

**In the Court of Dig Vinay Singh: Special Judge (PC Act) (ACB)-02
Rouse Avenue Courts, Delhi**

In re:

**CNR No. DLCT11000476-2019
CC No. 107/2019
FIR No. 15/2016
P.S. ACB
U/s. 120B of IPC & Sec. 13(2) r/w
13(1)(d) of the POC Act, 1988**

State

Vs.

- 1. Swati Maliwal (A1)**
- 2. Ms. Promila Gupta (A2)**
- 3. Ms. Sarika Chaudhary(A3)**
- 4. Ms. Farheen Malick (A4)**

Date of conclusion of arguments: 25.11.2022

Date of order : 08.12.2022

ORDER ON CHARGE

- 1.** The above named four accused have been charge sheeted for offence U/s 120B of IPC & Sec. 13(2) r/w 13(1)(d) of the P.C. Act, 1988. All the four accused were public servants at the relevant time. Requisite Sanction U/s 19 of the P.C. Act, as required for Sec. 13 of the said Act against all the four accused have been obtained and are on record.
- 2.** At the relevant time, A1 Ms. Swati Maliwal was working as Chairperson of Delhi Commission for Women (DCW), whereas A2 Ms. Promila Gupta; A3 Ms. Sarika Chaudhary and; A4 Ms. Farheen Malick, were members in DCW.

- 2.1.** It is the case of prosecution that all the four accused persons in conspiracy with each other abused their official position and obtained pecuniary advantages for the party workers and acquaintances of A1 as well as the ruling party namely 'Aam Aadmi Party' (AAP). It is claimed that such workers and acquaintances were appointed to different posts of DCW without following the due process. Rather the appointments were made in contravention of procedures, Rules, Regulations, without even advertising for the posts, in violation of General Finance Rules (GFR) and other guidelines and that money was disbursed to various such persons towards remuneration / salary/ honorarium. In the process, legitimate right of deserving candidates was violated to favour a particular class of persons. It is claimed that total 90 appointments were made in DCW between 06.08.2015 to 01.08.2016, out of which 71 persons were appointed on contractual basis in DCW and 16 persons were appointed for 'Dial 181'. No record qua appointment of remaining 3 appointees (out of 90) could be found.
- 2.2.** The background of the matter is that an undated complaint of Ms. Barkha Shukla Singh, Ex-MLA, was received in ACB on 11.08.2016. In the complaint, it is alleged that several individuals, who are / were associated with AAP were appointed in DCW in violation of all Rules & Regulations, without publication of vacancies and as such granting pecuniary benefits to them. The complainant pointed out name of 3 such persons who were connected with AAP and who were appointed in DCW for different remuneration amount. Complainant also mentioned the connection of those 3 persons with AAP. Along with the complaint, a list of 85 individuals associated with AAP and who were claimed to have been so appointed with DCW was also sent.

- 2.3.** On this complaint, preliminary inquiry was conducted and thereafter FIR was registered on 19.09.2016, U/s 13(1)(d) of POC Act as well as Sec. 409/120B of IPC.
- 2.4.** During investigation, it was learnt that DCW was reconstituted and notified on 27.07.2015 by the Government of NCT of Delhi, with A1 as its Chairperson and other three accused as other members of DCW. Against the 26 existing sanctioned posts in DCW, which were sanctioned vide letter no. F.1(20)/DCW/2003/3154 dated 22.06.2007, as many as 87 persons were appointed by the accused persons between 06.08.2015 to 01.08.2016 during their tenure and out of those 87 persons at least 20 persons were directly found to be associated with AAP. It may be clarified here that during investigation A1 had claimed that 90 appointments were made during the impugned tenure, but the investigating agency could not find any documentary or other proof of appointments of three persons and therefore appointments of only 87 persons during the impugned tenure could be ascertained. It is claimed that all these appointments have been made without following any Procedure, Rules and Regulations and even the General Finance Rules (GFR) were flouted while fixing, enhancing and disbursing remuneration to those appointed persons. Appointments were made even without requisite Sanction or creation of those posts to which appointments were made. It is also alleged that one Mr. Prem Prakash Dhal was appointed as Member Secretary (MS) on 05.04.2016 contrary to the prescribed Rules and without approval of Lt. Governor. It is also alleged that against the Budget Estimate of Rs.700 Lakh, lump sum amount of Rs. 676 Lakhs were released to DCW in one go instead of its release in instalments. It is claimed that DCW is a grantee institute and its parent department is the Department of Women & Child Development (WCD) of the Govt. of NCT of Delhi.

- 2.5.** The charge sheet alleges that regarding the appointments made, DCW did not provide any information to WCD as to the increase of strength of staff, that too despite written request and personal visit by WCD officials. The charge sheet also claims that during investigation DCW replied that interviews were conducted for all the recruitments in which suitability was assessed, but despite request no record of any such interviews as to the date, time and place of interviews; the details of candidates who appeared for the interviews; the details of interviewers, whether individual or board, were supplied, which indicates that no such interviews were actually conducted. It is also claimed by the investigating agency that no advertisements were published for any post in DCW and a reply from IT department of Delhi Government reveals that advertisements for the post of Legal Counsellors only was put on the website of DCW, that too only on 26.04.2016, whereas the legal counsellor had already been appointed by DCW even prior to that advertisement. Thus, it is claimed that no transparency was followed and illegal appointments were made and there is no record as to creation of the posts or publications of advertisement for those posts or any details of applications received or interviews conducted and as to what was the criteria followed for hiring the candidates. It is also claimed that not only illegal appointments were made, but even the salaries of many such employees were enhanced arbitrarily and illegally, at the cost of public money and the government exchequer. It is claimed that most of the appointments were made immediately after the reconstitution of DCW, therefore the defence of exponential increase in the work load of DCW, as claimed by the accused during investigation, does not appeal.
- 2.6.** In the charge sheet the investigating agency has specified that one Mr. Gautam Singh and Mr. Banteshwar Singh, who were appointed as Research Assistant and Personal Assistant to the Chairperson DCW, respectively,

were erstwhile associates of A1 as both of them were colleagues of A1 in the office of Chief Minister from 2015 onwards. At that time A1 was working as Advisor to CM (Public Grievance) and both Gautam Singh and Banteshwar Singh were handling the Grievance Cell in the office of CM. A1 even had issued appreciation letters dated 15.07.2015 in favour of those two persons and thereafter both those persons were issued appointment letters in DCW on 06.08.2015 at a monthly remuneration of Rs. 25,000/- and Rs. 22,000/-, respectively. Investigating agency also claims that on 06.04.2016 the remuneration of both these persons were whimsically increased to Rs. 50,000/- and Rs. 45,000/- per month respectively, in violation of Rules and Regulations.

- 2.7.** Similarly, one Mr. Raj Mangal Prasad was appointed as Advisor to DCW on a monthly salary of Rs. 1 Lakh, whereas earlier he was a Child Right Activist associated with the CM and AAP and he even contested election on the ticket of AAP from Bihar in the Lok Sabha Election of 2014.
- 2.8.** Similarly, the IO has specified 8 more instances on internal page no. 15 and 16 of the supplementary charge sheet regarding illegal appointments and enhancement of the remuneration of Mr. Bhupender Singh; Ms. Divya Balaji; Ms. Kesar Praveen; Ms. Biji Anil; Ms. Firdos; Ms. Meena Kumari; Ms. Jyoti Mala Sinha; and Ms. Madhuri Kashyap. It is also claimed that number of other appointments were similarly made for various posts during the impugned tenure of the accused persons.
- 2.9.** IO has specified that in the meeting of DCW convened on 06.04.2016, chaired by A1, in which other three accused were also present as member of DCW, a decision as to the contractual staff appointment and enhancement of remuneration was considered and approved. The said minutes contained signatures of the accused and approval of appointment and remuneration. It is also claimed that the staff was appointed vide minutes of meetings dated

25.02.2016; 02.03.2016; 25.04.2016; 05.05.2016; 27.05.2016; 09.06.2016; 23.06.2016; 29.06.2016; 05.08.2016 etc.

- 2.10.** Charge sheet also claims that Mr. P.P. Dhal was initially appointed as a Consultant cum Advisor to DCW and then he was appointed as Officiating Member Secretary by the accused persons, whereas the DCW Act, 1994 provides that MS shall be nominated by the Government and there was no provision to appoint MS on officiating basis. It is claimed that since the appointment of Mr. P.P. Dhal as MS was itself irregular, therefore, all decisions taken by Sh. P.P. Dhal as MS were irregular during the period 01.03.2016 to 31.10.2016.
- 2.11.** Charge sheet relies on the statement of Deputy Secretary-V (Finance) namely Manoj Kumar, according to whom DCW did not have unlimited financial autonomy like any other Grantee Institution which receives grants from the Government and therefore DCW was bound to follow the provisions of GFR and the conditions of Grant-in-aid. It is also claimed that as per guidelines dated 03.05.2012 issued by the Finance Department, the Grant-in-aid was to be released to DCW in three instalments of 25%, 50% and 25% of the Budget Estimate (BE), but in the present case entire funds were released in one go. It is also claimed that as per Office Memorandum dated 06.09.2011 issued by the Finance Department as to the Grant-in-Aid and the Pattern of Assistance to the Grantee Institution, it is prescribed that release of grant by itself does not give a license to the grantee institute to spend money and that expenditure out of it would be subject to prior expenditure sanction by the competent authority, observance of provisions of GFR and, other guidelines by the Finance Department.
- 2.12.** Initially A1 only was charge sheeted u/s 13(1)(d) r/w 13(2) of the POC Act, 1988, and the other three accused have been charge sheeted under

supplementary charge sheet for offences u/s 120B of IPC and u/s 13(1)(d) r/w 13(2) of the POC Act, 1988.

- 2.13.** It is also claimed that at the time of reconstitution of DCW in July 2015, one Ms. Archana Arora was working as MS of DCW since 01.10.2014 and her appointment was till 30.09.2017. But Archana Arora resigned on 24.02.2016. It is claimed that Archana resigned because of conflict with A1 Swati Maliwal and that too on the ground that she was being pressurized to recruit associates and workers of AAP without following Rules & Regulations, which was resisted by Ms. Archana Arora. It is claimed in the charge sheet that in the note sheet no. F.1/10/DCW/2016, by Ms. Archana Arora, she clarified about the provisions of DCW Act, 1994, the Rules of Business on the issue of grant by the Government and the financial powers of DCW, including the cases in which prior approval of the Government of NCT of Delhi is required are to be sent to Finance Department and other departments of the Government.
- 2.14.** It is also claimed in the charge sheet that at the time of release of grant to DCW by WCD it is mentioned in the sanction order that *"the procedure as prescribed in GFR 2005 and the OM/Circular issued by the FD/CVC is duly followed while procuring goods/ services and the norms/ procedure as laid down in CPWD manual/GFR 2005 are observed while executing project/ works contracts"*.
- 2.15.** It is also claimed that the accused persons deliberately ignored the suggestions of Ms. Archana Arora and gave appointments to the near and dear ones causing loss to the Government exchequer. It is also claimed that Ms. Archana Arora even noted in file no. F.1(10)/DCW/2014 regarding advertisement of post, but still appointments were continued to be made on contract basis.

- 2.16.** Even A1 circulated a note on 27.01.2016 that DCW was fully autonomous with autonomy in all financial matters. It is claimed that despite the fact that section 5 (i) of DCW Act, 1994 provides that the Government shall provide DCW with officers and employees as may be necessary and also that it provides for remuneration to be determined by the Government only, yet DCW appointed persons of its own and determined salaries on its own.
- 2.17.** In the supplementary charge sheet, investigating agency also claims that Order No. *F.12/3/2010-AC/dsfa/DS-111/914-921 dated 18/7/11* provides that if for the functional requirement any post is to be created, the autonomous bodies, granting institutions shall submit a consolidated proposal seeking prior concurrence of the Finance Department through their Administrative Department with full justification before obtaining the approval of the competent authority for creation of post. Similarly, letter no. *F.8/1/96-AC/3365 dated 21/2/97* from the Department of Finance (Accounts) GNCT of Delhi provides that any post whether permanent or temporary in any office in the Department of GNCT of Delhi can be created only with the concurrence of the Finance Department and approval of LG. Similarly, Order no. *F.1(89)/ Misc./Fin./Exp-1/2010-11/72-82 dated 04/7/11 issued by the Finance Dept., GNCT of Delhi* provides that the grantee institutions are duty bound to seek approval of the Government in respect of any proposal / project / scheme having major / substantial or recurring financial implications for the Government, particularly those in respect of which expenditure is to be meted out of grant-in-aid. It is also claimed that para 9 of the last mentioned order also stipulates that the grantee institution shall not do any act or undertake any activity which entails additional financial liability for the Government without the approval of the Administrative Department and the Department of Finance & Planning, which includes creation of posts, grant of pay scales etc. It is also claimed

that the Financial Power Rules, 1978 stipulates the name of the authorities empowered to create permanent or temporary post, which in this case is the Administrator.

3. Before proceeding further let it be mentioned that law as to considerations at the stage of charge are fairly well settled now.
- 3.1. In the case of *M.E. Shivalingamurthy v. CBI*, (2020) 2 SCC 768, Hon'ble Supreme Court summarised the scope at the stage of charge and observed as follows;

“Legal principles applicable in regard to an application seeking discharge

17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions viz. P. Vijayan v State of Kerala [P. Vijayan v. State of Kerala, (2010) 2 SCC 398; (2010) 1 SCC (Cri) 1488] and discern the following principles:

17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.

17.4. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, “cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial”.

17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CrPC (see State of J&K v. Sudershan Chakkar [State of J&K v. Sudershan Chakkar, (1995) 4 SCC 181: 1995 SCC (Cri) 664: AIR 1995 SC 1954]). The expression, “the record of the case”, used in Section 227 CrPC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police (see State of Orissa v. Debendra Nath Padhi [State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568: 2005 SCC (Cri) 415: AIR 2005 SC 359]).”

3.2. In State of Rajasthan v. Fatehkaran Mehdu, (2017) 3 SCC 198, Apex Court observed:

“26. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of the Code of Criminal Procedure.”

3.3. In State V. S. Bangarappa, (2001) 1 SCC 369: 2001 SCC (Cri) 152, it is held that,

“21. Time and again this Court has pointed out that at the stage of framing charge the court should not enter upon a process of evaluating the evidence by deciding its worth or credibility. The limited exercise during that stage is to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed further (vide State of M.P. v. Dr Krishna Chandra Saksena [(1996) 11 SCC 439:

1997 SCC (Cri) 35J).”

- 3.4. It was also observed as follows in para 28 in the case of **M.E. Shivalingamurthy (Supra)**;

“28. It is here that again it becomes necessary that we remind ourselves of the contours of the jurisdiction under Section 227 CrPC. The principle established is to take the materials produced by the prosecution, both in the form of oral statements and also documentary material, and act upon it without it been subjected to questioning through cross-examination and everything assumed in favour of the prosecution, if a scenario emerges where no offence, as alleged, is made out against the accused, it, undoubtedly, would enure to the benefit of the accused warranting the trial court to discharge the accused.”

- 3.5. In the case of **Akbar Hussain v. State of J&K**, (2018) 16 SCC 85, it was held as follows;

“5.At the time of framing the charge, the trial court has to consider the material before it by the investigating officer and form a prima facie opinion thereupon as to whether it is a fit case for framing of charge under a particular provision. The standard of proof test, which is to be applied at the final stage, in order to find out as to whether the accused is guilty or not on the basis of actual evidence produced is not to be applied at the stage of framing of the charge. Charge can be framed even when there is a strong suspicion founded upon materials before the Court, which leads the court to form a presumptive opinion as to existence of the factual ingredient constituting the offence alleged.”

- 3.6. In the case of **Mauvin Godinho v. State of Goa**, (2018) 3 SCC 358 it was held as follows;

“12. At the outset it would be pertinent to note the law concerning the framing of charges and the standard which courts must apply while framing charges. It is well settled that a court while framing charges under Section 227 of the Code of Criminal Procedure should apply the prima facie standard. Although the application of this standard depends on facts and circumstance in each case, a prima facie case against the accused is said to be made out when the probative value of the evidence on all the essential elements in the charge taken as a whole is such that it is sufficient to induce the court to believe in the existence of the facts pertaining to such essential elements or to consider its existence so probable

that a prudent man ought to act upon the supposition that those facts existed or did happen. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

4. Keeping in view the said legal position, let the facts of the present case be evaluated for a prima facie view as to whether or not any charges are made out.
5. The entire allegations against the accused persons can be categorised under three heads, viz.,
 - a) as against 26 sanctioned posts, the accused persons appointed 87 persons in DCW during the impugned tenure, out of whom most of the persons were acquaintances or party workers or associated with A1 and AAP;
 - b) Mr.P. P. Dhal was appointed as MS on 05.04.2016 contrary to the prescribed Rules & Regulations and without approval of the competent authority;
 - c) a sum of Rs. 676 Lakhs were released to DCW against the Budget Estimate Rs. 700 Lakh in one go, whereas it should have been disbursed in three instalments.
6. The Ld. Prosecutor and the Ld. Counsels for the four accused were heard. While Ld. Prosecutor argued that charges against all four accused persons are prima facie made out, on the other hand Ld. Counsel for the accused claimed that no charges are made out against any of the four accused.
7. It is contended on behalf of accused persons that U/s 9, 10 & 11 of the DCW Act, 1994, DCW is an Autonomous body and under those provisions DCW was within its right to regulate its own procedure, the procedure of Committees; DCW was empowered with powers of a Civil Court in investigating the matters and; DCW was empowered to spend such sums of money as it thinks fit for performing the functions under the Act. It is also argued that Rule VII of the Rules of Business, empowered DCW to approve

& sanction any expenditure for any purpose taken up during the financial year and Rule V thereof also empowered DCW to constitute a panel of consultants, draw experts from academic research, administrative, investigative or legal fields. It is also argued that nowhere does the DCW Act or the Rules formulated thereunder provides that DCW would work under the WCD or that WCD would act as its parent body. Thus, it is claimed that the entire case of the prosecution on the foundation that DCW was not competent to create posts or engage persons, is fallacious. In this regard, attention of the Court is also drawn towards the statement of Manoj Kumar, the then Deputy Secretary (Finance) U/s 161 Cr.P.C, wherein in answer to one of the queries of the IO, Manoj Kumar replied that DCW has autonomy within GFR, condition of grants and DCW Act. The other part of the statement of this witness claiming that autonomy of DCW was not of unlimited nature by relying upon other Office Memorandums and notes is sought to be distinguished by relying upon the case of ***R. Sai Bharathi Vs. J. Jayalalitha & Ors. (2004) 2 SCC 9***, to lay stress on the point that a document which does not have statutory force is not enforceable in law. Reliance is placed on observation made in para 50 of the judgment wherein it is held that the Code of Conduct not having a statutory force and not enforceable in a Court of law, nor having any Sanction or procedure for dealing with a contravention thereof by the Chief Minister cannot be construed to impose a legal prohibition against the purchase of property of the Government so as to give rise to a criminal offence U/s 169 IPC, and that in law there must be specific provision prohibiting an act to make it illegal. It was also held that a Code of Conduct prescribed by Government under certain notification by itself cannot be elevated to the level of law.

- 7.1.** The said case is distinguishable, as in that case the charge against one of the accused was that the accused in contravention of the Rule that a public

servant should not purchase the property of the Government and also in contravention of the Code of Conduct regarding the Ministers, had purchased the land and building etc. belonging to a Government company and that accused was charged for an offence punishable U/s 169 of IPC. While clarifying the requirements of Sec. 169 of IPC, Hon'ble Supreme Court held that the Code of Conduct not having a statutory force and not enforceable in a Court of law and not having any Sanction or procedure for dealing with a contravention thereof, cannot be construed to impose a legal prohibition.

7.2. Similarly, the accused also claimed that the statement of Vijay Chandana, the then Deputy Secretary, U/s 161 Cr.P.C supports the accused that the Commission had full powers under the Act, to launch programmes, projects, to fix remuneration for the staff, incur expenditure etc. It is argued that merely because funds were received from the Government, it cannot be an impediment as to the autonomous status of DCW. It is also argued that the controversy as to the autonomy of DCW was set at rest by the Deputy Chief Minister vide note dated 01.03.2016 wherein he stated that Administrative and Financial Powers will be exercised by the DCW and that even Finance Department is of the view that on a plain reading of DCW Act and the Rules & Regulations, the Executive Authority vested in the DCW includes all administrative and financial powers. It is claimed that once DCW is an autonomous body, the entire case of the prosecution is unsustainable.

7.3. The above said arguments does not appeal at this stage of the matter. Sec. 5(i) of the DCW Act clearly provides that it is the Government which shall provide the Commission with such officers and employees as may be necessary for the efficient performance of the functions of the Commission under this Act. Clause (ii) of this Section also provides that the salaries and allowances payable to as well as the terms & conditions of service of the

officers and other employees appointed for the purpose of the Commission shall be such as may be prescribed. This provision clearly indicates that it was the Government which was empowered to create post and prescribe the salary, allowance and other terms & conditions of the employees of DCW.

- 7.4.** Reliance placed by the accused persons upon Sec. 9, 10 & 11 of DCW Act, does not help their case. Sec. 9 merely prescribes the procedure of the Commission and the Committee as to when, where and at what time it shall meet; as to regulation of its own procedure; the functions of the Commission and the fact that grants were to be received from the Government, which the Commission was competent to spend in its wisdom for performing the functions under the Act out of the grant. Nowhere does any of those three sections empowers the Commission to create any post and incur any expenditure of recurring nature towards the salaries etc.
- 7.5.** Assuming that DCW was an autonomous body even with respect to creation of post or prescribing the terms & conditions for recruitment and conditions of service, still prima facie charge U/s 13(1)(d) of POC Act would be made out against the accused persons, as being an autonomous body receiving funds from the Government neither posts could have been created at whims & fancies nor recruitment of near and dear ones could have been made against all Rules. Promoting the interest of near & dear ones and nepotism, as revealed from the facts of this case, is also a form of corruption.
- 7.6.** In the case of *Meera Yadav Vs. CBI (2017) 8 SCC 757 in para 54* Hon'ble Supreme Court observed that nepotism is a greater evil since it involves dispersal of favours by patrons amongst their arm coterie, depriving others of a carrier or office they deserve more and that the practise of promoting the interest of few individuals to the detriment of many others is wholly reprehensible.

8. As to the claim of investigating agency regarding 87 appointments made in contravention of Rules, it is argued by the accused persons that out of 87 persons the investigating agency lists 20 persons who were associated with the party. It is argued that there is no embargo in appointing some persons from the party and the manner in which the investigating agency conducted verifications qua those 20 persons is legally unsustainable as it is primarily based on hearsay. It is also claimed that the reliance placed by the prosecution on certain photographs to show association of the recruits with the party is also legally unsustainable. It is argued that because of exponential increase in the work of the Commission, there was urgent need of engagement of man power which was purely done on emergent contract basis for a short period of three months, therefore, no criminality can be attributed on that account. In this regard, attention of the Court is drawn towards the nature and scope of the work performed by DCW as also the quantum of work. It is claimed that number of requests were sent to the Government for increasing the number of Sanctioned posts, but when no response was received, DCW in its meeting took a decision to increase the manpower purely on emergent contract basis for a short period. In this regard, reliance is also placed by the accused persons upon the order dated 22.12.2016 of Hon'ble Delhi High Court in the case of ***Meena Kumari & Ors. Vs. Delhi Commission for Women W.P. (C)11712/2016***, wherein in a Writ Petition preferred by certain appointees of DCW, who were working with DCW but were not getting salary, perhaps because of the present case being under investigation at that time, Hon'ble Delhi High Court directed that salaries be paid to the petitioners irrespective of the dispute between the parties with regard to the appointments made. In that case the counsel for DCW had argued that the petitioners were engaged in various cells, some of which were set up under the directions of the Court such as Rape Crisis Cell,

181 Caller, Crisis Intervention Centre, Acid Watch and Rehabilitation, Anti-Trafficking and Rehabilitation Cell, Mahila Panchayat, Mobile Helpline Program etc. In that very case it was also observed that the said order would not create any special equities in favour of either of the parties and it would not come in the way of investigation by ACB and that the order was passed in the peculiar facts and circumstance as some of the petitioners were dependent on salary for their subsistence.

- 8.1.** Similarly, it is also argued by the accused persons that appointment of Mr. P. P. Dhal was made as the earlier MS had resigned abruptly in February 2016 and for the critical functioning of DCW Mr. Dhall was appointed who had vast administrative experience. It is also claimed that after appointing Mr. Dhal as officiating MS, DCW also moved a file for his appointment as regular MS and ultimately he was appointed as MS vide notification dated 27.07.2018.
- 8.2.** It is also argued that merely because funds to the tune of Rs. 7 Crores were released in favour of DCW in one go, it cannot be a ground to frame charges against the accused persons as DCW had sought Rs. 20 Crore budget for the financial year in question and in any case DCW was receiver of the money which was granted by the Government therefore, DCW cannot be faulted with merely for receiving that amount even if some procedures were not followed at the end of the Government. In this regard also, accused persons rely upon the case of **R. Sai Bharti (Supra)**. Reliance in this regard has also been placed by the accused persons on the following cases.
- 8.3.** In the case of **C.K. Jaffer Sharief Vs. State (Through CBI) (2013) 1 SCC 205**, against dismissal of an application for discharge while hearing the appeal Hon'ble Supreme Court observed that dishonest intention is the gist of offence U/s 13(1)(d) implicit in the words “corrupt or illegal means” and

“abuse of position” as a public servant. In that case, the appellant accused, as Minister of Railways was head of two public sector undertakings. Four persons accompanied the appellant to London after the appellant prevailed upon the two Public Sector Undertakings to take four employees on “deputation” for the sole purpose of sending them to London in connection with his medical treatment and while in London, those persons had assisted the appellant in performing certain tasks connected with the discharge of duties as a Minister. Hon'ble Supreme Court held that in the light of those facts, it is difficult to visualise as to how the appellant can be construed to have adopted corrupt or illegal means or to have abused his position as a public servant to obtain any valuable thing or pecuniary advantage either for himself or for those four persons. The said case is clearly distinguishable on facts.

8.4. *Reliance is also placed by the accused upon the case of Tarlochan Dev Sharma Vs. State of Punjab & Ors. (2001) 6 SCC 260*, to lay stress upon the point that the expression 'abuse of power' cannot mean use of power which may appear to be simply unreasonable or inappropriate and it implies a wilful abuse or an intentional wrong. It was held that an honest though erroneous exercise of power or an indecision is not an abuse of power. Decision, action or instruction may be inconvenient or unpalatable to the person affected, but it would not be an abuse of power. Even this case is clearly distinguishable and does not help the case of accused at this stage.

8.5. Reliance is also placed by the accused upon the case of *Dhananjai Kumar Pandey Vs. Central Bureau of Investigation / Anti-Corruption 2015 SCC Online Bom 5625*, wherein in a quashing petition it was observed as follows in para 22 of the judgment;

“If at all there were irregularities while selecting the present petitioner or his wife Dr. Anju Pandey to the particular post, the concerned

department can look into the matter and see whether really some concession was given to the present petitioner or his wife at the time of their selection. Even assuming for the time being, the accused no. 1 to 4 have not followed the procedure and they have given some concession to the present petitioner even then such act could give rise only to initiate departmental inquiry but in any way no criminal liability can be fasten upon the accused in absence of a specific allegation in reference to the cheating or corruption”

- 8.6.** Even the case of **Dhananjai Kumar (Supra)** is distinguishable on facts as in that case the selection committee headed by the other accused, the accused petitioner was selected by overlooking other suitable / eligible candidates who were having experience of more than four years, whereas the accused petitioner was not having the required essential experience. In that case, the FIR was quashed only against the petitioner accused who himself was selected and not against other accused who were instrumental in selection process.
- 9.** It is also argued by the accused persons that the allegations put forth by the prosecution does not fulfil the necessary ingredients of Sec. 13(1)(d) of the POC Act and in that regard besides relying upon the case of **C. K. Jaffar Sharief (Supra)**, reliance is also placed upon the case of **A. Subair Vs. State of Kerala (2009) 6 SCC 587**, wherein it was held that the primary requisite of an offence U/s 13(1)(d) of the POC Act is proof of a demand or request of a valuable thing or pecuniary advantage from the public servant and it was also held that in absence of proof of demand or request from the public servant for a valuable thing or pecuniary advantage, the offence under this Section cannot be held to be established. The said case is also distinguishable as it was a case of trap in which in absence of examination of the complainant and any other witness as to the demand and only one witness deposed that the complainant took out the money from his pocket

and offered it through the window to the accused, was held to be insufficient to establish demand.

- 10.** Before dealing with the question whether necessary ingredients of Sec. 13(1)(d) of the POC Act are fulfilled or not, few facts as borne out from the records relied upon by the prosecution, be mentioned here.
- 10.1.** It is not in dispute that vide letter no. F.1(20)/DCW/2003/ 3154 dated 22.06.2007, in addition to already existing 12 posts in DCW, 26 additional posts were created against the demand of 28 posts by DCW. These posts were created by Department of Social Welfare, Govt. of NCT of Delhi. Under this letter, 15 posts (2 Sr. PA, 2 stenographer Grade-C, 2 UDC, 6 LDC and 3 drivers) were created on regular basis. Also 11 persons (2 project coordinators, 5 legal counsellors, 2 peons and 2 Safai Karamcharies) were allowed to be engaged on contract basis. This letter itself reveals prima facie that it was not DCW who was competent to create posts on its own and it was the concerned department of the Government which was so competent.
- 10.2.** As regards appointment of Mr. P.P. Dhal, one Archana Arora who was earlier working as MS in DCW resigned in February, 2016. Mr. P.P. Dhal was appointed in DCW as Honorary Advisor to A1 vide note sheet dated 25.1.2016. The said note was put up by Banteshwar Singh, PA to A1 and it is mentioned in the note that as per the directions of A1, who (A1) wishes to appoint Mr. P.P. Dhal as Honorary Advisor to A1, an office order may be issued for appointing Mr. P.P. Dhal. This note was approved by none other than A1 on 25.01.2016 and thereafter an office order dated 27.01.2016 was issued appointing Mr. P.P. Dhal as Honorary Advisor. It is worth mentioning that this appointment was made on pro-bono basis with

immediate effect. Subsequently, vide order dated 01.03.2016 Govt. of NCT of Delhi, Services Department also issued Order no. 93 appointing Mr. P.P. Dhal as Consultant -cum- Advisor purely on contract basis in DCW with immediate effect for a period of one year as per terms and conditions of Finance Department vide Order Memorandum (OM) No. F.20/4/2015-AC/204-248 dated 04.12.2015. Pursuant to it Mr. P.P. Dhal gave joining on that very day i.e. 01.03.2016 as Consultant-cum- Advisor for a period of one year and thereafter vide office order dated 04.03.2016 he was taken on the strength of DCW w.e.f. 01.03.2016. Interestingly, vide meeting of DCW dated 01.03.2016 under Agenda No.4 (II) Mr. P.P. Dhal was unanimously appointed as Officiating MS of the Commission w.e.f. that very day. It is also mentioned in the minutes of the meeting that A1 directed that necessary office order to that effect be issued in that respect. Thereafter an order dated 29.03.2016 was issued by DCW to that effect. There is an order dated 31.03.2016 of DCW in which consolidated remuneration of Mr. P.P. Dhal was fixed w.e.f. 01.03.2016 as Rs. 21,145/- plus DA at applicable rate after deducting the pension of Mr. P.P. Dhal before commutation.

- 10.3.** Under DCW Act, 1994 it is provided u/s 3(ii)(c) that MS to DCW shall be nominated by the Government, from amongst the person fulfilling the criteria mentioned under the said sub clause.
- 10.4.** In this case MR. P.P. Dhal was not appointed as MS in terms of section 3(ii)(c) of DCW Act, 1994 by the Government of NCT of Delhi and he was only appointed as Consultant- cum- Advisor purely on contract basis by the order no. 93 dated 01.03.2016 by the Government and that too after he was so appointed on pro-bono basis by DCW under order of A1 dated 25.01.2016. Interestingly, the initial note dated 25.01.2016 specifies that appointment of MR. P.P. Dhal would be honorary and the order dated 27.01.2016 also mentions that Mr Dhal would work on pro-bono basis as

Honorary Advisor to the Chairperson. But under the order dated 01.03.2016 of the Government of NCT of Delhi he was engaged as Consultant-cum-Advisor on contract basis and thereafter on the date when Mr. P.P. Dhal joined DCW, on that very day he was made officiating MS and also within a month his remuneration order dated 31.03.2016 for the above mentioned amount came to be fixed by DCW. It is also noteworthy that in the order dated 31.03.2016 fixing the remuneration of P.P. Dhal it is mentioned that the said fixation is with the approval of MS, DCW, whereas there was no MS appointed by the Government and it was Mr. P. P. Dhal himself who was officiating as MS w.e.f 01.03.2016 under the Resolution passed by the four accused persons in the meeting held on 01.03.2016 itself. All the four accused are signatory to the minutes of the meeting dated 01.03.2016. The appointment of Mr. Dhal, initially claimed to be on pro-bono basis and within two months remuneration was fixed for him, in violation of the DCW Act also indicates nepotism.

- 10.5.** Perusal of the charge sheet also reveals that vide note dated 04.08.2015 the process of engaging 3 persons namely Gautam Singh, Bhupender Singh and Banteshwar Singh was initiated in DCW. It is mentioned in the said note that Resume of those 3 persons for the post of Research Assistant, Media Advocacy Officer and Personal Assistant, respectively, were placed along with the note and it is also mentioned that vide meeting dated 29.07.2015 those 3 posts were decided to be created and it was decided that persons for those 3 posts be hired on contract basis initially for 3 months against the vacant posts. There was no vacant post for those 3 category of persons sought to be engaged on contract basis as per letter of Department of Social Welfare dated 22.06.2007. The resume of these 3 persons were then placed before A1 through the then MS and A1 approved the recruitment of those 3 persons on 06.08.2015 w.e.f. that very day. Thereafter on 11.08.2015 A1

approved the remuneration of those 3 persons to the tune of Rs. 25,000/-, 30,000/- and Rs. 22,000/- respectively vide her approval dated 11.08.2015. It may also be noted here that prior to approval of A1 to engage these 3 persons on 06.08.2015, those persons were asked to furnish their academic certificate and out of them only Gautam Singh and Banteshwar Singh submitted their academic certificates as reflected in the note sheet itself. The MS in her note dated 05.08.2015 specified that only 2 out of 3 have given their academic certificates and the MS directed the file to be placed before A1 to consider the applications and decide in the matter and also about their remuneration. Thereafter vide note dated 06.08.2015 A1 approved the recruitment w.e.f that very day and she asked about the previous remuneration given to the persons against those posts if any. Thereafter exercise was done about the previous remuneration and then the above mentioned remuneration was approved by A1 on 11.08.2015. Subsequently the appointment of these 3 persons were allowed to be continued by A1 under her approval dated 06.11.2015. It may be recounted here that both Gautam Singh and Banteshwar Singh were erstwhile associates of A1 and were her colleagues in the office of Chief Minister and A1 had even issued appreciation letters dated 15.07.2015 in their favour as specified in para 2.6 of this Order. Even if it is assumed that prior to the impugned tenure of the accused persons, someone was working under nomenclature of those three posts, it would not go in favour of the accused as when those posts did not exist, accused cannot claim that the earlier DCW also had engaged persons on those posts. A wrong is a wrong even if done by everyone. The manner in which these three appointments were made in opaque manner and without advertisement of vacancies etc, clearly reflects nepotism. One of the appointee did not even submit certificates yet was appointed.

- 10.6.** Similarly, another note dated 09.11.2015 reveals that one Chand Ram applied for the post of Data Entry Operator (DEO) in DCW and his application was processed. In the note dated 09.11.2015 of the then MS it is mentioned that A1 had no clerical assistance in her office and there were vacancies of LDC's and that this issue was discussed with A1 in which A1 desired that one DEO be engaged on contract basis against one post of LDC for one month and A1 then approved that note on 10.11.2015 appointing Chand Ram as DEO and also A1 specified remuneration of Chand Ram as Rs. 13,500/- per month. There is no clarity as to under what circumstance Chand Ram applied for the post and why his name was considered in exclusion to all others. It also prima facie smacks of nepotism.
- 10.7.** Note dated 02.02.2016 regarding extension of the period of engagement of 7 staff members including Bhupender Singh, Gautam Singh and Banteshwar Singh was approved by A1 on 10.02.2016 for a period of 3 months. In this very approval A1 also noted that Mr. Prem Sagar Pal was assisting A4 i.e. member Ms. Sarika and that Mr. Prem Sagar Pal should be compensated for it. Thereafter on 16.02.2016 it was proposed by the Assistant Secretary of DCW to appoint Mr. Prem Sagar Pal on the post of Legal Counsellor w.e.f. 01.02.2016. Under the note dated 19.02.2016 A1 also directed that Mr. Prem Sagar Pal be appointed and it be ensured that he gets his remuneration for the period he has served in the Commission and it is specifically directed that it be done immediately and that there was already a delay of 9 days since A1 had ordered to do so i.e. the appointment and that the subordinate was directed to revert to A1 on it on that very day. Thereafter Prem Sagar Pal was appointed w.e.f. 01.02.2016. Under note dated 22.02.2016 the Assistant Secretary of DCW put up the file for decision as to the period of contract and remuneration to be paid to Prem Sagar Pal. Vide note dated 24.02.2016 A1 not only approved appointment of Prem Sagar Pal but she

also mentioned that a sum of Rs. 1500/- per day be given to Prem Sagar for 3 months and she also directed that Prem Sagar be given remuneration from the day he has been rendering his services and also its status be informed on the next day to A1.

- 10.8.** Vide another note dated 22.02.2016 in the same note file it is mentioned that as discussed with the Deputy Secretary, 4 Legal Counsellors were working in DCW with remuneration mentioned against their names i.e. Ms. Biji Anil (Rs. 40,000/- p.m.), Ms. Prabh Sahai Kaur (Rs. 35,000/- per month), Ms. Kesar Parveen (Rs.1500 per day), Sh. Md. Umar Iqbal Khan (Rs. 375/- per hour). It seems that thereafter the remuneration of Prem Sagar was decided as above. This note also reflects that already the above named 4 persons were working as Counsellors in DCW against the remuneration mentioned as above. Even their engagement is questioned by the investigating agency and is claimed to be guided by nepotism.
- 10.9.** It is not in dispute that DCW appointed 71 persons on contract basis in DCW. In the charge sheet there is a tabulated information as to those 71 persons so working as on 16.11.2016 in DCW and the said tabulated information placed at page no. 362 -366 of the charge sheet reflects not only the date of initial appointment of those 71 persons, but also the remuneration increased qua them. Just to mention a few Gautam Singh was appointed as Research Assistant on 06.08.2015 and his remuneration was increased to Rs. 50,000/- p.m. from Rs. 25,000/- p.m. Similarly, Bhupender Singh was appointed as Media Advocacy Officer on 06.08.2015 and his remuneration was increased to Rs. 70,000/- p.m. from Rs. 30,000/- p.m. Similarly, Banteshwar Singh was appointed as PA to A1 on 06.08.2015 and his remuneration was increased to Rs. 40,000/- p.m. from Rs. 22,000/- p.m. I have already mentioned above the manner of appointments of Gautam Singh, Bhupinder Singh and Banteshwar Singh and the very fact that their

appointment was a result of nepotism, coupled with the increase in their remuneration to more than double the initial amount, prima facie creates a strong suspicion to frame charge u/s 13 (1)(d) of PC Act.

- 10.10.** Besides the above mentioned 71 officials, 16 persons were engaged on contract basis for women helpline no. 181 and their list as on 16.11.2016 is also part of the charge sheet at page no. 367 & 368.
- 10.11.** During investigation information was also collected from the Department of IT, Government of NCT of Delhi as to whether any such posts were advertised on the website, as claimed by the accused during investigation. Vide its reply dated 25.11.2016 IT department informed that only on four occasions few uploading as to requirement of staff was done i.e. on 22.08.2016 as to Legal Counsellor, on 01.07.2016 as to Registrar; on 26.04.2016 as to Legal Counsellor and on 26.02.2016 as to requirement of 4 DEO. Besides it no other information as to uploading of requirement of staff or publication of vacancy was given. No other advertisement of post or invitation of applications for various posts on which appointments were made and the manner of selection, came forth from the side of accused persons.
- 10.12.** Vide meeting dated 06.04.2016 under decision no. 1, the accused persons, all of whom were present in the meeting took a unanimous decision to increase the manpower on the ground that it was required to expand different activities of the Commission and w.e.f. 01.04.2016 appointment of 15 persons was made claiming to be on emergent contract basis for a period of three months. Those 15 persons appointed were on the post of Consultants, Legal Counsellors, Documentation Officer, Part Time consultants, Assistant Coordinator, Coordinator, Research Assistant, Advocacy Assistant, DEO, MTS and Caller 181. These appointments were

made against remuneration of various amounts ranging from Rs. 10,000/- to Rs. 50,000/- per month.

- 10.13.** Under the decision no. 2 of the meeting of the DCW on that very day, unanimously it was decided to enhance the remuneration of contractual staff already working with the Commission and also a decision was taken to change the designation of some of the staff members. Besides it, various minutes of the meetings held on various dated from 26.02.2016 to 09.08.2016 by DCW, of which all the four accused are signatory, various decisions as to creation of posts/ appointments/ fixing and enhancing of remuneration was under taken by the accused persons.
- 10.14.** The argument of accused persons that DCW was completely autonomous in creating posts or recruiting anyone of its choice, falls flat from the very fact that DCW itself sought permission / Sanction of the Government for creation of post vide note and further proceedings dated 28.10.2015, which is part of charge sheet. Merely because DCW had been pursuing the Government to fill up the vacant posts which was not timely complied with by the Government did not give any right to DCW to make arbitrary appointments. The above mentioned facts do create a strong suspicion that recruitments to various posts were made during the impugned tenure of the accused persons for different remunerations in arbitrary manner, violating all Rules & Regulations in which the near & dear ones were appointed and remunerations were given to them from public exchequer.
- 11.** The argument of accused persons that ingredients of Sec. 13(1)(d) of the POC Act are not fulfilled in the facts of the present case as the element of dishonest intention is lacking, is also without force.

11.1. Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, as were in existence at the time of offence of this case, and so far as relevant in this case, are to the following effect:

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

(d) if he—

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

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

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

(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.”

11.2. To attract the provisions of Section 13(1)(d) of the Prevention of Corruption Act, a public servant should obtain for himself or for any other person any valuable thing or pecuniary advantage either by corrupt or illegal means or by abusing his position as a public servant or, while holding such office without any public interest any such advantage is obtained. All the three sub clauses of Clause (d) of Sub-Section (1) of Sec. 13 of the POC Act are independent and if the elements of any of the three sub clauses are met, the same would be sufficient to constitute offence of ‘criminal misconduct’. The three sub clauses of clause (d) are in the alternative and disjunctive. Thus, even where any pecuniary advantage is obtained for someone else by a public servant, by abusing his position, it would amount to criminal misconduct.

11.3. Existence of dishonest intention has to be gathered from the facts & circumstance of a case and it being a mental element, no physical evidence

of the same would be readily available. In the present case, the above mentioned facts clearly demonstrates that appointments were made in opaque manner, in arbitrary manner, without inviting applications from eligible candidates and persons fulfilling or meeting the criteria for the relevant posts, without even seeking Sanction for creation of many such posts, against Rules & Regulations and the conditions of grant-in-aid by the Government and other official circulars and directions and also remuneration of many of the persons so appointed were increased arbitrarily against all Rules & Regulations. The discussion as above also prima facie indicates that most of the appointments were given to the near & dear ones of the accused persons / AAP party. Thus, it cannot be claimed by the accused persons that they did not abuse their position in order to obtain pecuniary advantages for other persons i.e. the persons so appointed or that prima facie there was no dishonest intention. A public servant causing wrongful loss to the government by benefitting a third party would squarely fall within the definition of Sec. 13(1)(d). The words “by abusing his position as a public servant” are very comprehensive to cover an act done otherwise than by corrupt or illegal means by a public servant abusing his position. Abusing means misuse i.e. using the position by the public servant for something for which it is not intended.

11.4. Here, certain observations made by Hon'ble Supreme Court in the case of ***Chittaranjan Shetty v. State*, (2015) 15 SCC 569** would be worth mentioning:

“21. *This Court, in M. Narayanan Nambiar v. State of Kerala [M. Narayanan Nambiar v. State of Kerala, AIR 1963 SC 1116 : (1963) 2 Cri LJ 186 : 1963 Supp (2) SCR 724] gave a broad interpretation to Section 5(1)(d) of the Prevention of Corruption Act, 1947, which is in pari materia with Section 13(1)(d) of the Act and held: (AIR pp. 1118-19, para 10)*

“10. ... *First taking the phraseology used in the clause, the case of a public*

servant causing wrongful loss to the Government by benefiting a third party squarely falls within it. Let us look at the clause 'by otherwise abusing the position of a public servant', for the argument mainly turns upon the said clause. The phraseology is very comprehensive. It covers acts done 'otherwise' than by corrupt or illegal means by an officer abusing his position. The gist of the offence under this clause is, that a public officer abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage. 'Abuse' means misuse i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means. The word 'otherwise' has wide connotation. ... The juxtaposition of the word or 'otherwise' with the words 'corrupt or illegal means', and the dishonesty implicit in the word 'abuse' indicate the necessity for a dishonest intention on his part to bring him within the meaning of the clause. Whether he abused his position or not depends upon the facts of each case; nor can the word 'obtains' be sought in aid to limit the express words of the section. 'Obtain' means acquire or get. If a corrupt officer by the said means obtains a valuable thing or a pecuniary advantage, he can certainly be said to obtain the said thing or a pecuniary advantage; ... On a plain reading of the express words used in the clause, we have no doubt that every benefit obtained by a public servant for himself or for any other person by abusing his position as a public servant falls within the mischief of the said clause."

12. Similarly, in the case of **Neera Yadav v. CBI**, (2017) 8 SCC 757, it is held as follows

"17. A perusal of the above provision makes it clear that if the elements of any of the three sub-clauses are met, the same would be sufficient to constitute an offence of "criminal misconduct" under Section 13(1)(d). Undoubtedly, all the three wings of clause (d) of Section 13(1) are independent, alternative and disjunctive. Thus, under Section 13(1)(d)(i), obtaining any valuable thing or pecuniary advantage by corrupt or illegal means by a public servant in itself would amount to criminal misconduct. On the same reasoning "obtaining a valuable thing or pecuniary advantage" by abusing his official position as a public servant, either for himself or for any other person would amount to criminal misconduct.

54. A particular kind of corruption that has become more rampant of late is nepotism to promote the interests of those near and dear to them. Nepotism is in a sense a greater evil since it involves dispersal of favours by patrons

amongst their arm coterie, depriving others of a career or office they deserve more. The practice of promoting the interest of few individuals to the detriment of many others is wholly reprehensible and deserves to be condemned.”

13. Turning to the argument of the accused persons that there is no evidence of criminal conspiracy between the accused persons and therefore charge U/s 120B of IPC cannot be framed against the accused persons, in that regard reliance has been placed by the accused persons upon the case of *State of Kerala Vs. P. Sugathan & Anr. (2000) 8 SCC 203; Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao (2012) 9 SCC 512 and; Kehar Singh & Ors. Vs. State (Delhi Administration) (1988) 3 SCC 609*. It was observed in these cases that to prove criminal conspiracy there must be evidence, direct or circumstantial, to show that there was an agreement between two or more persons to commit an offence, there must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence; where conspiracy is sought to be inferred from circumstances the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence; the prosecution has to discharge its onus of proving the case against accused beyond reasonable doubt; a few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of crime of the criminal conspiracy; the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused; even if some acts are proved to have been committed it must be clear that they were committed in pursuance of agreement between the accused persons and conspiracy cannot deemed to have been established on mere suspicion, surmises or inference not supported by cogent and acceptable evidence; the concurrence between accused cannot be inferred by

a group irrelevant facts artfully arranged so as to give an appearance of coherence; the innocuous, innocent or inadvertent events and incidents should not enter judicial verdict.

- 13.1.** There is no dispute as to the above said settled legal position. However, all the above mentioned four cases were appeals against judgments of trial courts and therefore the stage is different.
- 14.** Perusal of the minutes of the meetings held on various dated from 26.02.2016 to 09.08.2016 by DCW, of which all the four accused are signatory, various decisions as to creation of posts/ appointments/ fixing and enhancing of remuneration was under taken by the accused persons, including the minutes of the meeting dated 06.04.2016 vide which several persons were appointed and the remuneration was arbitrarily increased, as also the minutes dated 01.03.2016 regarding appointment of Mr. Dhal, to which all the four accused are signatories are enough to prima facie point to a strong suspicion that the appointments in question were made by the accused persons in agreement with each other. After all, none of the three accused besides A1 ever objected to or gave a dissenting note to the illegal appointments. Rather the decisions were claimed to have been arrived at unanimously in those meetings. There would be no apparent evidence of conspiracy available in most of the cases and it has to be gathered from the circumstances. In this case also the circumstances do prima facie strongly indicate such a conspiracy between the accused persons. Even though, there are no express allegations in as many words against the accused persons as to their conspiracy mentioned in the charge sheet, but indeed Sec. 120B of IPC has been invoked against them and the facts do indicate such a conspiracy.
- 15. Accordingly, a strong suspicion does arise against all the four accused persons and the facts do disclose prima facie sufficient material to**

frame charges against all the four accused persons for offences U/s 120B of IPC r/w Sec. 13(1)(d)/13(2) of POC Act as well as for the substantive offence U/s 13(2) r/w Sec. 13(1)(2) of POC Act. Charges be framed accordingly.

*Announced in the Open Court
on 08th December 2022.*

**(Dig Vinay Singh)
Special Judge (PC Act) (ACB)-02
Rouse Avenue Courts,
New Delhi (k)**