evidence

Central Govt. may notify in O.G.

Any agency/dept/body of C.G. or S.G.

For expert opinion on electronic evidence

Opinion becomes relevant fact u/s 45A (new) of the Evidence Act

### Admissibility of Text Messages

- Printouts of text message may be admitted following the usual method under Section 65B
- Court may summon the service provider to give details of text messages from a particular number
- Printouts must contain date, time, telephone number of each text message for verification

### Admissibility of Whatsapp Messages

- The same procedure to be followed like in case of text messages
- However, Whatsapp messages are not stored on Whatsapp servers unlike TSPs in text messages

- Reliability must be established, if questioned
- Audio/Video clippings in Mobile Phones
- Admissible
- Procedure under Section 65B to be followed
- If 65B cert. exists, oral evidence necessary only when authenticity is questioned
- If 65B conditions are met, phone itself is not necessary as an exhibit
- Only when trial court is not satisfied with evidence led, it may require original phone

### Emails

- Procedure under Section 65B
- Contents of e-mails as evidence
  - If parties admit the contents
  - If email is digitally signed
  - By subsequent conduct of parties
- In the alternative, by an IP address trace
- Finally, by examination of witnesses
- If emails have been produced after
- Following procedure in 65B
- Genuineness has been proved by witnesses
- Subsequent deletion is inconsequential
- 65B(1) admitted as direct evidence
- 65(c) – When the original has been lost or destroyed

### Tampering with evidence

- Hash value
- Expert report about file creation, access and modification
- In the absence of standard procedures being followed, by examination of witnesses

### MagrajPatodiaVs. R.K.Birla, SC 1972

Documents illegally produced as evidence in prosecution relating to election case

Documents recovered illegally from person who was neither witness nor party to the case

“the fact that a document was procured by improper or even illegal means will not be a bar to its admissibility if it is relevant and its genuineness proved”

Pooran Mal Vs. Director of Inspection, SC 1973

Case relating to Income Tax

Documents alleged to have been seized illegally during search and seizure

“...Neither by invoking the spirit of our Constitution nor by a strained construction of any of the fundamental rights can we spell out the exclusion of evidence obtained on an illegal search”

State (N.C.T of Delhi) Vs. Navjot Sandhu, SC 2005

CDR produced by illegal interception

“The non-compliance or inadequate compliance with the provisions of the Telegraph Act does not per se affect the admissibility.”

IT Act 2000

No Procedure for search and seizure specifically described

65B, Evidence Act talks only about admissibility on basis of Cert. under 65B(4)

### Session 7: Protection of Witnesses and Informants

Speaker: Anup Jairam Bhambhani, Senior Advocate, Supreme Court

Mr. Anup: .....otherwise is to reconstruct event..crimes episodes..and then to decide on the basis of whatever factual matrix the judge can or the court can..decipher and see..ofcourse there are lawyers to assist judges..but the lawyers you know hold briefs..specially in criminal matters there is no obligation really other than disclosing the law..for the lawyer to actually stand up and speak against his own case..that in fact even..against his very ethics of his profession..

Therefore the eyes and ears of the courts are actually the witnesses. In fact many centuries ago Jeremy Bentham..the British philosopher in Jurisprudence has said in so many words that

witnesses are the eyes and ears of justice..so being the hub of criminal prosecution witnesses are also in the most vulnerable position...they sheer importance and the relevance of the reality of witnesses and informants makes them very soft target and also makes them very central to the justice delivery system itself..so any vulnerability of the witnesses results in the vulnerability of the justice delivery system itself..now recent experience shows that there is urgent needs to sort this issue..

Now before I site some examples let me..let me say that I am acutely conscious of the fact that two out of these three cases that I will just mention..are pending matters..they are subjudice..therefore I would not deal into the merits of such cases and whatever I say will not reflect upon the merits..however there is information in relation to witnesses etc..relating to these very matters..are available very much in the public domain..therefore I think and it will be wrong of me..if I..atleast highlight some of these cases..one of the cases is from Delhi..this was sometime in 2000-2001..this is Jecisa Lal case..there was a young lady who was moonlighting as a bartender she was shot brutally in cold blood at head..for refusing to serve someone a drink..the matter came news..there was tremendous public interest in the matter..when the matter went to trial in may 2001..one of the key witnesses..the informant himself turned hostile..others also turned hostile..sayan munsu who was the complainant in the matter..was in the bar during the matter happened but during the trial he disowned his very own statement saying that he dint know Hindi and he dint even understand..the word bayan or testimony.. the high court judgment in the matter says that the FIR was recorded in hindi while he narrated everything in English he dint know Hindi at all..the Court says that we do not find his statement to be convincing..regarding two guns the judgment says..” in court he has taken the..came out with the version that there were two men at the bar counter we have no manner of doubt that in this aspect he is telling a complete lie” that being the observation of the Court..however please appreciate the position of the trial court where the judge in the matter..he has a report in his file..where the same witness says something in writing..and he is entitled to believe that what the police has recorded is what the witness says but now the witness goes back on his words..now obviously that leaves the jugde...



Later..a sting operation was conducted by tehelka magazine..what appeared on the show was that the witnesses were bribed and coerced to change their testimony..the father of one of the main accused was named in the exposure as the one who has paid money to the witnesses..

Another very important witness in the very same case who turned hostile was the ballistics expert..prem sagar..this person was the expert of forensic from the laboratory in jaipur..in Rajasthan..he was the key witness in the case who turned hostile like Munshi..earlier he was of the opinion that there was only one weapon involved but later he changed his testimony to..what came to be known as the two weapon theory..namely that there was also another person with another gun at the bar at the same time..

However in may 2013 the Delhi High Court ordered the prosecution of Sayan Munsri who was a budding actor as well as the ballistic experts...

More recently we have been reading the case of a godman..Asharam babu..whose matter is still pending therefore I will not go in details..but here again on the official complains of rape..twenty two in number..which is pending against the godman..there has been three witness who have been killed and nine of them have been attacked..this information is what we gather from the public domain..I am not saying that whatever..it is..it is true or false..but this is something which has happened in a high profile trial..as a matter of fact..it would interest you to know that the session judge who was hearing the case..got a letter..through post warning him of dire consequences if the accused was not allowed to walk out on bail.....so forget witness..even judges are threatened..even Supreme Court judges..which therefore brings me to the point where I started..which is that if witness and informants protection is not put in the centre of the agenda..the day is not far when courts will act....because judges are also human beings..they have families..so other than these two cases..there is another case which has also been now hogging the limelight and there has also been..this is the Vyapam Case..its under investigation at the moment therefore I will not deal into the depth..except to say that there has been forty nine deaths in this one case..and the causes of death have been varied..suicides have been seven..road accidents..12..we may choose to ignore this but at heart of hearts all of us know that this has something to do with the matter..

However this is not new..in 2003, the Supreme Court has traced..in regard to the law to protect witness..and this happened in the context of the Gujarat riots..the title of the case is NHRC v State of Gujarat ...and the petitioner itself was the NHRC..because certain complaints were received at the NHRC..this is what the Supreme Court had to say..2003 9 scale 329..Zahira is also an important case..yes..Malimath committee has.....in para 7 of this reported the court says..justice malimath committee has since submitted its report..you are aware that the committee has dealt into several aspects of criminal law administration and one of the aspect related to witness is..this is what was said:

this Court regretted that "no law has yet been enacted, not even a scheme has been framed by the Union of India or by the State Government for giving protection to the witnesses."

Then, on the question of protection of witnesses, the Supreme Court referred to the absence of a statute on the subject, as follows: "No law has yet been enacted, not even a scheme has been framed by the Union of India or by the State Government for giving protection to the witnesses. For successful prosecution of the criminal cases, protection to witnesses is necessary as the criminals have often access to the police and the influential people. We may also place on record that the conviction rate in the country has gone down to 39.6% and the trials in most of the sensational cases do not start till the witnesses are won over. In this view of the matter, we are of opinion that this petition (by NHRC) be treated to be one under Art. 32 of the Constitution of India as public interest litigation."

It is very obvious and evident that sometime due to delay in trial the witnesses disappear they die..they relocate..but delay in trial is often created by accused person so that..trial only goes on..as the Supreme Court says that the trial does not start till the witnesses are over..

Then in para 10 the Supreme Court says that.....however in 2003 in PUCL v Union of India..Supreme Court had another occasion to refer to witness protection now this judgment I am referring to has citation 2003 10 scale 967..the case referred to POTA..constitutional validity had been challenged..but in the process of doing that the supreme court also..made certain relevant and material observation..in regard to witness says..and I will draw everybody's attention to this..now section 30 of POTA provides the court certain powers to hold proceedings in camera to explain briefly ..

### 30. Protection of witnesses.—

(1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reason to be recorded in writing, be held in camera if the Special Court so desires.

(2) A Special Court, if on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include—

(a) the holding of the proceedings at a place to be decided by the Special Court;

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and address of the witnesses are not disclosed;

(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner.

(4) Any person who contravenes any decision or direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

Now the challenge essentially was that you cannot keep witness's identity secret because that leads to the very right to the accused to cross examine and therefore it defeats natural justice..I am reading para 57..section 16 of POTA is similar to section 13 of TADA..

The validity of these special provisions of the TADA was upheld in *Kartar Singh vs. State of Punjab* 1994(3) SCC 569 and of the POTA in *PUCL vs. Union of India*: 2003(10) SCALE 967.

while dealing with the validity of section 30 of the Prevention of Terrorism Act, 2002, the Supreme Court has referred in detail to the subject of 'protection of the witnesses' and to the

need to maintain a just balance between the rights of the accused for a fair trial (which includes the right to cross examine the prosecution witnesses in open court) and to the need to enable (1) prosecution witnesses whose identity is known to the accused to give evidence freely with being overawed by the presence of the accused in the Court and (2) protection of the identity of witnesses who are not known to the accused, – by means of devices like video-screen which preclude the accused from seeing the witness even though the Court and defence counsel will be able to see and watch his demeanour.

The Court in PUCL has pointed out that the need for existence and exercise of power to grant protection to a witness and preserve his or her identity in a criminal trial has been universally recognized. A provision of this nature should not be looked at merely from the angle of protection of the witness whose life may be in danger if his or her identity is disclosed but also in the interests of the community to ensure that heinous offences like terrorist acts are effectively prosecuted and persons found guilty are 277 punished and to prevent reprisals. Under compelling circumstances, the disclosure of identity of the witnesses can be dispensed with by evolving a mechanism which complies with natural justice and this ensures a fair trial. The reasons for keeping the identity and address of a witness secret are required to be recorded in writing and such reasons should be weighty. A mechanism can be evolved whereby the Special Court is obliged to satisfy itself about the truthfulness and reliability of the statement or deposition of the witness whose identity is sought to be protected.

The point I am only highlighting is often times as lawyers..as judges..as people..we see these things happening all the time and we get desensitized to the position of the victim..so the Supreme Court further goes on to say..I have read...and then..

“This is done by devising a mechanism or arrangement to preserve anonymity of the witness when there is an identifiable threat to the 280 life or physical safety of the witness or others whereby the Court satisfies itself about the weight to be attached to the evidence of the witness. In some jurisdictions, an independent counsel has been appointed for the purpose to act as amicus curiae and after going through the deposition evidence assist the Court in forming an opinion about the weight of the evidence in a given case or in appropriate cases to be cross-examined on the basis of the question formulated and given to him by either of the parties.

Useful reference may be made in this context to the recommendation of the Law Commission of New Zealand.”

“ The present position is that section 30 (2) requires the Court to be satisfied that the life of a witness is in danger to invoke a provision of this nature. Furthermore, reasons for keeping the identity and address of a witness secret are required to be recorded in writing and such reasons should be weighty. In order to safeguard the right of an accused to a fair trial and basic requirements of the due process, a mechanism can be evolved whereby the Special Court is obligated to satisfy itself about the truthfulness and reliability of the statement or deposition of the witness whose identity is sought to be protected.” Finally, the Court while upholding the validity of section 30, observed (in para 62) as follows: “ It is not feasible for us to suggest the procedure that has to be adopted by the special Courts for keeping the identity of witness secret. It shall be appropriate for the concerned courts to take into account all the factual circumstances of individual cases and to forge appropriate methods to ensure the safety of individual witness.”

Then I would cite a subsequent case which is that of Sakshi..now Sakshi again is a PIL...sakshi was an NGO which helped woman in distress and a PIL then came to be filed in the matter..of sexual offences and then are asked to depose as witnesses..

Now..here the supreme court further clarifies certain other aspects which would be useful in day to day administration of justice and.. that would..its Sakshi v Union of India..2004 6 Scale 15..and I am reading para 31..

The whole inquiry before a Court being to elicit the truth, it is absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. Section 273 Cr.P.C. merely requires the evidence to be taken in the presence of the accused. The Section, however, does not say that the evidence should be recorded in such a manner that the accused have full view of the victim or the witnesses. Recording of evidence by way of video conferencing vis-à-vis Section 272 Cr.P.C. has been held to be permissible in a recent decision of this Court in State of Maharashtra vs. Dr. Praful B. Desai 2003(4) SCC 601. There is a major difference between substantive provisions defining crimes and providing punishment for the same and procedural enactment laying down the procedure of trial of such offences. Rules of procedure are hand-maiden of justice and are meant to advance and not to

obstruct the cause of justice. It is, therefore, permissible for the Court to expand or enlarge the meaning of such provisions in order to elicit the truth and do justice with the parties.....

The mere sight of the accused may induce an element of extreme fear in the mind of the victim or the witnesses or can put them in a state of shock. In such a situation he or she may not 283 be able to give full details of the incident which may result in miscarriage of justice. Therefore, a screen or some such arrangement can be made where the victim or witnesses do not have to undergo the trauma of seeing the body or the face of the accused. Often the questions put in cross-examination are purposely designed to embarrass or confuse the victims of rape and child abuse. The object is that out of the feeling of shame or embarrassment, the victim may not speak out or give details of certain acts committed by the accused. It will, therefore, be better if the questions to be put by the accused in cross-examination are given in writing to the Presiding Officer of the Court, who may put the same to the victim or witnesses in a language which is not embarrassing. There can hardly be any objection to the other suggestion given by the petitioner that whenever a child or victim of rape is required to give testimony, sufficient breaks should be given as and when required. The provisions of sub-section (2) of section 327 Cr.P.C. should also apply in inquiry or trial of offences under Section 354 and 377 IPC.”

It is for the presiding officer to tell the council to please give those questions in writing..and I will frame it in my own words..in a way that it is not offensive..

The Court in Sakshi referred to State of Punjab vs. Gurmit Singh 1996(2) SCC 384 where the Supreme Court had highlighted the importance of section 327(2) and (3) of the Cr.P.C. which require evidence to be recorded in camera in relation to holding rape and other sexual offences. The Court gave the following directions, in addition to those given in Gurmit Singh’s case, namely,

The provisions of sub-section (2) of section 327 Cr.P.C. shall, in addition to the offences mentioned 284 in that sub-section, would also apply in inquiry or trial of offences under sections 354 and 377 IPC. (2) In holding trial of child sex abuse or rape:

- (i) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;

- (ii) the questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident, should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;
- (iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

Therefore the Court in sakshi case gave two measures;

One to screen and the other to.....the question which may be embarrassing can be given to the presiding officer..who may then reframe and put..then coming to Zahira Habibullah ..this again is a very important case..the best bakery case where the supreme court again had the chance of dealing...how witnesses can be..turned hostile..the citation I have of Zahira is 2004 4 SCC 158..para which are relevant..i will read para 2..

In this case, the Supreme Court dealt with ‘witness protection’ and the need for a fair trial, whereby fairness is meted out not only to the accused but to the victims/witnesses. On the question of ‘witness protection’, the Court observed:

“ Witnesses, as Bentham said, are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control, to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by the court on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface. Broader public and social interest require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State representing by their presenting agencies do not suffer ... there comes the need for protecting the witnesses. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth

presented before the Court and justice triumphs and that the trial is not reduced to mockery. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power. ...As a protector of its citizens, it has to ensure that during trial in court, the witness could safely depose truth without any fear of being haunted by those against whom he has deposed.”

Participant Judge: instead of looking too much into the scheme of witness protection we must focus on the fact as to why witnesses turn hostile...in most of the cases where..80 percent may be not lesser..with most respect..the lawyers of the IOs are involved..hostile turning..

Mr. Anup: as a systemic answer we can never look into the minds of men..but as a system we can put a framework in place which will ensure that an honest person will not turn dishonest due to fear..that I think is not a full solution but it a large step forward..it is a good step forward..there is no antidote to corruption...if it is family members..then at times the victim also turns hostile..its is also the case where money power may not be the answer..there are several reasons why this happens..there is a nine judge decision of the new jersey supreme court..it was on validity of a TIP..and the supreme court came to the decision that when we do a TI the person does not uses his memory but his related judgment..

Participant: Identity issue is the most difficult part in a trial..

Mr. Anup: let me now bring you to some of the existing provisions of the law..for example 273..now this is not an absolute right at all..the other is 317..which says that..and 327 which says that...now one of the law is the Unlawful Activities Prevention Act of 1967..and the provision is section 44..it says...

44. Protection of witnesses.—

(1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held in camera if the court so desires.

(2) A court, if on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, is satisfied that the life of



such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a court may take under that sub-section may include—

(a) the holding of the proceedings at a place to be decided by the court;

(b) the avoiding of the mention of the name and address of the witness in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and address of the witness are not disclosed;

(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

(4) Any person, who contravenes any decision or direction issued under sub-section (3), shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine.

198<sup>th</sup> report of law commission dealt with witness protection in court..I will point of section parts of that:

There are three categories of witnesses:

(i) victim-witnesses who are known to the accused;

(ii) victims-witnesses not known to the accused (e.g. as in a case of indiscriminate firing by the accused) and

(iii) witnesses whose identity is not known to the accused. Category (i) requires protection from trauma and categories (ii) and (iii) require protection against disclosure of identity

In category (i) above, as the victim is known to the accused, there is no need to protect the identity of the victim but still the victim may desire that his or her examination in the Court may be allowed to be given separately and not in the immediate presence of the accused

because if he or she were to depose in the physical presence of the accused, there can be tremendous trauma and it may be difficult for the witness to depose without fear or trepidation. But, in categories (ii) and (iii), victims and witnesses who are not known to the accused have a more serious problem if there is likelihood of danger to their lives or property or to the lives and properties of their close relatives, in case their identity kept secret at all stages of a criminal case, namely, investigation, inquiry and trial.

The law commission said that:

We are of the opinion that witness protection is necessary even at the stage of investigation. This can be provided by the prosecutor moving the Magistrate to a conduct a preliminary inquiry or voir dire, in his chambers, i.e. 4 in camera. The Magistrate will have to consider the material relied upon by the prosecutor for substantiating the danger to the witness or his property or those of his relatives, and, if necessary, the Magistrate can examine the witness. The suspect is not entitled to be heard at this stage during investigation. If the Magistrate comes to the conclusion that there is likelihood of danger, he can grant identity will, however, be disclosed to the Magistrate and none else. Further, the real identity will not be reflected in the court records but the witness will be described by a pseudonym or a letter from the alphabet. The Magistrate, which passing the order will, however, keep in mind the various matters listed in sec. 5(6) of the Bill. Such an anonymity order passed at the investigation stage will ensure only during the 'investigation' period.

On the point of during inquiry and before recording evidence at the trial the law commission says that:

In the inquiry before the Magistrate or Court of Session (before the trial starts), the prosecutor or the witness has to make a fresh application and this is necessary even if some of the witnesses have been allowed anonymity and given a new identity during investigation. The Magistrate or judge has to pass a fresh preliminary order granting anonymity. The reason is that, unlike at the stage of investigation, in the case of identity protection during inquiry/or before trial, such protection can be granted only after giving a reasonable opportunity to the accused. We have evolved a procedure in which inquiry before the Magistrate or before the Sessions Judge before recording of evidence at the trial, the Magistrate or Judge will consider

the material produced by the prosecutor or the witness as to the danger to his life or property or that of his relatives, and will, if necessary, hear the witness. All this has to be in camera and the accused/his lawyer will not be present. However, the Magistrate or Judge will have to hear the accused or his lawyer separately and disclose to them the material relating to the alleged danger to the witness, but not any facts which may enable the accused or his lawyer to discover the real identity of the witness. This, we have pointed, satisfies the requirement of law where rights of the accused and the rights of the witness get balanced. If, during inquiry, the Magistrate or Judge grants identity protection by a preliminary order, it will ensure not only for the period during inquiry, trial, but at the later stages of appeal or revision and even after the case has been finally concluded. The record of the proceedings shall not, however, contain the real identity of the witness or any facts from which identity can be discovered.

The law commission suggested regarding recording of evidence during trial..here is what it says:

Recording evidence during the trial in the Sessions Court: two-way closed circuit television :  
The next stage is the final stage of trial in the Sessions Court. The witness, if he had already been granted anonymity by the Magistrate or Judge, as stated above, he need not apply again for anonymity. In respect of the evidence during the trial a two-way closed-circuit television or video link and two-way audio link is proposed and these will be installed connecting two rooms.....

In one room, (A), the Presiding Judge, the courtmaster, the stenographer, the public prosecutor, the threatened witness and the technical personnel (who will be employees of the court) will be present. In another room, which we may call (B), the accused, his pleader and the technical persons operating the system will alone be present. Both rooms will be connected by a two-way closed circuit television or video link coupled with a two-way audio link.

The threatened witness (i.e. victim or witness not known to the accused) will be examined by the prosecutor in Room A directly. The witness may identify the accused on the video screen in his room but the camera in Room A where the witness is present shall not be focused on

the witness and therefore his image will not be visible in Room B where the accused is present.

Participant judge: in Delhi something like this has already been done..

Mr. Anup: on the point of witness protection programme the law commission says that:

We are not providing a Bill on this subject in as much as the question of funding is and important issue. We have recommended that the Central and State Government must bear the expenditure equally. Witness Protection Programmes refer witness protection outside the Court. At the instance of the public prosecutor, the witness can be given a new identity by a Magistrate after conducting an ex parte inquiry in his chambers. In case of likelihood of danger of his life, he is given a different identity and may, if need be, even relocated in a different place along with his dependants till the trial of the case against the accused is completed. The expenses for maintenance of all the persons must be met by the State Legal Aid Authority through the District Legal Aid Authority. The witness has to sign an MOU which will list out the obligations of the State as well as the witness. Being admitted to the programme, the witness has an obligation to depose and the State has an obligation to protect him physically outside Court. Breach of MOU by the witness will result in his being taken out of the programme....

We have also dealt with complex situations where the witness has to prosecute or defend or be a witness in another civil or criminal case without disclosing his identity. Under the Act, we have provided for punishment to those who violate the provisions of the Act and reveal the identity of protected witnesses. In our recommendations, we have provided a detailed framework for Witness Identity Protection and Witness Protection Programmes. We may add a word of caution that this subject is different from the law which is now being enacted to deal with the problem of hostile witness. What we have recommended in this Report is totally different, it relates to witness identity protection during investigation and in Court; and witness protection programmes outside Court.

## Session 8: Arrest Of Public Servant In CBI Cases

Speaker: Sonia Mathur, Advocate, Supreme Court of India

The speaker very much started the session with the definition of Public Servants. Bribery and Corruption amongst public servants was defined originally in the IPC but the inadequacy of law was felt; and thereby Prevention of Corruption Act, 1947 enacted. The definition of public servant provided U/S 2 of the PC Act, 1947 to mean, “as defined under section 21 of IPC.” It was still vague, paving the way for amending Act of 1988 enlarged the definition of 'Public Servant' to include performance of 'public duty'.

➤ Section 2 (c) (viii) :-

Any person who holds an office by virtue of which he is authorized or required to perform any public duty

➤ “Public duty” is defined in section 2 (b):-

“Public duty” means a duty in the discharge of which the State, the public or the community at large has an interest.

Strengthened certain provisions such as :-

- Provision for day to day trial,
- Prohibitory provisions with regard to stay of proceedings,
- Prohibitory provisions with regard to exercise of power of revision against interlocutory order, etc.

S.6A, Delhi Special Police Establishment Act, 1946

Dr. Subramanian Swamy V Director CBI 2014 AIR SC 2140

- Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences.
- Manjeet Singh Khera V/s State of Maharashtra (2013) 9 SCC 276
- Supreme Court acknowledges right of the Agency not to disclose identity of the Complainant and contents of the complaint.
- Accused persons not prejudiced by such non-disclosure .
- If the names of the persons, as well as the copy of the complaint sent by them are disclosed, that may cause embarrassment to them and sometimes threat to their life.
- The complaint only triggered an enquiry.

#### Arrest

- The term is Anglo-Norman in origin and is related to the French word arrêt, meaning "stop".
- An arrest is the act of depriving a person of their liberty usually in relation to the purported investigation or prevention of crime and presenting (the arrestee) to a procedure as part of the criminal justice system.

Joginder kumar vs state of UP and Ors

1994 (4) SCC 260

- Existence of power of arrest and justification for exercise of arrest are two different things
- Law of arrest is one of balancing individual rights, liberties and privileges on one hand and individual duties, obligations and responsibilities on the other hand

- Protection should be provided of individual from oppression and abuse by the police and other enforcement agencies

#### Grounds For Arrest

- To prevent further offence
- For proper investigation
- To prevent tampering with evidence in any manner
- Influencing witnesses\*
- Flight risk

#### Circumstances Under Which Arrest Could Be Made

- Credible information / Source Information
- Accused of cognizable offence punishable with greater than seven years or with death sentence
- Proclaimed Offender
- Possession of suspected stolen property and suspected to be obtained in the offence
- Obstruction of justice\*

#### Procedure Of Arrest And Duties Of Officer Making Arrest

- Bear accurate name which would be visible and clear identification
- Prepare a memorandum of arrest
  - Attested by atleast one witness, who is a member of the family of the person arrested or member of the locality
  - Countersigned by the person arrested

- Person arrested to be informed that he has a right to have a relative or friend named by him to be informed of his arrest

### Circumstances For Arrest Of Public Servants In CBI Cases

(Per CBI Manual)

- Necessary in the interest of investigation
- Prevent the accused from absconding
- After decision taken to launch prosecution and necessary sanction for it has been obtained
- IO should obtain concurrence of the SP before making arrest
- IO and SP should take utmost care and discretion in deciding arrest
- Satisfy the requirements of law
- Proper steps to be taken especially where the person is on operational duty
- Timely information of intention to arrest may be conveyed to immediate superior
- If arrest cannot be postponed for exceptional reason, inform superior immediately after making arrest
- Report to be sent to HO detailing the reason for affecting arrest

### Serious Consequences

- When placed under arrest, suspension is automatic.
- Employee reduced to subsistence allowance.

### Economic death - in certain cases

- Traumatic - adverse consequences at the place of work and in Society.
- In case of prolonged trial\*



## CHECKS AND BALANCES

Certain checks to protect officers from frivolous prosecution / investigation:-

- Section 17 - who can arrest / investigate?
- Section 19 - sanction for prosecution
- State Inspector of Police v/s Surya Sankaram Karri (2006) 7 SCC 172
- Section 17 provides for investigation by a person authorized in this behalf with a *non-obstante* clause.
- It makes investigation only by police officer of the ranks specified therein to be imperative in character. Authorization by a Superintendent of Police in favour of an officer is a statutory one.
- Uses the expression "shall". Ex-facie mandatory in character.
- The burden, undoubtedly, was on the prosecution to prove the same.
- When a statutory functionary passes an order, that too authorizing a person to carry out a public function like investigation into an offence, an order in writing was required to be passed.
- Issuance of an oral direction is not contemplated.
- The statutory functionaries are enjoined with a duty to pass written orders.

## ANIL KUMAR & ORS VS M.K.AIYAPPA

(2013) 10 SCC 705

- Private complaint under section 200 Cr.P.C. filed before a Special Judge for Prevention of Corruption .
- Challenge made to the order of investigation under section 156 (3) of CrPC, for want of prior sanction.

Necessary Precautions

- Preliminary inquiry is desirable in corruption charges
- Such preliminary enquiry has the sanction of Hon'ble SC, in P. Sirajuddin v. State of Madras - (1970) 1 SCC 595 : (AIR 1971 SC 520)
- However, Police cannot disregard provisions of the Cr. P.C. while proceeding further after such preliminary enquiry.

LalitaKumari vs Govt of UP and ors

2014 (1) JCC 1

- Preliminary enquiry could be carried out in case of cognizable offences even if it strictly needs to be recorded under section 154 crpc
- Arrest during investigation of cognizable offence may be considered in the facts and circumstances of the case

The following hypothetical problem was then given to the participants for discussion :

*CBI v. Mr. 'A' and others*

Central Bureau of Investigation (hereinafter referred to as "CBI") filed a charge sheet against five accused persons [Mr. 'A' (accused no.1) and the Company 'X' (accused no.2) to which he was Managing Director along with Mr. 'B', Mr. 'C' and Mr. 'D' (accused No3 to No.5, employees of National Bank)], under Section 120B read with Sections 420, 467, 468, 471A Indian Penal Code read with Sections 5(2) and 5(1)(d) of the Prevention of Corruption Act, 1947 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. In the said charge sheet it was assailed that the 'X' Company (accused No.2) was granted financial assistance by the National Bank, Suraj Nagar Branch under various facilities. On account of default in repayment of the loans, the Bank filed a suit for recovery of the amount payable.

On 19th December, 2013 a complaint was made by the General Manager and the Chief Vigilance Officer of the Bank on the basis whereof investigations were undertaken by the CBI, which filed the above-mentioned charge sheet in the Court of the Special Judge on 30th December, 2013. The allegations under the charge sheet indicate that the accused persons

conspired with each other in fraudulently diverting the funds of the National Bank. Offences alleging forgery were also included in the charge sheet.

The above-mentioned suit for recovery between the Company and the Bank, to which the appellant herein was also a party, was disposed of on a compromise arrived at between the parties which was reduced into writing, and was filed in the suit. On the basis of the consent terms, the suit was compromised upon the defendants agreeing to pay the amounts due as per the schedule mentioned in the consent terms.

Clause 11 of compromise instrument reads as, “save as aforesaid neither party has any claim against the other and parties do hereby withdraw all the allegations and counter allegations made against each other.”

Consequent upon the compromise of the suit and having regard to the contents of Clause 11 of the consent terms, the all the accused filed an application for discharge from the criminal complaint, in respect of which charge sheet had been filed by the CBI.

On behalf of accused no.1 to 5, it was urged that, it would be unreasonable to continue with the criminal proceedings which had been commenced on a complaint filed on behalf of the Bank having particular regard to clause 11 of the consent terms by which the parties had withdrawn all claims against each other.

Mr. Suriman (Advocate on behalf of accused no 1 to 5) submitted that since the disputes out of which the criminal proceeding has arisen have been compromised between the appellant and the Bank, continuing with the complaint would only amount to misuse of the process of Court and also the contents of the chargesheet and the allegations made therein, at best make out a case for cheating and not forgery.

The learned Advocate on behalf of CBI submitted that apart from Section 420 IPC the appellant had been charged with other offences in the chargesheet as indicated hereinabove, most of which being offences under the IPC as also the Prevention of Corruption Act, were non-compoundable.

Rebutting the submissions made on behalf of the appellant, the learned CBI Advocate referred to the provisions of Sections 463 and 464 IPC which relate to the definition of "forgery" and "the

making of a false document". It was urged that all the ingredients of offences committed under Sections 468 and 471 as also Section 420 IPC are made out in the chargesheet, and hence, even if the matter was compromised between the parties, the criminal proceedings could not be compounded on that basis, since the offences involved also include non-compoundable offences.

In light of these facts and argument advanced on behalf of both parties, decided following points of contentions with reasons,

- (1) Whether economic offenses arising out of serious offences like cheating and forgery, be allowed to compound in pursuant to compromise made by the parties.
- (2) Whether in the instant case criminal proceeding against all accused be quashed since, the continuance of the same after the compromise arrived at between the parties would be a futile exercise.

Session 9: Trial of Economic Offences by CBI Courts  
Speaker: Justice Murlidhar, Judge, Delhi High Court

Dr. Geeta Oberoi: Very Good Morning to all of you..I am beginning because all of you are here..no one is outside so waiting for two minutes and staring for each other makes no sense..that would give more time to Hon'ble Justice S. Murlidhar...Justice Mulidhar's judgement all of you must have gone through by now Dharmvir vs CBI..its kind of benchbook for all of us..I dont think there is other such technical savvy judge that I have come across, apart from Justice Lokure..So we have Hon'ble judge who will be dealing..interacting with you for one hour..thank you

Justice Murlidhar: Good Morning Everyone..I know how it feels on third day of a workshop in the morning..but we will try and do our best..we are fortunate to have Dayan Krishnan with us..Geeta was mentioning dharmvir...dayan was a part of it so I have had the fortune of having dayan argue cases in which we could try new things..one course one issue pending in supreme court is whether you can file revision petition in against an order framing charges in prevention

of corruption cases. I held that petition could not be files..some of my colleagues felt that we cannot take away the powers of High Court under 226, although there is a statutory bar, so that's still pending in Supreme Court...How many of you think CBI is a statutory body..If I tell you that CBI is a statutory body under Delhi Special Police establishment Act how many of you would agree with me ..OK then what is it..any idea how CBI was set up..U see CBI has vast powers..Even today morning I don't know how many of you saw newspaper..Supreme Court has asked CBI to take over investigation in this premedical admission test issue from MP...so every other day there is High Court or Supreme Court asking CBI to take over cases..PILs are being filed even in ordinary cases saying that we don't trust ordinary police and CBI should take over and Dayan has appeared saying that we cannot take over every case..HAHHAHA...so why CBI has become such an important Body and why CBI is not an statutory body..any idea any thoughts...

Participating Judge: .....

Atleast Supreme Court in three judgement has gone on the basis that CBI is a body under the Delhi Special Police establishment Act...but there was one judge, two judge..division bench of Guwhati High Court..any one from assam?..haan so you must be familiar with that..Navindta Kumar..2013...thats right..but what is important..How CBI got to be set up..under the Constitution you have entry VIII of List 1..just picj up that.....this is just brief introduction to the topic we are discussing but I thought it is important for you to bear this in mind.....Entry VIII in List 1 of 7th schedule..Do you have that?.....You will find that the entry reads Central Bureau of investigation as Many students of Law .... know these entries are not source of power,...they are only topics on which there can be legislations...right..so there could be a legislation with reference to central bureau of intelligence and investigation so there was a debate in the parliament..constituent assembly when the constitution was being framed..that whether this could mean that the Central Government can have true statute an investigative body and the clarification was that the word investigation was not meant to be criminal investigation under the CrPC. but just general sort of enquiry..police is state subject in List 2..so intention was not to encroach upon state's power so this was clarified in the constituent assembly itself...so the question arose if it is not under statute with reference to this entry in List 1..What is CBI...so this question arose in a petition filed in Guwhati High

Court wherein a person...the accused facing charges under the prevention of corruption act decided to question the very authority of CBI..that is functioning without any authority..so when court called for the files it found that CBI has been set up under an executive notification in 1963 for first time..when judges saw the norteson file..they found that there was a concern raised that can we could set up this body without statuty base..but some under secterary or joint secretary in Gov. felt that this entry in list 1 was sufficient to give it a constitutional basis...going back with alegialattion that encroaches upon states power will be a long drawn process it might create problms..so they said we will make CBI Delhi special police establishment which is already in the Delhi special police establishment Act 1946 make this a wing ..of CBI..I dont know how..but thats exactly what happened...so you have a Delhi special police establishment established under a statute..which is pre independence and now this Delhi special police establishment is a partn of the CBI which by this executive body have become the main body..But It has no stautiory basis so I was asking Dayan post this Guwhati High Court Judgment..The Guwhati High Court negative the judgment that you could trace this status of CBI to the constitution..rightly it was pointed out that you cannot treat this as a source of power this entry in List 7 there has to be a statute..it was also argued that Supreme Court in three judgment has proceeded on the basis that CBI is functioning under this act so the argument of Additional Solocitor general before the Court was that Suprme Court has recognized this body statutory under the Act can you today turn around and say that no it is not..Court said that cases in which Supreme Court said so where cases in which not this issue arose..about the Constituonal Validity of such an notification Constituting investigating wing ..If you see background to this Delhi special police establishment Act..it was initially meant for crimes in the Union territory and so under section 6 without a request comming from state you cannot take up invetsigation concerning state..so essentially it is meant for crimes committed in the union territory..so the question arose when state gov.does not give permission and there are crimes which give cross borddr ramifications..lets take the example of Vyapum isue..it is cleary across state...you have three to four states involved..so the whole idea of having CBI involved in that note was when you have crimes involving interstate ramifications and you cannot have coordination among state bodies..it is useful to have a centralized state body and there are instances that people go the court and say that there are ramifications involved and CBI should be given that cases..and there are state governments reluctant to grant that consent and there is lot of political pressure and hue and cry..there are

instances when after change of government there are government saying we want to withdraw our consent which happened in the....

So in this background, Why do think it is necessary to have a CBI Court altogether? should it reflect the character of the investigative agency i.e. CBI. It can be very much be a necessity in terms of interstate ramifications but there actually situation where there are no ramifications. As per the experience is it really speedy disposal?

It also addresses the concern of the interference of the executive or political interests. In Madhya Pradesh, the Vyapam Scam, the accused are to be people in high position of power so the investigation will not take place in a fair manner, so such a concern is there in almost all these cases. It is very much necessary that CBI should be insulated from the executive but the CBI officials are answerable to someone in the central government, thus it is a conundrum. Therefore, the Vineet Narain Case, so it was clarified as to who can order the CBI Officials like courts cannot necessarily direct the CBI to investigate in a manner but nothing prevents the executive to do so but the entire idea of CBI courts and the agency was to insulate itself from the executive.

Even agency was meant to reflect such a nature that it should be an exclusive court that should deal with the matter like in 2G Cases, it is since 2011, Mr Saini (Spe. Judge Delhi) there has been only increase in the size of docket and many issues have cropped up. Even many more cases have been added up. It's a massive case anyway, so the idea that through constitution of CBI court shall deliver speedy justice but whenever the prosecutor appears there always a list of 18 to 100 witnesses. Why does CBI has such a long list of witnesses? At least there are 18 to 100 witnesses in CBI matters so it is not possible for any efficient judge to examine such high no. of witnesses in a short manner, all to stick to their versions and all to be given witnesses protection. Once you have a long line of prosecution witnesses, the defense is bound to come up with some witnesses, so this manner of having court has not served its purpose. It takes nearly 10-15 years to conclude the trial for even a trial of the CBI court. Even for a bribery of Rs. 1000-10000 a Govt. Servant has to go such a long way and then appeal that makes it nearly 25 years. So a person who is wrongly accused his life gets destroyed.

The first of judgment of 2G Scam, CPIL V. UOI, 2011 1 SCC 560, the auction of spectrum and policy was of first come first serve there was no auction during the time of NDA govt. in 2001. When the UPA govt. took over whether it is required to go with the same method or call for an auction? The govt. called for bids, received large no. of applications, much more than what they can receive. Mr. Krishnan represented one of the petitioners. After submission of all the applications the cutoff date was advanced. Those who applied after September 25, the applications were rejected and no reasons were provide for cutoff date. The advancement of cutoff was rejected after submission of all the applications. The Delhi HC said that the cutoff date cannot be extended after submission of all the application. It was even upheld by the Division Bench of which Justice was a part of, reasoning that you can't change the rules of the game after it started so it struck down the press note with which it was declared.

Another NGO, Peoples Watch, that had gone to the CVC with a detailed report on the irregularities conducted and awarding the spectrum. Here, two of the bidders, got it by 1537 Crores, kept it for a week and sold it for about 4500 Crores to a foreign player. Then, Unitech which got the spectrum for about 1600 Crores sold it to Telenor for 6000 Crores, so it was obvious that the real value was much higher. They also got some favors. CVC on the report submitted recommended to the CBI that a case be registered but the case was already registered. When the SC was approached the CBI had already registered two FIRs. So the anxiety was that CBI will not be able to investigate in a fair manner so the prayer in the Writ Petition before the Delhi High Court dismissed and therefore went to the Supreme Court. The prayer was that the court should take up the monitoring of the investigation by the CBI and the SC felt it to be necessary so under the SC directions. The special court was constituted through a notification and also appoints a special public prosecutor as such that's How Mr. Lalit is a judge of the Supreme Court and Mr. Anand Grover, Senior Counsel has been entrusted. There was one order dated 11 April 2011, no other court shall order that hampers the investigation. A large no. of case application under Sec. 482 of the Cr. PC. was applied in Delhi HC but when the SC found it was the situation. ON 9th November 2102, the SC stayed all the petitions and said no other court in the country could pass an order in the matter touching the 2G Scam. In the second judgment, so the petitioner went to SC and said this without jurisdiction. The court cannot take the power of questioning an order under the Cr. PC. Even powers cannot be exercised under Art. 32 or 142, to do that. It is actually interfering with the trial court would do and it is contrary to all the previous



judgments like Fodder Scam, Taj Corridor and Vineet Narain. Once a charge sheet has been filed, the monitoring should stop. So the petitioner challenges that they cannot be prevented to file writ in High court or any court. The SC judgment in Shahid Balwa V. UOI 2014 2 SSC 687, negated the objection, the directions were to enhance and protect the trial. It was also brought that they can approach the court if they are aggrieved. The court also said that only one aspect was only investigated. There was certainly a consideration of Prevention of Money Laundering Act but licensing issue till related 2001.

Third judgment of 2G Scam, in Sunil Bharati Mittal V. CBI, dated 19th January 2015, during 2001-07, the time of allocation of the spectrum additional to existing stakeholders while the policy of first come first serve was very much valid. At that time, the public offer by Bharati Mittal Group was already announced but for some reason, it was not subscribed enough but it was when they purchased the additional spectrum, next day the issue got oversubscribed. The unique thing is spectrum has been accepted on a revenue sharing basis but in this case 1% revenue sharing basis. The complaint therefore was that this policy cost loss of Rs. 846 Crores to the government. There were three companies namely, Airtel, Hutch and Sterling Cellular had benefited from this additional allocation at a much lower rate of revenue sharing. Charge sheet was filed, Mr. Pramod Mahajan was the Minister at that time in collusion with secretaries were held. The filed a charge sheet and CBI Court heard the matter and said there will be some brain in the cellular company. Ravi Ruia said that he was not an accused in the charge sheet as by the CBI and argued this before the Supreme Court. The CBI argued with the Alter Ego Theory, saying that Sunil Mittal is the alter ego of Airtel cellular but was not accepted by the Supreme Court with the reason that the company has not been sued in the same manner but there is no liability for vicarious liability in the IPCLikewise nothing has been mentioned in Prevention of Corruption Act.

The instance where a company can be sued with the company under Sec. 120 B and Managing Director can be sued or not? The Supreme Court does not permit you to stretch, which is the ratio of the judgement, saying that mere alter ego theory will not make both Sunil Mittal and Ravi Ruia as accused. Justice also emphasized that lacunas in law are to be always pointed out

otherwise the legislature will never correct it. If a law has to be uniformly exercised throughout the country then, the statute must be clear and so the parliament should step in.

### Session 10: Extradition: Role of CBI Courts

Speaker: Dayan Krishnan, Senior Advocate

Dayan Krishnan:

He themed his discussion around the “international criminal activities role of the state and the judiciary” and outlined his presentation into two headings..

- Section i: extradition: role of courts
- Section ii: mutual legal assistance in investigations

On the point of role of courts he said..:

*In a world of increased mobility, interactive technology and new forms of criminality, extradition represents an essential response to the characteristics of contemporary crime.”*

⊕Justice Kirby, Dissent in Foster v. Minister of Customs and Justice (2000) 200 CLR 442 at 474, High Court of Australia)

He then talked of:

- EXTRADITION LAW PRINCIPLES
- PRINCIPLE OF DOUBLE CRIMINALITY
- Bartle-Ex Parte Pinochet 1998 UKHL 41=1998 4 ALL ER 897
- The Carlos Cabal Extradition 2000 (186) ALR
- Section 2(c) Indian Extradition Act; Article 2 UN Model Treaty; Section 3 UN Model Law

PRINCIPLE OF SPECIALITY: on this principle he talked of three cases specially

- Daya Singh Lahoria (2001) 4 SCC 516

- Abu Salem (I) (2011) 11 SCC 214 modified by Abu Salem (II) (2013) 12 SCC 1 – Lesser offences excluded by the Ministerial order
- Om Prakash Srivastava (2004) 112 DLT 123

He then moved on to :

1. Section 21 Indian Extradition Act;
2. Article 14 UN Model Treaty;
3. Section 34 UN Model Law

In INDIAN EXTRADITION ACT, 1962, the following sections were dealt in details..

- SECTION 2(c) Double Criminality
- SECTION 21 Specialty
- SECTION 31 Political Exception
- SECTION 34C Death Penalty
- SECTION 7 Powers of the Magistrate
- SECTION 8 Powers of the Central Government

Under U.K extradition Act basically these are the concerns:

- Section 11: Bars to Extradition
- Section 21: Human Rights (Requiring ECHR compliance)
- Section 25: Physical or mental condition of the detainee
- Sections 26-34: Appellate procedure
- Sections 166-171: Treatment following arrest including fingerprints, samples and photographs
- Part 4 : Police powers

The discussion then moved on to the U.N Model Codes:

- The UN Model Treaty on Extradition, 1990

- Provides for human rights safeguards such as protection against torture, prejudices arising out of religion, sex, race or political opinion or status (Articles 2 and 3)
- The UN Model Law on Extradition, 2004
  - Grounds for refusal: offences of political nature, discrimination, torture, fair trial standards, ne bis in idem, death penalty (Sections 4-13)
  - *Aut dedere, aut judicare* (Section 15 of the UN Model Law)

On the point of approaches on the abuse of process these cases were referred:

- *McKinnon v. The Government of the United States of America* [2008]UKHL 59
- *USA v Cobb* [2001] 1 SCR 587
- *Nadeem Akhtar Saifi v. The Governor of Brixton Prison and The Union of India* 2000 EWHC ADMN 437
- *Ravi Shankaran v. The Government of India* [2014] EWHC 957 (Admin)
- *Maninder Pal Singh Kohli v. Union Of India* (2007) 97 DRJ 178

Acceptance of India's Position on Abuse of Process and Torture:

- *Hanif Mohammed Umerji Patel @ Tiger Hanif v. The Government of India* 2013 EWHC 819 (Admin)
  - The test applied by Courts in the United Kingdom is that of a “case to answer”; which lays down that the prosecution must establish a strong *prima facie* case to show that there is a sustainable case against the defendant whose extradition is being sought. What must be shown is that there is sufficient evidence to build a case and prosecute the defendant. If it cannot be shown that there is a sustainable case the same would amount to an abuse of process.

- Relying upon the statements made by the co-accused, the English Court in the case of Tiger Hanif was of the opinion that a “case to answer” had been put forth by the prosecution.

Then the principle of political exception was explained:

- *T v Immigration Officer* (1996) UKHL 8 - “international terrorism must be fought and the vague outlines of political exception are of no help” (per Lord Mustill)
- *Cabal* 2000(186) ALR 188, holds that it requires strict proof to show that the extradition was sought to prosecute the fugitive solely on account of his political opinion. There must be material to show that the decision to seek extradition was because of the applicants political opinion.
- The view of the House of Lords in *RB (Algeria) 2009 UKHL 10* sounds the death knell of this defence – “*it should be recognised too, and counterveilingly, that there may be compelling reasons in favour of extradition rather than that the suspect should enjoy an undeserved safe heaven from prosecution*”- per Lord Brown.

Section 31(1)(a) – Offence of a political character.....

...The UNSC Resolutions Concerning Terrorism Exclude the Defence of Political Exception

Resolution 1373 dated 28.09.2001

Political motivation is not a ground to refuse extradition requests.

“claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists”

Resolution 1566 dated 08.12.2004

Imposes obligations such as,

- (a) Deny safe haven,
- (b) Bring justice on the basis of the principle of “*extradite or prosecute*”

*Secy. of State v. Rehman* [2001] UKHL 47

- National security includes international cooperation against terrorism
- Lord Slynn: “.... the reciprocal cooperation between the United Kingdom and other states in combating international terrorism is capable of promoting the United Kingdom’s national security...”
- Lord Hoffmans’ postscript: “I wrote this speech some three months before the recent events in New York and Washington. They are a reminder that in matters of national security, the cost of failure can be high. This seems to me to underline the need for the judicial arm of government to respect the decisions of ministers of the Crown on the question of whether support for terrorist activities in a foreign country constitutes a threat to national security. It is not only that the executive has access to special information and expertise in these matters. It is also that such decisions, with serious potential results for the community, require a legitimacy which can be conferred only by entrusting them to persons responsible to the community through the democratic process. If the people are to accept the consequences of such decisions, they must be made by persons whom the people have elected and whom they can remove.”

The second part of presentation concentrates on...

#### International Mutual Legal Assistance In Investigations

- Reciprocal arrangements regarding processes (Section 105(1)(ii) and 105(2) Cr.P.C.)
- Reciprocal arrangements for assistance in securing transfer of persons, attachment/forfeiture of property, identification/ seizure of unlawfully acquired property (Sections 105-B to 105E Cr.P.C.)
- Letters Rogatory (Sections 166A & 166B Cr.P.C.)

Statutory Provisions relating to MLATs Cr.P.C. Compliance

- Using the LR under Section 166A does not give the investigating agency any greater legal advantage. The deeming provision under 166A(3) is only to the effect that

statements recorded etc. shall be deemed to be evidence collected during the course of investigation. All that this means is that this will be a part of the charge sheet.

- Evidence received by an MLAT or an LR will still have to be proved by leading evidence. The MLAT is much faster, efficient and less cumbersome.
- There has also been extensive use of the MLAT procedure in the Headley Trial.
- The examination of doctors from Singapore, in the Delhi Gang Rape case, by video conferencing using the MLAT process is an example in point.

#### Mutual Assistance in Criminal Matters Statutes

- To aid and regulate international co-operation, requests for mutual assistance in criminal matters including extradition.
- Examples:
  - i. Switzerland: The Federal Act on International Mutual Assistance in Criminal Matters, 1981 (IMAC)
  - ii. New Zealand: The Mutual Assistance in Criminal Matters Act, 1992 (MACMA)
  - iii. Singapore: The Mutual Assistance in Criminal Matters Act, 2000 (MACMA)
  - iv. Malaysia: Mutual Assistance in Criminal Matters Act, 2002
  - v. UK: The Crime (International Cooperation) Act, 2003

No such statute in India.....

The discussion finally ended on red corner notice and....

- *Bhavesh Jayanti Lakhani v. State of Maharashtra* (2009) 9 SCC 551
  - A red corner notice, by itself, cannot be the basis of arrest or transfer of an Indian citizen.

- Extradition is subject to the Indian Extradition Act, 1962 as well as other municipal laws of the country.
  - Arrest and/or extradition severely affects civil liberties, and is therefore, subject to judicial review on the ground of violation of fundamental rights.
  - This matter, in any event, related to a matrimonial dispute, where a Red Corner Notice ought not to have been issued in terms of Article 83 of the INTERPOL's Rules on the Processing of Data.
- *Assange v. Swedish Prosecution Authority* 2012 UKSC 22
    - Extradition for investigation

### Session 11: Media Trial In CBI Cases

Speaker: Geeta Ramaseshan, Advocate, Madras

- ⦿ Media trials
- ⦿ Article 19 makes no distinction between the media and the citizen.
- ⦿ Media has the same rights as that of the citizen
- ⦿ Understanding Media trial and the approach of courts in this regard

General understanding is that

There should be no trial by media

The media should not 'prejudge' the case.

The right to judge a case should 'belong' to the judiciary.

- ⦿ *In re Mohandas Karamchand Gandhi* (AIR 1920 Bom, 175)

Charged of contempt- Gandhiji argued that it was the duty of a person to criticise a litigant if what it decided or said was contrary to the truth or was morally wrong. The court in the



judgment drew a distinction between the liberty of the press and the duties which accompany along with it.

Gopal Vinayak Godse vs Union of India ( AIR 1971 Bom 56. The High court permitted the media to watch the proceedings but restricted the media from reporting them.

⊙ MEDIA TRIAL IN LARGER PUBLIC INTEREST

- Bhopal disaster UCC vs UOI 1989 (1) SCC 674 (5) SCC 38- protecting the rights of the vulnerable
- Manu Sharma vs NCT Delhi ( 2010 6 SCC pg 1) Jessica Lal case The criticism of the acquittal in the media led to the Supreme Court stressing the importance of section 311 CRpc and the role of the judge in using the provision to summon witnesses.

⊙ SERVING AN IMPORTANT PUBLIC CAUSE

- ⊙ R K Anand vs Delhi High Court ( 2009 8 SCC 106) Sting operation by NDTV in the BMW case on role of defence lawyer and the Prosecutor

“ Telecast of sting operation exposing collusion between defence lawyer and the public prosecutor in respect of summoning witnesses pending in a court is not an obstruction of justice. Programme telecast showed a conspiracy was afoot to undermine the BMW hit and run case and was proved to be substantially true and accurate. Telecast was in larger public interest and served a public cause.”

- ⊙ Stages of such “ trials by media”

Leaking of records before the case gets to the courts

- ⊙ Leaking by investigating agencies to support their cases-
- ⊙ Interviews of investigation agencies Aarushi’s case
- ⊙ Leaking of evidences such as letters etc- Madhumita’s case
- ⊙ Playing recordings of confessional statements
- ⊙ Interviewing the accused violating his fair trial

- ⊙ Publishing of photos of accused before identifying parade ?
- ⊙ Media pressure resulting in a legal action affecting the rights of persons negatively.

Sanjog case.

- ⊙ At the stage of trial
- ⊙ Opinionated analysis of the evidence- fair comment and rash comments
- ⊙ Building up public opinion on the case including asking for e votes
- ⊙ Taking positions on sentencing and punishment and taking e polls
- ⊙ Lack of understanding of evidence, process etc
- ⊙ Creating an atmosphere where judicial process is blamed
- ⊙ Impact on persons

Affects fair trials of parties by creating a perception of guilt irrespective of the judgment. Movie Black Friday

Violates the privacy forcing a life of public scrutiny.

Impacts their reputation

Puts the parties and their families at great risk

Interviews and statements in the media are often used by lawyers to discredit the witness.

- ⊙ Some issues
- ⊙ “ A trial by media is the very antithesis of the rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against such pressure and he is to be guided strictly by rules of law. “ ( State of Maharashtra vs Jawanmal Gandhi 1997 8 SCC 386 )
- ⊙ In cases of public scandals regarding to companies, it is the duty of a free press to comment on it so as to bring them to the attention of the public( A K Gopalan vs Noordeen 1969 2 SCC 734)

- ⊙ Constitutional powers of dispensing justice rests with the judiciary and cannot be usurped by others. Media discussion is part of the freedom of speech and needs to be allowed.
- ⊙ It ought to be restricted only in instances where there is an actual and immediate danger of the trial being affected.
- ⊙ Media needs to develop a protocol on covering court cases especially in the context of privacy and protection of witnesses.

### Session 12: Presumptions Under Pc Act Vis A Vis Presumption Of Innocence

Speaker: Geeta Ramaseshan

- Presumption of innocence
- Presumption of Innocence
- Innocent unless proven guilty coined by Sir William Garrow ( 1760 -1840)
- Golden thread in criminal law.
- Proof having been met if there is no plausible reason to believe otherwise.
- Presumption of innocence
- The prosecution must prove the guilt of the accused
- Accused is presumed to be innocent unless proved guilty
- Accused has the right to remain silent and cannot self incriminate ( exceptions examples, photos can be taken, samples such as blood etc can be collected, fingerprints taken etc)
- General features of presumption

As in Babu v. State of Kerala<sup>1</sup>, Every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence. For this purpose, the nature of the offence, its seriousness and gravity thereof has to be taken into consideration. The

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<sup>1</sup>(2010) 9 SCC 189

courts must be on guard to see that merely on the application of the presumption, the same may not lead to any injustice or mistaken conviction.

- Reversal of burden

( *praesumptioloristantunn* )

*Assumption of a fact unless someone comes forward to contest it and prove otherwise.*

*One example, presumption of sanity in the commission of a crime unless the plea of insanity is raised as a defense*

- Shifting of burden of proof
- Same acts burden shifts Eg in a civil case the plaintiff has to prove that the defendant had borrowed the money
- Under 138 Negotiable Instruments Act the burden shifts on the defendant if a negotiable instrument is drawn
- Prevention of Corruption Act, where burden is shifted under section 7, 11, 12, 13 ( clause a or b of sub section 1) or 14 ( clause b)
- Other examples, Excise and Customs laws evidential burden imposed on accused who has special knowledge of transactions.
- the Terrorist and Disruptive Activities (Prevention) Act, 1987,
- In all these statutes guilt is presumed if the circumstances provided in those statutes are found to be fulfilled and shift the burden of proof of innocence on the accused. However, such a presumption can also be raised only when certain foundational facts are established by the prosecution.
- Understanding rebuttal presumption

Kali Ram Vs Himachal Pradesh<sup>2</sup>, (Justices HR Khanna, Hans Raj, Talagirisamy, Sarkaria and Ranjit Singh) there are certain cases in which statutory presumptions arise regarding the guilt of the accused but the burden even in those cases is upon the, prosecution to prove the existence of facts which have to be present before the presumption can be drawn.”

- Kali Ram continued
- if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases where in the guilt of the accused is sought to be established by circumstantial evidence."
- Kali Ram

“If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal.”

*Not many persons undergoing the pangs of wrongful conviction are fortunate like Dreyfus to have an Emile Zola to champion their cause and succeed in getting the verdict of guilt annulled.*

- Presumption under the PC Act
- Under section 20, once the prosecution has proved that the accused has received any gratification, for the offences cited therein the presumption is raised and the onus shifts to the accused to explain the same.

While the statute does not use the word preponderance of probability, this concept in common law has been recognised by courts.

V.D Jhingan vs State of U.P<sup>3</sup>

- Other statutes on shifting of burden of proof NDPS, POCSO

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<sup>2</sup>AIR 1973 SC 2773

<sup>3</sup>AIR 1966 SC 1672

- 35 (1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.
- Explanation- In this section "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.
- (2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.
- Additional requirements for reverse burden
- Under Section 313 Cr.PC., the object is to afford an opportunity to the accused to explain the circumstances appearing in the evidence against him. The failure to elicit an answer from the accused on a crucial aspect against the accused will cause serious prejudice to the accused, particularly when the Court is required to raise a statutory presumption against the accused on his failure to explain such circumstance. ( Avtar Singh vs state of Punjab<sup>4</sup>
- Avatar Singh continued
- This duty of the Court assumes great significance whenever the Court is to raise any such statutory presumption making an inroad into the traditional criminal jurisprudential concept of the accused's right of silence.
- Although such statutory presumptions are held to be constitutional, it will be unfair to the accused to raise statutory presumptions like the one under Section 25 or Section 35 of the NDPS Act without putting appropriate questions to the accused under Section 313 Cr.PC., (especially when he has not examined himself as a witness or led any evidence) and without cautioning the accused that in view of the statutory presumption failure to answer questions on crucial aspects being put to the accused may result into conviction of the accused for the offence for which he is being tried.

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<sup>4</sup>2002 (4) SCC 719

- Noor Agha vs State of Punjab<sup>5</sup>
- "In determining whether a reverse burden is compatible with the presumption of innocence regard should also be had to the pragmatics of proof. How difficult would it be for the prosecution to prove guilt without the reverse burden? How easily could an innocent defendant discharge the reverse burden?"
- Noor Agha
- However, in our opinion, limited inroad on presumption would be justified. We may consider the question from another angle. The doctrine of *res ipsa loquitur* providing for a reverse burden has been applied not only in civil proceedings but also in criminal proceedings. [See *Alimuddin Vs. King Emperor*<sup>6</sup>. In *Home vs. Dorset Yacht Company*<sup>7</sup>, House of Lords developed the common law principle and evolved a presumptive duty to care.
- Noor Agha
- Pragmatism will have greater sway where the reverse burden would not pose the risk of great injustice - where the offence is not too serious or the reverse burden only concerns a matter incidental to guilt. And greater weight be given to prosecutorial efficiency in the regulatory establishment.
- *Surjit Biswas vs state of Assam*, May 2013
- It is a settled legal proposition that in a criminal trial, the purpose of examining the accused person under Section 313 Cr.P.C., is to meet the requirement of the principles of natural justice, i.e. *audi alterum partem*. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation.  
<http://indiankanoon.org/doc/168007417/>

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<sup>5</sup>2008 SCC ( 16) 417

<sup>6</sup>1945 Nagpur Law Journal 300

<sup>7</sup>1970 (2) ALL E.R. 294

- Phula Singh vs H.P<sup>8</sup>
- At the stage of questioning, the accused may choose to remain in silence or in complete denial, but the court will be entitled to draw an inference against the accused as permissible in accordance with law.
- raghubirsingh vs state of Haryana<sup>9</sup>
- N Narisingarao vs state of andhrapradesh<sup>10</sup>
- Suraj Mal vs state Delhi administration<sup>11</sup>
- Hazarilal vs delhi<sup>12</sup>
- Madhukar Joshi vs state of maharashtra<sup>13</sup>

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<sup>8</sup>AIR 2014 SC 1256

<sup>9</sup>1974 4 SCC 560

<sup>10</sup>2001 (1) scc 691

<sup>11</sup>1979 (2) SCC 725

<sup>12</sup>1980 (2) SCC 390

<sup>13</sup>JT 2000 (supple 2) SC 458



### Session 13: Flaws In Investigation In CBI Trials: Role Of Special Judges

Speakers:

Mr. O.P. Verma, Director of Prosecution, CBI Headquarters, New Delhi

Mr. R.P. Agarwal, Joint Director, CBI Headquarters, New Delhi

(The Answer to the queries have been answered unanimously by both the speakers)

The panel was chaired by Dr. Geeta Oberoi where she initially emphasized that CBI officials or police blames the judges and judicial officers allege that cops shorty investigation. Therefore, It is necessary to reach a point of convergence as it is a loop. So as stakeholders, in this session the gathering judges would have the opportunity to hear the opinion from both the sides to adjust with limited time and space. It was unanimously agreed to make the session on a question and answer, to make it effective. The session started with the queries as following:

Lucknow-The investigation chargesheet is filed by the IO, without the sanction of prosecutor and it creates a problem and the accused stands to be arrested. As in the situation, the accused files application for bail but for the IO to get sanction itself takes 15 days. The accused asks the court whether he can file for bail or not? so what can be remedies taken by IO or CBI in this matter?

Answer. Usually CBI's policy is that it does not arrest initially. It is majorly dealing with offences under the PC Act, so the agency does not expect the public servant to run away with it until such circumstances. The agency also does not file a charge sheet without the sanction of the prosecution. It is except in certain trap cases, there is a policy of arresting a person and then investigation takes place in 60 days. After 60 days, the arrested person would get default bail but the agency thinks that a person who has committed the offence bribery should not walk away therefore, that agency files the charge sheet even before sanction from the prosecution. The effort always remains to get prosecution sanction as soon as possible so as to expedite the trial.

Lucknow- Even for DA cases, there assets/property that are not quite relevant for the purpose of trial as evidence, so it should returned to the accused with the sanction of the prosecutor. They keep buying the time of the court requesting return those seized goods like passbook before filing the charge sheet.

Answer. Normally when the agency gets search warrant from the court, it submits a report to the court for all the matters that have been seized by the agency. It therefore not possible to release any useful or useless item by the agency, it is for the court to pass an order in that manner.

Bombay- I deal with bank fraud cases mainly pending since prior 1995, at presently the initial investigating officer gets transfer and witness die or are unavailable. Even to prove a document, the prosecutor brings in about 100 witnesses, so it makes the case bulky and voluminous. Similarly to drop a witness, it has a cumbersome process. It actually is done in consultation with the senior officer in the presence of purview officer, SP and Prosecutor. It seems to be more theoretical than logical?

Answer. The major problem of courts in Maharashtra is that they deal with the cases chronologically that means even if the agency files a charge sheet it would take 15 year to complete the trial. Also the special court has only district jurisdiction unlike other states which ash state jurisdiction. Even the special court do not exclusively deal with the CBI matter alone, they also deal with even other matter. The major reason is that for calling out such large no. of persons are called for the purpose of authenticity. It may be with the idea that more than that the reason for witness being dropped through record with discussion with 2 or 3 people as team work. Similarly the I.O cannot by himself drop any witness as in normal courts, many malpractice takes place in this name. Even there is purview officer is assigned for the matter that everything goes transparently even though it consumes sometime.

Bombay judge- The matters other than CBI are asked by judge because it affects the track record of the judge and affect service benefits than any other court when his posting is done in the CBI court. It shall be looked into by the administrating judge in the HC, that disposal is not being done.

Answer. The weightage of units that are given for disposal of CBI case is usually double than usual cases in almost by special regulation of all High Courts.

Amravatti- They should certainly abolish CBI court in Amravatti. Even MCOCA and TADA Case, which are very much sensitive are extremely delayed. It should attach more district and recruit local persons on board to help in investigation knowing the local language. A prosecutor is having the charge of 11 districts and does not have time. Also with voluminous document –

Notes should be given at this stage but statement alone are not enough. The prosecutors should do homework and submit certain notes necessarily as if there are 100 page document which are the more important parts that have been relied by him.

Answer. All the special courts are funded by the Govt. of India. It was created with the sole purpose of expediting the trial of CBI cases. The purpose is not being served. The suggestions were noted down.

Guwahati- The Investigating Officer is not conversant with the law like in a company matter, the company has not been sued and the individuals of the company have been charged with the crime. There is extreme detriment in writing the judgment. Even though, the case was interpreted made as individual capacity can be sued and therefore, they were convicted. The prosecutor is not familiar with the cases and is not regularly appointed.

Answer. Not taking Company as accused may be a specific case where the mistake has been made. There have been prosecutors have been immense shortage and contractual basis prosecutors are appointed. There is difficulty in assigning even though the agency has recently got 80 prosecutors. There are three types prosecutors namely selected through UPSC, another a panel of local advocates and contractual basis. In CBI courts, the contractual advocates are more but their term comes to an end where the case is at crucial stage so the panel of lawyers is given in every state that all the cases are taken care off.

Hyderabad- Immense problem in infrastructure? There were 4 in Hyderabad but 3 are in Govt. complex. The former Joint Director made a plan to shift the court back to the Govt. complex. It was a certain amount but the state govt. has only sanctioned the half for the purpose of setting up the court. It is also pointed out that useless staff is employed in the CBI court and also special allowances should be given to the employees who work in the court.

The suggestions were noted.

Vizag- In Bank fraud case, without the company being sued Managing Director has been sued under S. 319. But since there is precedent by the apex court, that such cases should not be taken the merits are also not taken into consideration. The matter is fast end of disposal and the judge is bound to follow precedent. If allowed to exercise discretion under Sec. 390 to add the company

as a party, then it would be tedious process to call all the witnesses and retry the matter. The accused irrespective that he is a culprit has to be left free. The sanctioning authority is not brought a duty from the agency; even they are not given within a time period. It is used as defense by the other counsel summoning the sanctioning documents as a precedent in Ashok Kumar Agrawal's Case. The court is not in a position to understand what actually is enclosed in the sanctioning document? If it is possible the sanctioning document can be sent without mentioning the enclosures. The courts are bound to follow precedent of the apex court as in Nishant Sareen's Case.

Answer-The sanctioning authority will differ from case to case as they might be high positioned officer involved to deal with it. When such a pretext comes up, the document can be summoned by the court. Usually the file is kept with the department, the only possibility that the sanctioning authority come with the file. It can be certainly be done for some cases but it is usually for internal matter. At least the draft sanction can be sent but usually the agency does not. Only result of the investigation and other documents that are relevant are sent by the agency. The zerox of the sanctioning authority is not a file of the agency and cannot produce before the court. It can only summoned by the court.

Raipur- No clarification or suggestion as newly posted.

Gujarat- Revision and appeal are pending from 2001, drafting of an appeal in Ahmedabad and vetting by senior officers in New Delhi so it is taken as excuse. At least a general order has to be mentioned that such flimsy defenses are not to be taken. It is even closure report is of the CBI then why is response has to be filled? But closure reports of 2002 and 2003, then why is it has to be taken ? Do not change the purview officers often?The prosecutors appointed by CBI courts are only harping over exhibiting the evidence and not actually proving the matter. The contents of the document are not proved at all and there is no endeavor on their part to take effort. They must read the document and do their homework. When the agency is sends some tape or recording it should always be enclosed with a forwarding letter. The mode has not been recorded. The procedure that has been used reach such conclusion. Witnesses are dropping when there is contradicting, then IO's should drop the witnesses but they also have negated state.

Answer. The purview officer is only to free the IO from the documents. Usually they are retired inspector or sub-inspector from the police, unless and until the term of the purview officer gets over there exists no other barrier. The suggestions were noted. At the branch level, the decision is taken to drop the witness and there is fear of senior officers. The prosecutor has to point out to senior officer that's all. There is no matter or least 10% comes to Joint Director level for decision. There should be a memorandum for the witnesses. As per office order, there should be a prosecution plan that has to be submitted to the agency by the said prosecutor and categorize them into A, B and C Segment, in the order as to importance of the issues in the case. If A list has done everything there is no relevance of B and C.

Then, the gathering has been dispersed for Tea.

#### Session 14: Challenges Faced In CBI Courts: A Practical Insight

Speakers: Mr. O.P. Verma, Mr. R.P. Agarwal

Session Contd.

Assansole, W.B-

There was no prosecutor appointed for a month since the appointment of the judge to the court. After writing to many authorities, a prosecutor has been recently appointed even though on a contractual basis. The Court had no work and the witnesses kept on coming to the court but everything was in vain due to absence of a prosecutor. The problem at presently has been solved. Many trap cases. The nature of the witness is of the same nature. This delays the disposal. If only one witness are required to brought forth to the court. In cases like postal fraud cases, 100 of witness exist. In instances of bribe of Rs. 1000 or 2000, there should not be production of witness more than one. Also, the prosecutor has extreme fear of the superior branch official to whom he has to obey often. There is no proper infrastructure in the courts.

Answer.

The lack of appointment prosecutor is certainly a problem in the instance for contractual basis. Usually the tenure can be extended but even other alternatives would be sought by the concerned Director. It was analyzed that there were certain vacancies. The prosecutor will be told about the

matter of witness through concerned branch. If there is a genuine point to drop the witness, it shall be considered.

As per DoPT regulations, there is a minimum infrastructure prescribed for the special courts like CBI specifically. It is actually the state government and high court do not find the necessity to implement the so required. They actually distort the central govt. funds that are to be reimbursed and do not use it effectively. It was also accepted that the funds are used even for other courts too. It depends to state to state, the courts in Assam has all the infrastructure.

Ahmedabad (Other Judge)- No queries or clarification.

Delhi- The main problem is HIO, this person is understood to be more than IO. He does not know anything virtually. The existing IO's are transferred to HQ on deputation. The best prosecutors are transferred to some other courts. Nobody knows about the matter properly. How can this be resolved?

Answer. The HIO and IO have much difference. HIO is only to assist the prosecutor and IO is mainly concerned with the physical investigation through the agency. The points shall be noted and addressed soon.

Madurai- The problem is that of the branch of agency stands to be in Chennai. At the same time, the charge vested upon is of 14 districts. The list of memorandum of the witness and most of the .....Further while submitting the.....

Answer.

Madras- For even normal 311 application, it takes 3-4 adjournments. The arguments that are set forth is that the prosecutor requires certain approvals from the agency and therefore the adjournments. The consume at least 3-4 hearings of the matter.

Next is in regards to 207 copies, D1 entire file but the copies are giving with missing files. The prosecutor say that those portions are not relevant for the present matter and the defense raises the argument that those documents are favorable to them.

Also the principal judge taking charge sheet on file without mentioning any public servant whereas only private people have been sued. So far there is no public servant and the court has said that it does not have jurisdiction.

Answer. Internal matter will be resolved and concerned branches shall be informed but particularly certain cases might be an exception. Secondly, if the relied upon documents are relevant then the court can certainly pass an order in that manner to summon the segregated papers. Thirdly, the agency shall ponder upon the matter and inform the concerned branches.

Jabalpur- dealing with Cases of IPC-420, 409, 467 MP amendment. Being dealt with all pending case and one new matter, there should be responsible prosecutor. When the witnesses are summoned, they don't appear. The CBI official says that witness is busy in some other matter etc., so it should be looked at the time of the court should not be wasted. The jurisdiction extends to about 22 districts.

The fresh matter is of FICN matter, in which the court was satisfied with the investigation. The only lacuna was that the persons belonged to West Bengal and on appearing before the court the case diary was not produced as and when required, although it was later produced.

Jodhpur- The procedure has not been satisfactorily even under the law, where only one FIR was registered for an offence done in February and December, done with different people by a person. At times, S. 409 and 420 is charged to a same person. How is it possible?

Answer. If it is permissible under the Cr. PC is not offended then it can certainly be used without any disturbance.

Jaipur- The subordinate courts language use the local language and the FIR submitted by the CBI is always in English, the accused always files application for a translation copy otherwise they are unable to defend their case. The translation takes place in nearly years.

Answer. Shall be dealt.

Bangalore- A concurrent charge of NIA cases too. The 4 days are used for NIA and 2 days for CBI matters. The charge of CBI court should not be mixed with any other charge of a court. The monthly progress of a case has to be submitted to CJ of the HC. CBI cases should not be

entangled with any other court. For Bank Compliance cases, the banks have moved to other cities, once summoned they directly come to court without any preparation and waste the time of the court. The witness thus are not able to answer properly.

Answer. Noted

Ghaziabad- Different IO s investigating different phases of investigation, everyone tries to pass the buck on other. Now the court has to summon all the IO's. A soft copy and hardcopy has to be given of the 161 statement. In West UP, Saturday is taken as a holiday as it is leave for Central Government. The prosecutors do not appear on Saturday but still for certain matters, there presence is very much required. The prosecutor must do his homework and not do things in the court premises. The security concern of CBI judge is very important through central government and has to be provided with security.

Patna- The judge does not have any problem.

Patna( Other Judge)- The fellow brother judges have already spoken.

Indore- Closed cases, there cases only one or two witness are remaining. The case remains at the threshold of the disposal but IO's are absent for months. One of the IO is settled in Canada and responds that he cannot come. Next, the latest development of law so that the judges remain highly updated. Lastly, please superior official should not put a sword of disposal on the neck of CBI court judge.

Answer. Canada case, it can be tried through videoconferencing. The ultimate decision is to drop the person and get another IO for the case.

Himachal Pradesh-No special problems- they have already been dealt.

Hazaribagh- No experience as appointed for dealing with vigilance cases.

Uttarakhand- No special problems.

Haryana- There are more problems and suggestions.56:33



