

Form No.XXXII

Part ' A '

MCOC SPECIAL CASE NO.01/2015 @ 16/2019

[Para 44(i) of Chapter VI of Criminal Manual]

MHCC020045782015



Received on : 12.02.2015

Registered on : 12.02.2015

Decided on : 16.03.2023

Duration : 08 01 04

Years Months Days

CNR NO. : MHCC02-004578-2015

EXT.678

IN THE COURT OF SPECIAL JUDGE UNDER
MCOC / NIA / TADA ACT, FOR GREATER
MUMBAI AT MUMBAI

Present : B.D. SHELKE, ADDL. SESSIONS JUDGE
& SPECIAL JUDGE UNDER MCOC / NIA /TADA
ACT, GREATER MUMBAI.

[Date of Judgment] : 16.03.2023.

MCOC SPECIAL CASE NO.01 OF 2015

C.R. No.105/2014 in D.C.B. C.I.D., Mumbai.
(C.R. No.288/2014 in Juhu police station.)

Complainant - **The State of Maharashtra,**
(At the instance of D.C.B. C.I.D., Mumbai,
C.R. No.105/2014)
(Juhu police station, C.R. No.288/2004)

REPRESENTED BY : Mr. Pradip Gharat, SPP for State /
Prosecution.

ACCUSED - **1. Mohammad Anis Abdul Rashid Merchant**

@ Radiowala (A1)

Aged : about 43 years, Occ.: Building Material Supplier

R/at : A/502, Sainath Co-Op Hsg. Society, 5th Floor, Gate No.8, Malvani, Malad (W), Mumbai.

2. Ishrat Badshah Shaikh (A2)

Aged : about 48 years, Occ.: Labour Contractor

R/at : Aftab Palace, 1st Floor, Room No.107, Near Insha Nagar, Amrut Nagar, Kausa, Mumbra, Dist. Thane.

3. Ashpak Abdul Rashid Sayyed (A3)

Aged : about 30 years, Occ.: Service

R/at : Old Nasheman, A-Wing, Room No.04, Kausa, Mumbra, Dist. Thane.

4. Azim Nasim Khan @ Shotty (A4)

Aged : about 28 years, Occ.: Service

R/at : Room No.04, A-Wing, Opp. Shirin Villa, Kalsekar College, Kausa, Mumbra, Dist. Thane.

5. Asif Abdul Sattar Khan @ Boss (A5)

Aged : about 35 years, Occ.: Nil

R/at : Room No.06, Ground Floor, A-Wing, Parkar Complex, Kismat Colony, Mumbra, Dist. Thane.

6. Shahanawaj Sharifulla Shaikh @ Shanu (A6)

Aged : about 42 years, Occ.: Nil

R/at : Indira Gandhi Nagar, Behind Jubli Park, Zopda No.9 & 10, Shrilanka, Kausa, Mumbra, Dist. Thane.

7. Mohammad Hasnat Hakikkulla Mohammad Shakil Khan (A7)

Aged : about 46 years, Occ.: Electrician

R/at : Jubali Park, Building No.10/304,

Shrilanka, Kausa, Mumbra, Dist. Thane.

8. Ravikesh Jagdamba Singh @ Ravi (A8)

Aged : about 32 years, Occ.: Estate Agent
R/at : Room No.401, A-Wing, Rashmi Star
City, Aachole Talav, Nalasopara (E), Dist.
Palghar.

9. Sufiyan Dilshad Shaikh (A9)

Aged : about 26 years, Occ.: Building
Material Supplier
R/at : Room No.302, Shamim Manzil, 3rd
Floor, Tulinj Naka, Tulinj Road, Nalasopara
(E), Dist. Palghar.

10. Faiz Naim Shaikh (A10)

Aged : about 29 years, Occ.: Education
R/at : Room No.201, Shamim Manzil, Appa
Nagar, Tulinj Naka, Tulinj Road, Nalasopara
(E), Dist. Palghar.

11. Armaan Abbas Siddhiqui @ Bunty (A11)

Aged : about 28 years, Occ.: Education
R/at : Room No.201, Anis Manzil, Sonar
Wadi, Dahanu Baug Talav, Tal. Vasai,
Nalasopara (E), Dist. Palghar.

REPRESENTED BY : Mr. Manerkar, advocate for Accused
Nos.1 to 4, 6, 7, 10.
Mr. Aditya Sharma, advocate for
Accused No.5.
Mr. Jitendra Mishra, advocate for
Accused No.8.
Mr. Satish Mishra, advocate for
Accused No.9.
Ms. Anjali Awasthi, advocate for
Accused No.11.

ALONGWITH

MHCC020122122019



Received on : 08.08.2019
Registered on : 08.08.2019
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Duration : 03 07 08
Years Months Days
CNR NO. : MHCC02-012212-2019

EXT.678

**IN THE COURT OF SPECIAL JUDGE UNDER
MCOC / NIA / TADA ACT, FOR GREATER
MUMBAI AT MUMBAI**

**Present : B.D. SHELKE, ADDL. SESSIONS JUDGE
& SPECIAL JUDGE UNDER MCOC / NIA /TADA
ACT, GREATER MUMBAI.**

[Date of Judgment] : 16.03.2023.

MCOC SPECIAL CASE NO.16 OF 2019

**C.R. No.105/2014 in D.C.B. C.I.D., Mumbai.
(C.R. No.288/2014 in Juhu police station.)**

Complainant - **The State of Maharashtra,**
(At the instance of D.C.B. C.I.D., Unit-IX,
Mumbai, C.R. No.105/2014)
(Juhu police station, C.R. No.288/2004)

REPRESENTED BY : Mr. Pradip Gharat, SPP for State /
Prosecution.

ACCUSED - **12. Obedullah Abdul Rashid Radiowala @
Obed Radiowala @ Rabbitwala (A12)**
Aged: - about 50 years, Occ.: -,
R/at : (i) Room No.74, Washington Avenue,
Eaj lane, New Jersey, 08830, America
U.S.A.
(ii) 502, 5th floor, Sainath Apartment, Gate

No.08, Malvani, Malad (West), Mumbai.

13. Ravi Sulya Pujari (A13)

... (Wanted)

14. Charanjit Singh @ Sunil Raniyal @ Bittu (A14)

... (Wanted)

15. Sarvar Inder Singh (A15)

... (Wanted)

REPRESENTED BY : Mr. Manerkar, advocate for Accused
No.12.

Part ‘ B ’
[Para 44 (ii) of Chapter VI of Criminal Manual]

Date of offence	Prior to 27.06.2014 till 25.08.2014
Date of FIR	24.08.2014 (in MCOC Spl. Case No.01/2015 @ 16/2019)
Date of Charge-sheet	10.02.2015 (in MCOC Spl. Case No.01/2015) and 01.08.2019 (in MCOC Spl. Case No.16/2019)
Date of Framing of Charges	23.08.2016 (in MCOC Spl. Case Nos.01/2015) and 16.09.2019 (in MCOC Spl. Case No.16/2019)
Date of commencement of evidence.	17.10.2019
Date on which judgment is reserved.	23.02.2023
Date of the Judgment	16.03.2023
Date of the Sentencing Order, if any.	-

Accused Details

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr.PC.
1.	Mohammad Anees Abdul Rashid Merchant @ Radiowala	16.12.14	-	u/Ss.120-B r/w. 302 r/w. 511, 115, 427, 465, 468, 471, 307 of IPC r/w. Ss.3, 25, 27 of Arms Act r/w. Ss.3(1) (ii), 3(2), 3(4) of the MCOC Act.	Acquitted	-	-
2.	Ishrat Badshah Shaikh	16.12.14	-	u/Ss.120-B r/w. 302 r/w. 511, 115, 427, 465, 468, 471, 307 of IPC r/w. Ss.3, 25, 27 of Arms Act r/w. Ss.3(1) (ii), 3(2), 3(4) of the MCOC Act.	Acquitted	-	-
3.	Ashpak Abdul Rashid Sayyed	16.12.14	-	u/Ss.120-B r/w. 302 r/w. 511, 115, 427, 465, 468, 471, 307 of IPC r/w. Ss.3, 25, 27 of	Acquitted	-	-

				Arms Act r/w. Ss.3(1) (ii), 3(2), 3(4) of the MCOC Act.			
4.	Azim Nasim Khan @ Shotty	16.12.14	17.09.16 (B.A. Ext.91)	u/Ss.120- B r/w. 302 r/w. 511, 115, 427, 465, 468, 471, 307 of IPC r/w. Ss.3, 25, 27 of Arms Act r/w. Ss.3(1) (ii), 3(2), 3(4) of the MCOC Act.	Acquitted	-	-
5.	Asif Abdul Sattar Khan @ Boss	16.12.14	(i) 03.08.20 (B.A. Ext.390) (ii) B.A. (Ext.390 cancelled vide Ext.409 dtd.02.09. 20) (iii) (As per Hon'ble Bombay High Court order in Cri. B.A. No.1912 of 2021 dated 25.06.21 bail is granted.)	u/Ss.120- B r/w. 302 r/w. 511, 115, 427, 465, 468, 471, 307 of IPC r/w. Ss.3, 25, 27 of Arms Act r/w. Ss.3(1) (ii), 3(2), 3(4) of the MCOC Act.	Acquitted	-	-

6.	Shahanawaj Sharifulla Shaikh @ Shanu	16.12.14	-	u/Ss.120-B r/w. 302 r/w. 511, 115, 427, 465, 468, 471, 307 of IPC r/w. Ss.3, 25, 27 of Arms Act r/w. Ss.3(1) (ii), 3(2), 3(4) of the MCOC Act.	Acquitted	-	-
7.	Mohammad Hasnat Hakikkulla Mohammad Shakil Khan	16.12.14	-	u/Ss.120-B r/w. 302 r/w. 511, 115, 427, 465, 468, 471, 307 of IPC r/w. Ss.3, 25, 27 of Arms Act r/w. Ss.3(1) (ii), 3(2), 3(4) of the MCOC Act.	Acquitted		
8.	Ravikesh Jagdamba Singh @ Ravi	16.12.14	(i) 24.10.15 (B.A. Ext.50) (ii) 12.08.22 (B.A. Ext.640 is <u>allowed</u> against cancellati on of NBW dtd.27.07. 22)	u/Ss.120-B r/w. 302 r/w. 511, 115, 427, 465, 468, 471, 307 of IPC r/w. Ss.3, 25, 27 of Arms Act r/w. Ss.3(1) (ii), 3(2), 3(4) of the MCOC Act.	Acquitted	-	-
9.	Sufiyan Dilshad	17.11.14	(i) 17.08.20	u/Ss.120-B r/w.	Acquitted	-	-

	Shaikh		(B.A. Ext.396) (ii) B.A. (Ext.396 <u>cancelled</u> vide Ext.410 dtd.02.09.20)	302 r/w. 511, 115, 427, 465, 468, 471, 307 of IPC r/w. Ss.3, 25, 27 of Arms Act r/w. Ss.3(1) (ii), 3(2), 3(4) of the MCOC Act.			
10.	Faiz Naim Shaikh	17.11.14	(i) 05.09.15 (B.A. Ext.2) (ii) 03.08.22 (B.A. Ext.631 is <u>allowed</u> against cancellati on of NBW dtd.27.07.22)	u/Ss.120-B r/w. 302 r/w. 511, 115, 427, 465, 468, 471, 307 of IPC r/w. Ss.3, 25, 27 of Arms Act r/w. Ss.3(1) (ii), 3(2), 3(4) of the MCOC Act.	Acquitted	-	-
11.	Armaan Abbas Siddhiqui @ Bunty	17.11.14	05.09.15 (B.A. Ext.2)	u/Ss.120-B r/w. 302 r/w. 511, 115, 427, 465, 468, 471, 307 of IPC r/w. Ss.3, 25, 27 of Arms Act r/w. Ss.3(1) (ii), 3(2), 3(4) of the MCOC Act.	Acquitted	-	-
12.	Obedullah Abdul Rashid Radiowala @ Obed	15.04.19	-	u/Ss.120-B r/w. 302 r/w. 511, 115,	Acquitted	-	-

	Radiowala @ Rabitwala			427, 465, 468, 471, 307 of IPC r/w. Ss.3, 25, 27 of Arms Act r/w. Ss.3(1) (ii), 3(2), 3(4) of the MCOC Act.			
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Part ‘ C ’

[Para 44 (iii) of Chapter VI of Criminal Manual]

LIST OF PROSECUTION WITNESSES

Rank	Name	Nature of Evidence
PW1	Eknath Shankar Jamadar	Other witness
PW2	Mohammad Ayub Mohammad Mehaboob Khan	Other witness
PW3	PI Shivaji Yadavrao Shivtare	Police witness
PW4	Amit Hridaynarayan Singh	Eye witness (Victim)
PW5	Narendra Krishna Thakur (Retired as Nayab Tahasildar)	Other witness
PW6	Sunil Subhashchandra Tiwari (Regulatory to Bharti Airtel, Delhi)	Other witness
PW7	Nodal Officer at Bharti Airtel- Yogesh Shrikrishna Rajapurkar	Other witness
PW8	Pahadsingh Nethisingh Chauhan	Other witness
PW9	Shahzad Umar Kaswani	Other witness
PW10	Vijay Eknath Shinde	Other witness
PW11	Nodal Officer Tata Teleservices- Baby John	Other witness
PW12	Retired Nodal Officer, Vodafone, Mumbai Circle- Vikas Narayan	Other witness

	Phulkar	
PW13	Deepak Yenulal Gaire	Other witness
PW14	Radha Subhash Solanki	Other witness
PW15	Kumar Chalaiya Swami	Other witness
PW16	Mohammad Munavar Shah	Other witness
PW17	Mohammad Safi Alam Razi	Other witness
PW18	Shayad Jainuddin Nijamali	Other witness
PW19	Mohammad Sameer Abdul Aziz Shaikh	Other witness
PW20	Pintu Lanchan Gaud	Other witness
PW21	PHC 32085- Vikas Sambhaji Sawant	Police witness
PW22	Santosh Bhaskar Pednekar	Other witness
PW23	Mohammad Akhil Khurshid Ahmed Ansari	Other witness
PW24	PC 041174- Amit Bhimrao Mahangade	Police witness
PW25	Zaheer Anwar Shaikh	Other witness
PW26	Anil Hari Dhangar	Other witness
PW27	Chandan Subhash Sontake	Other witness
PW28	Mehtab Ahmed Aihسان Ahmed	Other witness
PW29	Akbarali Afsarali Sayyed	Other witness
PW30	Irfan Anwar Khan	Other witness
PW31	Siraj Sali Mohammad Khamare	Other witness
PW32	Ali Raza Shabbir Hussain Talajawala	Other witness
PW33	Rajesh Pyarelal Gupta	Other witness
PW34	Dushyant Mangaru Singh	Other witness
PW35	Danish Aasif Shaikh	Other witness
PW36	Mohammad Rafiq Shamsuddin Momin	Other witness
PW37	Mohammad Shafik Shaikh	Other witness
PW38	Jiyauddin Noor Mohammad Khan	Other witness
PW39	Vishwanath Chikan Jha	Other witness

PW40	Raja Karim Shaikh	Other witness
PW41	Salim Washid Ali Shaikh	Other witness
PW42	Washim Siraj Dhamaskar	Other witness
PW43	Mohammad Jafar Sirajuddin Mansoori	Other witness
PW44	Ravindra Dagadu Brahamane	Other witness
PW45	Shahanawaj Saed Khan	Other witness
PW46	Shashidhar Kalu Shetty	Other witness
PW47	Rahul Shamnarayan Pandey	Other witness
PW48	Asir Yusuf Ali Shaikh	Other witness
PW49	Sonu Shaktisagar Sood	Other witness
PW50	Sabina Abdul Somani	Other witness
PW51	Hanif Akbar Shaikh	Other witness
PW52	Ali Gulam Ali Morani	(Informant)
PW53	Naim Lallan Khan	Other witness
PW54	PI Deepak A. Sawant	Police witness
PW55	API Kiran Vasantrao Pagare	Police witness
PW56	Retired PI Kishor Vasantrao Patil	Police witness
PW57	Retired Nodal Officer- P. N. Singh	Other witness
PW58	PI Sagar Jagannath Shivalkar	Police witness
PW59	Jodhunath Krushnachandra Lenka	Other witness
PW60	C.P. Sadanand Vasant Date	Police witness
PW61	Retired ACP Sunil Laxman Deshmukh	Police witness
PW62	Addl. C.P. Virendra Ramvilas Mishra	Police witness
PW63	Retired ACP Ashok Tukaram Durafte	Police witness
PW64	Suspended PI Asha Vishwanath Korke	Police witness
PW65	Retired C.P. Rakesh Harikrushna Mariya	Police witness
PW66	M.L.A. Rajesh Udaysingh Padvi	Police witness

LIST OF PROSECUTION EXHIBITS

DOCUMENTS

Sr. No.	Exhibit Number	Description
1.	225	Panchanama at page no.221.
2.	227	Panchanama at page no.82.
3.	240 & 241	TIP panchanama from page nos.115 to 135 and page nos.161 to 179, 183.
4.	242	Letter at page no.3843.
5.	246	Covering letter at page no.3845.
6.	247	The certificate u/S.65B(4) at page no.3847.
7.	248(Colly.)	The CDRs at page nos.3875 to 4291.
8.	249	The letter at page no.4293.
9.	250	Covering letter at page no.4295.
10.	251	The certificate u/S.65B(4) at page no.4297.
11.	252(Colly.)	The CDRs at page nos.4299 to 4444.
12.	253	The letter at page no.4445.
13.	254	Covering letter at page no.4447.
14.	255	The certificate u/S.65B(4) at page no.4449.
15.	256(Colly.)	The CDRs at page nos.4469 to 4499.
16.	257	The letter at page no.4501.
17.	258	Covering letter at page no.4503.
18.	259	The certificate u/S.65B(4) at page no.4505.
19.	260(Colly.)	The CDRs at page nos.4519 to 4524.
20.	261(Colly.)	The letters at page nos.4525 and 4527.

21.	262	Letter at page no.4529.
22.	263	The certificate u/S.65B(4) at page no.4531.
23.	264	Covering letter at page no.4533.
24.	265	The certificate u/S.65B(4) at page no.4535.
25.	266(Colly.)	The CDRs at page nos.4537 to 4557.
26.	Portion Mark 'A'	Statement recorded in evidence of PW-6.
27.	268	The covering letter at page no.67.
28.	269	The certificate at page no.69.
29.	270 (Colly.)	The CDRs of cell no.9665168378 from pg no. 147 to 198.
30.	271 (Colly.)	The CDRs of cell no.9987401421 from page nos.199 to 307.
31.	272(Colly.)	The CDRs of cell no.9867111711 from page no. 309 to 423.
32.	273 (Colly.)	The CDRs of cell no.9867060088 from page nos.425 to 701.
33.	274	The letter at page no.703.
34.	275	The covering letter at page no.705.
35.	276	The certificate at page no.707.
36.	277 (Colly.)	The CDRs of cell no.99370253321 from page nos.709 to 714.
37.	278 (Colly.)	The CDRs from page nos.715 to 729.
38.	279 (Colly.)	The CDRs of cell no.9759820331 from page nos.731 and 732.
39.	280 (Colly.)	The CDRs from page nos.733 to 737.
40.	281	The CDRs of cell no.18622200002 from page no.739.
41.	282	The CDRs of cell no.18624855507 from page no.741.

42.	283	The CDRs of cell no.18566260179 from page no.743.
43.	284	The CDRs of cell no.1822490708 from page no.745.
44.	285	The CDRs of cell no.17327621462 from page no.747.
45.	286(Colly.)	The letter at page nos.749 and 751.
46.	287	The covering letter at page no.753.
47.	288	The certificate at page no.755.
48.	289(Colly.)	The CDRs of cell no.9867735715 from page nos.775 to 1087.
49.	290 (Colly.)	The CDRs of cell no.9867735715 from page nos.1089 and 1093
50.	291 (Colly.)	The CDRs of cell no.9967100944 from page nos.1095 to 1172.
51.	292 (Colly.)	The CDRs of cell no.9967100944 from page nos.1173 to 1176.
52.	293	The letter at page no.1177.
53.	294	The covering letter at page no.1179.
54.	295	The certificate at page no.1181.
55.	296 (Colly.)	The CDRs of cell no.7738262215 from page nos.1187 to 1317.
56.	297(Colly.)	The CDRs of cell no.7738262215 from page nos.1319 to 1392.
57.	298	The letter at page no.1393.
58.	299	The covering letter at page no.1397.
59.	300	The certificate at page no.1399.
60.	301	The CDRs of cell no.9561398554 page no.1433.
61.	302 (Colly.)	The CDRs of cell no.9867302222 from page nos.1435 to 1574.
62.	303 (Colly.)	The CDRs of cell no.9867302222 from page

		nos.1573 to 1581.
63.	304	The letter at page no.1583.
64.	305	The covering letter at page no.1587.
65.	306	The certificate at page no.1589.
66.	307 (Colly.)	The CDRs of cell no.9867343198 page nos.1619 to 1657.
67.	308 (Colly.)	The CDRs of cell no.9867343198 from page nos.1659 to 1662.
68.	314	The letter at page no.1 (File- 1).
69.	315	The forwarding letter at page no.3.
70.	316	The certificate at page no.5.
71.	317	The true copies of CDRs at page nos.13 to 21.
72.	318	The letter at page no.41 (File- 1).
73.	319	The forwarding letter at page no.49.
74.	320	The certificate at page no.51.
75.	321 (Colly.)	The true copies of CDRs at page nos.53 to 63.
76.	322	The letter at page no.43 (File- 1).
77.	323	The forwarding letter at page no.45.
78.	324	The certificate at page no.47.
79.	325	The letters at page no.23 (File- 1).
80.	326	The forwarding letter at page no.25.
81.	327	The certificate at page no.27.
82.	328(Colly.)	The true copies of CDRs at page nos.29 to 39.
83.	332 (Colly.)	The letters at page nos.1681 and 1683 (File no.3) .
84.	333	The forwarding letter including SDR at page

		no.1685.
85.	334	The certificate at page no.1689.
86.	335 (Colly.)	The true copies of CDRs at page nos.1691 to 1693.
87.	336 (Colly.)	The letters at page no.1695 (File no.3).
88.	337 (Colly.)	The forwarding letter including SDR at page nos.1697 to 1699.
89.	338	The certificate at page no.1701.
90.	339 (Colly.)	The true copies of CDRs at page nos.1729 to 1920.
91.	340 (Colly.)	The true copies of CDRs at page nos.1921 to 2032.
92.	341 (Colly.)	The true copies of CDRs at page nos.2033 to 2118.
93.	342 (Colly.)	The true copies of CDRs at page nos.2119 to 2262.
94.	343 (Colly.)	The true copies of CDRs at page nos.2263 to 2390.
95.	344 (Colly.)	The true copies of CDRs at page nos.2391 to 2436.
96.	346	The letter at page no.3417.
97.	347	The certificate at page no.3419.
98.	348	The verified SDR at page no.3439.
99.	349 (Colly.)	The true copies of CDRs at page nos.3441 to 3624.
100.	350	The letter at page no.2579.
101.	351	The certificate at page no.2581.
102.	352 (Colly.)	The true copies of CDRs at page nos.2603 to 2808.
103.	353 (Colly.)	The true copies of CDRs at page nos.2809 to 2938.
104.	354	The true copy of SDR at page no.2939.
105.	355 (Colly.)	The true copy of SDR at page nos.2941 to 3020.
106.	356	The letter at page no.3021.
107.	357	The certificate at page no.3023.

108.	358	The true copy of SDR at page no.3039.
109.	359 (Colly.)	The true copies of CDRs at page nos.3041 to 3305.
110.	360 (Colly.)	The two letters at page nos.3649 and 3651.
111.	361	The certificate at page no.3653.
112.	362 (Colly.)	The true copies of CDRs at page nos.3655 to 3665.
113.	363	The letter at page no.3625.
114.	364	The certificate at page no.3627.
115.	365 (Colly.)	The true copies of CDRs at page nos.3629 to 3647.
116.	366	The letter at page no.3307.
117.	367	The certificate at page no.3309.
118.	368 (Colly.)	The true copies of CDRs at page nos.3311 to 3415.
119.	369	The letter at page no.3667.
120.	370 (Colly.)	The certificates at page nos.3669 and 3671.
121.	371	The true copy of SDR at page no.3685.
122.	372 (Colly.)	The true copies of CDRs at page nos.3687 to 3808.
123.	374	The panchanama at page nos.65 and 66.
124.	378	True copy of panchanama at page nos.71 to 76.
125.	381	Panchanama as per page nos.111 to 113.
126.	384	Panchnama at page no.69.
127.	386	Panchanama as per nos.107 to 109.
128.	388	The writing at page no.103.
129.	389	The writing of proceeding.
130.	437	Panchanama as per page no.219.
131.	438	The letter for handling over the incriminating

		articles to the FSL as per the copy at page no.277.
132.	441	The entry no.3823 dated 24.08.2014 on page no.12 of Supreme Guest House hotel register.
133.	442	The photostat copy of driving license at page no.201.
134.	443	Panchanama as per page nos.197 to 199.
135.	446	The panchanama at page nos.241 and 242.
136.	448	The letter at page no.279.
137.	450	The certificate u/S.65B(4) regarding retrieval of copies and preparation of C.D.
138.	453	The statement as per page nos.185 and 186.
139.	454	Panchanama at page no.189.
140.	459	The statement as per page nos.151 and 152.
141.	460	The statement at page nos.153-154.
142.	464	The statement at page no.148.
143.	465	Spot panchanama.
144.	498	The panchanama as per page nos.158 to 159.
145.	501	The statement as per page nos.83-84.
146.	502	The panchanama as per page nos.84 to 87.
147.	505	The panchanama as per page nos.141-142.
148.	506	The panchanama as per page nos.143-144
149.	512(Colly.)	CAFs (Page nos.3849 to 3873).
150.	518	The certified copy at page no.331.
151.	522	The certificate u/S.65B(4) of Evidence Act relating to collection of CCTV footages.
152.	524	The panchanama at page nos.67-68.
153.	532	The panchanama at page no.1.

154.	536	FIR as per page nos.57-58.
155.	537(Colly.)	Signatures of PW-52 at page nos.56 and 59.
156.	548	Statement as per page nos.203-204.
157.	549	The panchanama as per page nos.205-207.
158.	551	Printed FIR form as per page nos.55 and 59.
159.	553	The statement at page nos.89-90.
160.	554	Recovery panchanama at page nos.91-93.
161.	557	The letter dated 19.01.2015 issued by Law Enforcement Agency for retrieving the material relating to International Mobile no.0076108925979.
162.	558	Covering letter vide page no.1675.
163.	559	Certificate issued u/S.65B(4) of Evidence Act.
164.	560	The CDR at page no.1679.
165.	562(Colly.)	Specimen handwriting of accused- Anis and Ishrat at page nos.33 to 35, 38 and 52 to 55.
166.	563	Panchanama at page no.137.
167.	564(Colly.)	Specimen handwriting of accused- Anis and Ishrat at page nos.36, 37, 40, 41 and 48 to 51.
168.	565	Panchanama at page no.139.
169.	566 (Colly.)	Specimen handwriting of accused- Anis and Ishrat at page nos.14 to 32, 39 and 42 to 47.
170.	567 to 570	Panchanamas at page nos.145, 209, 215 and 217.
171.	576	Sanction order (as per page nos.53-54).
172.	580	The examination report of Ballistic Expert, C.F.S.L. at P-269 to P-270.
173.	581(Colly.)	Covering letter at P-275 with Form II at P-275 and P-273.

174.	582 and 583	The certified true copies of previous charge-sheets as per P-435 to P-459 and P-463 to P-513.
175.	584 to 588	Portion Marks in statements of Noddle Officers : Sunil Tiwari PW-6, Vikas Phulkar PW-12, Baby John PW-11, Vijay Shinde PW-10 and Prashant Singh PW-57 as stated by them.
176.	591	Part- I of confessional statement of accused-Sufiyan.
177.	592	Part- II of confessional statement of accused-Sufiyan.
178.	593	Certificate relating to the voluntariness of accused.
179.	594	The letter dated 26.12.2014.
180.	595	The letter dated 29.12.2014.
181.	596	The letter dated 30.12.2014.
182.	597	The letter dated 31.12.2014.
183.	601	Disclosure statement of accused- Armaan at P-103.
184.	608	Sanction order dated 06.02.2015 at P-49 to P-51.
185.	616	Disclosure statement of accused- Ravikesh at P-211-212.
186.	617	Panchanama at page no.P-213-214.
187.	665	FSL report vide M.L. Case No.BL-1076/14 dated 23.03.2015.
188.	666	FSL report vide M.L. Case No.Cy-157/15 dated 23.07.2015.
189.	667	FSL report vide M.L. Case No.Cy-251/15 dated 23.07.2015.
190.	668	FSL report vide M.L. Case No.Cy-146/15 dated 01.09.2015.
191.	669	FSL report vide M.L. Case No.Cy-991/14 dated 24.09.2015.
192.	673	Particulars of mobiles and CDR records of accused.

193.	676	The FSL report of BMW car bearing registration no.MH-04-GB-23 at page 257.
194.	677	The CFSL report at page 261 in respect of fired deformed 7.65 mm copper jacketed pistol bullet.

LIST OF ARTICLES

Sr. No.	Articles	Description
1.	Art.S	Black colour Nokia-105 mobile phone.
2.	Art.S1	Wrapper on Art.S1.
3.	Art.A	Blue colour Samsung mobile phone.
4.	Art.A1	Wrapper of Art.A1.
5.	Art.B	Whitish colour Samsung mobile phone.
6.	Art.B1	Wrapper of Art.B.
7.	Art.C (Colly.)	A wallet with currency of Rs.110/-.
8.	Art.C1 (Colly.)	Wrapper of Art.C(Colly.).
9.	Art.D	Driving license.
10.	Art.D1	Wrapper of Art.D.
11.	Art.E	Samsung mobile phone.
12.	Art.E1	Wrapper of Art.E.
13.	Art.F	Pistol.
14.	Art.F1	Cartridges.
15.	Art.F1	Label on Articles F and F1.
16.	Art.G	One black colour pistol.
17.	Art.G1	Five cartridges.
18.	Art.G2	Label on Articles G1 and G2.

19.	Art.H	One black colour pistol.
20.	Art.H1	Five cartridges.
21.	Art.H2	Label on Articles H and H1.
22.	Art.I to M respectively	The CAF record verified copies at pg no.3849 to 3871.
23.	Art.N to P respectively	The CAF record at page nos.4451 to 4467.
24.	Art.Q to R respectively	The CAF record certified copies at page nos.4507 to 4517.
25.	Art.S(Colly.)	The certified copies of CAF and relevant record at page nos.71 to 145.
26.	Art.T(Colly.)	The certified copies of CAF and relevant record at page nos.757 to 773.
27.	Art.U(Colly.)	The certified copies of CAF and relevant record at page nos.1183 to 1185.
28.	Art.V(Colly.)	The certified copies of CAF and relevant record at page nos.1401 to 1431.
29.	Art.W(Colly.)	The certified copies of CAF and relevant record at page nos. 1591 to 1618.
30.	Art.X(Colly.)	The certified copies of CAF record at page nos.7 to 11.
31.	Art.A1(Colly.)	The verified true copies of CAF at page nos.1703 to 1727.
32.	Art.A2 (Colly.)	The original CAF record at page nos.3431 to 3437.
33.	Art.A3(Colly.)	The photostat verified copies of CAF record at page nos.2583 to 2601.
34.	Art.A4(Colly.)	The Original copies of CAF record at page nos.3027 to 3038.
35.	Art.A5(Colly.)	The Original copies of CAF record at page nos.3673 to 3683.
36.	Art.A6	The broken glass pieces in polythene bag.
37.	Art.A7	Label of Art.A6.

38.	Art.A8 (Colly.)	The black wallet containing PAN Card, driving license, cash, 03 silver rings and HTC white mobile phone and the label.
39.	Art.A9 (Colly.)	Black wallet containing cash amount and black Nokia mobile phone handset and the label.
40.	Art.A10(Colly.)	Black Samsung mobile phone handset and the label.
41.	Art.A11(Colly.)	Black Samsung Duos mobile phone handset and the label.
42.	Art.A12(Colly.)	Black Nokia mobile phone handset and currency of Rs.800/- and the label.
43.	Art.A13(Colly.)	Black with Red stripe Nokia mobile phone handset, Wallet consisting pan card, ATM card and the label.
44.	Art.A14(Colly.)	Black Nokia mobile phone handset and the label.
45.	Art.A15(Colly.)	07 hard-disks.
46.	Art.A16	Label on Art.A15(Colly.)
47.	Art.A17	The part of bullet.
48.	Art.A18	Label on Art.A17.
49.	Art.A19	The envelope label (old Art.18A).
50.	Art.A20	The chit (old Art.18).
51.	Art.A21(Colly.)	The mobile phone handset alongwith its battery and its label.
52.	Art.22(Colly.)	The WhatsApp messages printout at page nos.243 to 253.
53.	Art.23(Colly.)	The mobile phone and CD and their packet.
54.	Art.24	The copies of purchase receipt and bills at page no.155.
55.	Art.25(Colly.)	The pistol and 3 cartridges (2 empties and one bullet).
56.	Art.25A(Colly.)	Label on Art.25(Colly.)
57.	Art.26(Colly.)	The DVR and its hard-drive.

58.	Art.27	The pen-drive.
59.	Art.26A	Label on Art.26(Colly.)
60.	Art.27A	Label on Art.27.
61.	Art.28	CD of make- Mouser Bear.
62.	Art.29	The printout of SMS as per page no.303.
63.	Art.28-A	Packet of Art.28.
64.	Art.30	Printout of message.
65.	Art.31	Photograph and address (page no.4).
66.	Art.32(Colly.)	Documents at page nos.191 and 193.
67.	Art.23A	Label on Art.23's envelope.

**CORAM : THE ADDL. SESSIONS JUDGE
AND THE SPECIAL JUDGE UNDER
MCOC/POTA/TADA/NIA ACT
B.D. SHELKE (C.R. NO.55)
DATE : 16.03.2023.**

J U D G M E N T

Accused nos.1 to 12 stands prosecuted for the offences punishable u/Ss.120-B r/w. 302 r/w. 511, 115, 427, 465, 468, 471, 307 of Indian Penal Code 1860 (in short, 'IPC') r/w. Ss.3, 25, 27 of Arms Act r/w. Ss.3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (in short, 'MCOC Act').

2. CASE OF THE PROSECUTION :

(a) Informant (PW-52) Mr. Aligulam Ali Morani resides at Shagun bungalow, 30 Ashok Nagar, Road No.9, 6th floor, J.V.P.D., Vile Parle (W), Mumbai. He and his brothers are having Cineyug Entertainment

Private Limited Company. The office of said company is situated at Aldota building, Ground floor, Juhu Church Road, Mumbai – 49. Through his company the work of film production and event managements are carried out. The movie namely- “Happy New Year” was produced by Red Chilly Entertainment Company owned by Shah Rukh Khan. The work of promotion of said movie namely- “Happy New Year” was going on at U.S.A. and Canada, before release of said movie. The work of event management in U.S.A. of said movie was allotted to Shree Balaji Entertainment owned by Shri. Rakesh Kaushal and Shri. Harish Darshan Mehta. The Cineyug company of informant was helping in said work of promotion and co-ordination to Shree Balaji Entertainment.

(b) Informant and his brother are well acquainted with local show promoter who is settled in U.S.A. namely Sunil Raniyal @ Bittu (accused no.14), as they used to meet him at the time of show in the U.S.A. On 27.06.2014, accused no.4 sent threatening *WhatsApp* message on mobile phone of informant about promotion show of movie, at that time informant replied said *WhatsApp* message stating that movie “Happy New Year” has been produced by Red Chilly Entertainment and the work of promotion has been allotted to Shree Balaji Entertainment. Thereafter, on 04.07.2014 and 07.07.2014, accused no.14 sent *WhatsApp* message contending therein that, “ *Pujari baba waiting and R P ka phone pick up nahi kar rahe ho, woh aapko phone kar raha hai*”.

(c) It is further alleged that, on 13th, 14th, 15th July 2014, informant, his brother- Karim Morani, Mohammad Morani and his daughter- Shirin Morani were receiving threatening international phone calls from other countries. The persons talking on phone from other side were asking about promotion of the show and were asking to allot said work of promotion of movie “Happy New Year” to accused no.14 and were telling that, if they avoided to receive the phone calls he became angry. On

which the informant, his brothers and daughter were informing to such callers from other Countries that the show of promotion has been produced by Red Chilly Entertainment and the work of promotion of said movie has been given to Shree Balaji Entertainment, informant and his company only assisting in management and co-ordination of said promotion. Accused no.13 on 16.07.2014 sent message on mobile phone of informant asking him to allot the show cost to cost within 48 hours and if he had not made talk, then he would make phone call to Shah Rukh Khan and if informant avoided to do so, he and his family and his business would be in danger.

(d) It is further alleged that, on 24.08.2014, the servant informed to informant PW-52 that due to hitting something damage is caused to the four wheeler vehicle. On which informant asked him to verify the CCTV footage installed in his bungalow. Then, it came to the notice that on 23.08.2014 at about 10.30 p.m., three persons came on motorcycle on road situated in front of Shagun bungalow and out of them one person made firing with direction of Shagun bungalow through the firearm. Due to such firing glass of the window of bathroom on first floor of the bungalow of informant has been broken and damage to the car of brother of informant has been caused. On inquiry with watchman, he told to informant that due to fear of termination of his services he has not reported said incident to the informant. However, on next day he narrated the incident of firing made by three unknown persons came on motorcycle and they tried to kill the watchman. On which the informant lodged report as on 24.08.2014 with Juhu police station.

(e) The police of Juhu police station, Mumbai recorded the complaint lodged by PW-52, obtained his signature on it and registered C.R. No.288/2014 for the offence u/Ss.307 r/w. 34 of IPC and Ss.3, 25 of Arms Act against unknown accused.

(f) It is further alleged that, on 25.08.2014 at about 10.30 a.m., SMS was received on mobile phone of daughter of informant wherein the contents of message were, “ *ye trailer tha, film abhi baaki hai, agala firing Shah Rukh – Don Ravi Pujari* ”. On same day, at about 11.00 a.m. to 12.00 at noon phone call was received in the office of Cineyug company of informant and message was given that, the said person talking on phone is Ravi Pujari and instruct to the informant and his brother to contact him and also gave threat that within 2-3 days he would make firing on the office of Cineyug Company as well as kill Shah Rukh Khan (actor).

(g) It is further alleged that, in view of the directions of the Superior authorities the documents in Crime No.288/2014 registered with Juhu police station, Mumbai were transferred to D.C.B. C.I.D., on which C.R. No.105/2014 u/Ss.307 r/w. 34 of IPC, r/w. Ss.3, 25 of Arms Act r/w. S.66(a) of Information Technology Act was registered.

(h) Further, it is contended that, Anti Motor Vehicle Theft Cell, Unit- Mumbai had arrested seven persons with three firearms in their possession as on 15.11.2014, in view of the secret information received by them. C.R. No.464/2014 u/Ss.120-B, 115 r/w. 302 of IPC r/w. Ss.3, 25 of Arms Act was registered with Khar police station. Thereafter, the said C.R. was registered as C.R. No.104/2014 with D.C.B. C.I.D.. Anti Motor Vehicle Theft Cell carried further investigation. During further investigation other four co-accused were arrested. Thus, total 11 accused were arrested in said crime.

(i) During further investigation conducted by Anti Motor Vehicle Theft Cell conducted inquiry with arrested accused. Detailed inquiry was conducted with accused no.9, accused no.10 and accused no.11. During said inquiry it revealed that they were participated in commission of Crime Number 105/2014, therefore they were handed over in custody of D.C.B. C.I.D., Unit-IX. During inquiry of those accused in C.R.

No.105/2014, their involvement was revealed in said C.R. No.105/2014, therefore they were arrested on 17.11.2014.

(j) During interrogation with accused nos.9 to 11 and in the investigation conducted by Anti Motor Vehicle Theft Cell Unit in C.R. No.104/2014, the interrogation reports of accused were forwarded to D.C.B. C.I.D. Unit-IX in which participation of accused nos.1, 2, 3, 4, 5, 6, 7, 8 was revealed, therefore on 21.11.2014 they were shown as wanted accused.

(k) Thereafter, Anti Motor Vehicle Theft Cell added the provisions of MCOC Act. Therefore, in order to take custody of wanted 08 accused i.e. accused nos.1 to 8, Misc. Application No.155/2014 was filed before the Special Court (MCOC) and their custody was obtained on 16.12.2014 and after inquiry they were arrested in C.R. No.105/2014.

(l) The proposal was submitted to the competent authority for invoking provisions of MCOC Act through proper channel. The competent authority issued prior approval order on 20.12.2014, thereafter the provisions of Ss.3(1)(ii), 3(2), 3(4) of MCOC Act were invoked against the accused. During further investigation it revealed that the accused hatched the conspiracy with each other and made firing on bungalow of informant, therefore S.120-B of IPC and S.27 of Arms Act were added.

(m) According to prosecution case, it revealed in further investigation by the investigating agency that accused no.5 procured five SIM cards producing fabricated documents and making duplicate signatures on SIM card application forms and he had used those SIM cards in commission of crime. Therefore, Ss.465, 468, 471 of IPC were added. Further, it also revealed in the investigation that the threats were given to the informant and prosecution witnesses for extortion money, therefore offence u/S.387 of IPC was added against the accused.

(n) Further, it is contention of prosecution that during investigation accused no.9 made disclosure statement, on the basis of which one pistol with five live cartridges were seized under seizure panchanama at his instance. The statement of witnesses were recorded. T.I.P. was conducted, in which the witnesses identified the accused. In view of the disclosure statement made by accused no.10 chit of address and photograph of the brother of informant was seized from his possession. Similarly, the disclosure statement was made by accused no.11 recorded and panchanama has been prepared in respect of the place of bungalow and office of informant at his instance. During further investigation the Investigating Officer recorded statement of witnesses. Disclosure statement of accused no.1 was recorded and at his instance the documents were seized from the shop of the prosecution witnesses. The investigating agency during further investigation collected the entries in the hotel register, wherein the accused no.1 was stayed after commission of crime. The specimen handwriting of accused no.1 was obtained and writing in the register seized from the hotel and those specimen handwritings were sent to the handwriting expert. In further investigation, disclosure statement made by accused no.5 was recorded and the documents submitted by him while purchasing SIM cards to the shopkeeper were seized at his instance. Even the hard-disc of the computer has been seized from the cyber shop wherein the accused no.5 had prepared fabricated documents. Memorandum of accused no.9 was recorded and at his instance the documentary evidence has been recovered from the hotel, where on day of incident accused no.9, accused no.1 were stayed. Bajaj Pulsar motorcycle has been seized from accused no.4 which was used while committing crime. The panchanama in respect of place from which said motorcycle was stolen has been prepared. The panchanama of the place from where the accused got prepared bogus plate number of motorcycle was drawn, in

view of the disclosure statement made by accused no.4. The statement of maker of plate number also recorded. FIR registered with Mumbra police station in respect of theft of said motorcycle also collected.

(o) It is further alleged that, the panchanama of the place at Barwani, Madhya Pradesh, from where accused no.8 procured firearms has been prepared, at the instance of accused no.8 on the basis of disclosure statement made by him. Sarvar Singh, the person who has provided firearms to accused no.8 is absconding, therefore he is shown wanted accused no.15 in this case. Firearm which was used for firing on bungalow of informant has been recovered in view of the disclosure statement made by accused no.3. The statements of watchmen serving at Shagun bungalow have been recorded. The watchmen have identified the accused in T.I.P. Further according to prosecution case gang-leader wanted accused no.13- Ravi Pujari gave threats on international phone to the informant and other prosecution witnesses before incident, their statements have been recorded. The CDRs in respect of *inter-se* communications between accused nos.1 to 13 also collected. The mobile handsets which were in the use of accused also recovered. The confessional statement of accused no.9 has been recorded by the competent authority. During investigation it revealed that wanted accused no.13 gave threats to the informant and prosecution witnesses so as to compel them give promotion work of the movie "Happy New Year" to wanted accused no.14- Sunil Raniyal @ Bittu, however when he realised that there is no use of threats given by him, he had formed organized crime syndicate with the help of accused no.12- Obedullah Abdul Rashid Radiowala. The accused procured the firearms so as to create terror by making firing. Amount was distributed to the members of organized crime syndicate and in pre-planned manner, hatching conspiracy with each others they have made fire on residential bungalow of informant and

prosecution witnesses and thereafter, also again gave threats to the informant and prosecution witnesses. More than one charge-sheets have been filed against gang-leader and wanted accused no.13- Ravi Pujari in preceding last 10 years in which punishment upto three years or more has been provided, the competent Courts have taken cognizance of those offences registered against the wanted accused no.13. Thus, all the accused in conspiracy with each other continued their illegal activities which are prohibited by law which is a cognizable offence punishable with imprisonment for three years or more with an object of gaining pecuniary benefits or gaining undue or other advantage for themselves and to the organized crime syndicate headed by wanted accused no.13 and with an object of promoting insurgency. Therefore, the investigating agency filed charge-sheet against accused nos.1 to 11 as on 12.02.2015. On which MCOC Special Case No.01/2015 has been registered. Accused no.12 was arrested on 15.04.2019. Further investigation conducted against him and supplementary charge-sheet filed against him on 01.08.2019. On which MCOC Special Case No.16/2019 has been registered. Since both these cases are relating to same crime, therefore both these cases tried together.

3. Accused nos.13 to 15 still absconding, their presence not secured for the trial before this Court, therefore the trial against the accused nos.1 to 12 has been proceeded.

4. My Ld. Predecessor has framed charge at (Ext.95) in MCOC Spl. Case No.01/2015 and charge (Ext.212) in MCOC Spl. Case No.16/2019 for the offences punishable u/Ss.120-B r/w. 302 r/w. 511, 115, 427, 465, 468, 471, 307 of Indian Penal Code, 1860 r/w. Ss.3, 25, 27 of Arms Act r/w. Ss.3(1)(ii), 3(2), 3(4) of MCOC Act against the accused nos.1 to 12, contents therein were read over and explained to them, they

understood the same, to which they pleaded not guilty and claimed to be tried. Accused nos.4, 5, 8, 10 and 11 are on bail. Accused nos.1, 2, 3, 6, 7, 9 and 12 are under-trial prisoners.

5. Following points arise for my determination and I have recorded my findings thereon for the reasons given there under :

Sr. Nos.	Points	Findings
1)	Whether prosecution proves that, accused nos.1 to 12 alongwith wanted accused nos.13 to 15 and their unknown associates between June 2014 to 15.11.2014 at Greater Mumbai agreed to do an illegal acts namely to commit unlawful activities jointly by use of violence with the objective of gaining pecuniary benefits and undue economic advantage, to get the promotion show for the region of U.S.A. and Canada of movie “ Happy New Year” produced by Red Chilly Entertainment, to wanted accused no.14 and in pursuant to said common evil design, did further incidental acts of giving threats to the informant (PW-52) and other prosecution witnesses and also in furtherance of said common evil design formed an organized crime	In the Negative.

syndicate with the help of accused no.12, as per the instructions of accused no.13 and procured firearms and thereafter, made fire on Shagun bungalow i.e. residential house of informant (PW-52) and his brothers, in order to achieve the objective of organized crime syndicate and thereby committed an offence punishable u/S.120-B of IPC ?

- 2) Whether prosecution proves that, In the Negative.
- accused nos.3, 4 and 5 on 23.08.2014 at about 22.30 hours went on motorcycle on road near Shagun bungalow situated at 30 Ashok Nagar, Road No.9, J.VPD., Vile Parle (W), Mumbai and thereat accused no.3 did an act to fire bullet through firearm on watchman serving at Shagun bungalow and also made fire on Shagun bungalow with such an intention or knowledge and under such circumstances that death of watchman or informant or his family members might have been resulted and the said act did by accused no.3 in conspiracy and in furtherance of common intention with accused

nos.1, 2 and 4 to 12 and wanted
accused nos.13 to 15 and thereby
committed an offence punishable u/s
307 r/w 120-B of IPC or 307 r/w 34
of IPC ?

- 3) Whether prosecution proves that, In the Negative.
accused nos.1 to 12 alongwith
wanted accused nos.13 to 15 and
their unknown associates in between
June 2014 to 15.11.2014 were
members of an organized crime
syndicate headed by accused no.13 ?
- 4) Whether prosecution proves that, In the Negative.
between the period mentioned
aforesaid, being members of
organized crimes syndicate or on
behalf of organized crime syndicate
headed by accused no.13 fired on
watchman (witness no.4), used
violence or threat or intimidation or
coercion by wrongful means with the
object of getting pecuniary benefits or
undue economic or other advantage
through wrongful activities ?
- 5) Whether prosecution proves that, In the Negative.
accused nos.1 to 12 have committed
an offence punishable u/S.3(1)(ii) of

MCOC Act ?

- | | |
|--|------------------|
| 6) Whether prosecution proves that, accused nos.1 to 12 and their other associates including wanted accused have conspired, abetted or attempted to commit or to facilitate the commission of organized crime syndicate and thereby committed an offence punishable u/S.3(2) of MCOC Act ? | In the Negative. |
| 7) Whether prosecution proves that, accused nos.1 to 12 alongwith wanted accused and their unknown associates committed an offence punishable u/S.3(4) of MCOC Act ? | In the Negative. |
| 8) Whether prosecution proves that, during the period of June 2014 to 15.11.2014, accused no.3, accused no.4, accused no.5 and accused no.9 were found in possession of firearm and ammunities without valid license as required under the Arms Act, 1959 and thereby committed an offence punishable u/Ss.3, 25 of Arms Act ? | In the Negative. |
| 9) Whether prosecution proves that, | In the Negative. |

accused nos.3, 4 and 5 on 23.08.2014 at about 22.30 hours went on motorcycle on road near Shagun bungalow situated at 30 Ashok Nagar, Road No.9, J.V.P.D., Vile Parle (W), Mumbai and thereat accused no.3 did an act to fire bullet through firearm on watchman serving at Shagun bungalow and also made fire on Shagun bungalow and thereby used the firearm without license in contravention of S.5 of the Arms Act and they did said act in conspiracy with accused nos.1, 2 and accused nos.6 to 12 and other wanted accused and thereby committed an offence punishable u/S.27 of Arms Act ?

- 10) Whether prosecution proves that on or about 19.08.2014 at Kausa, Mumbra, accused no.4 in pursuance of aforesaid criminal conspiracy and in furtherance of common intention of accused nos.1 to 3 and 5 to 12 and wanted accused committed theft of Pulsar motorcycle No. MH-03-BF-2290 and thereby committed an offence punishable u/S.379 r/w 120- In the Negative.

B or 379 r/w 34 of IPC ?

- 11) Whether prosecution proves that in between 19.08.2014 to 23.08.2014 at Kausa, Mumbra, accused no.4 in pursuance of aforesaid criminal conspiracy and in furtherance of common intention of accused no.1 to 3 and 5 to 12 and wanted accused did dishonestly forged number plate of aforesaid Pulsar motorcycle No.MH-03-BF-2290 to MH-04-FB-1494 and committed an offence punishable u/S.465 r/w 120-B or 465 r/w 34 of IPC ? In the Negative.
- 12) Whether prosecution proves that in between 19.08.2014 to 23.08.2014 at Kausa, Mumbra, accused no.4 in pursuance of aforesaid criminal conspiracy and in furtherance of common intention with accused nos.1 to 3 and 5 to 12 and wanted accused did dishonestly forged number plate of aforesaid Pulsar motorcycle No.MH-03-BF-2290 to MH-04-FB-1494 for the purpose of cheating and thereby committed an offence punishable u/S.468 r/w 120-B or 468 In the Negative.

r/w 34 of IPC ?

- 13) Whether prosecution proves that in between 19.08.2014 to 23.08.2014 at Greater Mumbai, accused nos.3, 4 and 5 in pursuance of aforesaid criminal conspiracy and in furtherance of their common intention with accused nos.1, 2 and 6 to 12 and wanted accused did dishonestly used as genuine the aforesaid forged number plate of Pulsar motorcycle No.MH-03-BF-2290 knowing or having reason to believe the aforesaid number plate to be forged and thereby committed an offence punishable u/S.471 r/w 120-B or 471 r/w 34 of IPC ? In the Negative.
- 14) Whether prosecution proves that on 13.08.2014 at Greater Mumbai, accused no.5 in pursuance of aforesaid criminal conspiracy and in furtherance of common intention with accused nos.1 to 4, 6 to 12 and wanted accused dishonestly forged SIM Card Application Forms by forging signature of bogus applicant and thereby all accused committed an In the Negative.

offence punishable u/S.465 r/w 120-B or 465 r/w 34 of IPC ?

- 15) Whether prosecution proves that on 13.08.2014 at Greater Mumbai, accused no.5 in pursuance of aforesaid criminal conspiracy and in furtherance of common intention with accused nos.1 to 4, 6 to 12 and wanted accused dishonestly forged SIM Card Application Forms by forging signature for the purpose of cheating and thereby all accused committed an offence punishable u/S.468 r/w 120-B or 468 r/w 34 of IPC ? In the Negative.
- 16) Whether prosecution proves that between 19.08.2014 to 23.08.2014 at Greater Mumbai, accused no.5 in pursuance of aforesaid criminal conspiracy and in furtherance of common intention with accused no.1 to 4, 6 to 12 and wanted accused dishonestly used as genuine aforesaid forged SIM Card Application Forms knowing or having reason to believe the aforesaid SIM Card Application Forms to be forged and thereby all In the Negative.

accused committed an offence punishable u/S.471 r/w 120-B or 471 r/w 34 of IPC ?

- 17) Whether prosecution proves that on 23.08.2014 at about 10.30 pm at Shagun Bunglow, J.V.P.D. Juhu, Greater Mumbai, accused nos.3, 4 and 5 in pursuance of aforesaid criminal conspiracy and in furtherance of common intention with accused nos.1, 2, 6 to 12 and wanted accused did an act of firing firearms shots at the watchman of Shagun Bunglow, caused damage to window pane, caused damage to BMW Motor Car exceeding Rs.50/- and thereby all accused committed an offence punishable u/S.427 r/w 120-B or 427 r/w 34 of IPC ? In the Negative.
- 18) Whether prosecution proves that in between June 2014 to 23.08.2014, at Greater Mumbai, wanted accused nos.13 and 14 abetted the commission of murder of PW-52/Informant and his family members of an offence punishable with death or imprisonment for life, In the Negative.

which said offence was not committed in consequence of the abatement and thereby all accused committed an offence punishable u/S.115 r/w. 120-B or 115 r/w. 34 of IPC ?

19) What offences proved against accused? As per final order.

20) What order ? As per final order.

6. The prosecution has examined 66 witnesses, placed reliance on voluminous documents, thereafter filed pursis closing its evidence. Their list is enclosed in Part 'C' of this judgment. The statement of accused nos.1, 2, 3, 4, 5, 6, 8 to 12 have been recorded u/S.313 of Cr.PC. at Ext. Nos.649 to 659 respectively. The statement of accused no.7 has been recorded u/S.313 of Cr.PC. at Ext. No.662. Accused persons have raised defence of false implication with total denial but they have not examined any defence witnesses.

REASONS

AS TO POINT NOS.1 TO 18 :

7. Heard arguments of Ld. SPP Mr. Pradip Gharat for Prosecution; Ld. advocate Mr. Manerkar for accused nos.1 to 4, 6, 7, 10 and 12; Ld. advocate Mr. Aditya Sharma for accused no.5; Ld. advocate Mr. Jitendra Mishra for accused no.8; Ld. advocate Mr. Satish Mishra for accused no.9; Ld. advocate Ms. Anjali Awasthi for accused no.11. Heard reply arguments of Ld. SPP Mr. Gharat for Prosecution on final arguments of Ld. defence Counsels.

8. Ld. SPP Mr. Gharat submitted that, PW-52 complainant has proved the contents of FIR Ext.536. Spot panchanama Ext.374 supports the evidence of PW-52. PW-47 who has copied the CCTV footage from DVR Art.26 in pen-drive Art.27 has proved DVR Art.26 and pen-drive Art.27, he also proved certificate Ext.522. The cross-examination of this witness shows that mere suggestions have been given to him. Thus, as per his submission the evidence of PW-47 can not be discarded. It corroborates the evidence of PW-52. Further, PW-48 the panch witness corroborates evidence of PW-47 and proved the panchanama Ext.524. He has proved Articles- 26, 26-A, 27, 27-A. He also identified the recording. In his cross-examination except suggestion there is nothing on record. The FSL reports also corroborates evidence of PW-52. Art.22 is a printout of message sent by wanted accused no.14. PW-23 copied message from the mobile phone of PW-52. Printout of message Art.22 has been proved by PW-23. He also proved CD Art.23. All suggestions given to PW-23 during his cross are without foundation. Thus, the evidence of PW-23 corroborates the evidence of PW-52 in respect of threatening messages received by him. The Ld. SPP Mr. Gharat further submitted that, PW-25 also corroborated the evidence of PW-52. He had opened the *WhatsApp* messages received on mobile phone of PW-52. He copied those messages into laptop in separate folder. Thereafter, he took printout of those messages using office printer. He also copied those messages in the CD. He has identified printout of message Art.22 and CD Art.23. He also proved certificate Ext.450 issued u/S.65-B(4) of Evidence Act. Cross-examination of this witness shows that nothing brought on record to discard and disbelieve evidence of this witness. The CDR produced on record shows that, PW-52, his daughter, his brothers received threatening calls from international phone number. They also received threatening messages on their mobile phone numbers. PW-23 has proved the seizure panchanama Ext.446. Nothing came on record to

discard his evidence. Accused no.14 is main accused behind all these incidents. He further submitted that, PW-4 was serving as a watchman at Shagun bungalow. He was present at the time of incident of firing took place on 23.08.2014 at about 10.30 p.m. at Shagun bungalow. In case the bullet was hit to him fired by the accused, he would have been killed in the said incident. He sat down and avoided the shot of bullet. He has identified the accused during Test Identification Parade conducted. PW-4 was worried about his employment / services, therefore he has not immediately disclosed the incident to PW-52. As per his submission, evidence of PW-4 is very natural, which shows that the incident of firing took place at Shagun bungalow and the assailants attempted to commit murder of PW-4. He further submitted that, the bullet was hit on car of brother of PW-52, it was hit on window of bathroom at first floor and was passed through a standing tree. These facts proved by PW-4. As per his submission, evidence of PW-4 has been corroborated by panchanama Ext.374. PW-13 proved the panchanama Ext.374. He further submitted that, panchanama Ext.384 has been proved by PW-18. The evidence of PW-18 and panchanama Ext.384 corroborates the incident of firing took place at Shagun bungalow. Further, he submitted that PW-52 informant has stated about the motive and intention of the accused for committing crime by the accused. As per his submission, PW-52 has reproduced the contents of FIR Ext.536 in his evidence at Ext.535. He further submitted that, PW-52 categorically stated that, "Happy New Year" movie was produced by Red Chilly Entertainment owned by Shah Rukh Khan (actor). The movie was published all over the world. Mr. Rakesh Kaushal and Darshan Mehta, the partners of Balaji Entertainment were doing promotion work of said movie in USA and Canada. Thereafter, in the month of July 2014, PW-52 started receiving threatening phone calls and threatening messages from accused no.13 and his associates. He himself, his daughter, his brothers

were receiving such threatening phone calls and threatening messages. The caller was telling his name as Mr. Bittu Raniyal calling from New York and was demanding cost to cost promotional show at overseas. The Ld. SPP further submitted that, PW-52 narrated the incidental firing took place on 23.08.2014 at about 10.30 p.m. at his Shagun bungalow. He further submitted that, this witness has identified his signature and proved the contents of FIR Ext.537. The Ld. SPP submitted that, this witness also stated about the fact that the recording in CCTV footage was copied in the pen-drive Article- 27. As per his submission, evidence of PW-52 is remained unshaken in his entire cross-examination.

9. The Ld. SPP further submitted that, PW-49 actor in movie “Happy New Year” adduced his evidence and proved the fact of receiving threatening phone calls and threatening message on his cell phone. Article- 28 is a copy of message received on cell phone of PW-49. It corroborates the evidence of PW-52.

10. Ld. SPP Mr. Gharat submitted that, PW-62 recorded the confession of accused no.9 by following legal procedure. He has proved Part-I and Part-II of confession Exts.591 and 592. He also proved certificate Ext.593. It shows that accused no.9 voluntarily confessed the guilt. This confession also corroborated by other evidence. Hence, there is no harm to accept the confession of accused no.9. He further submitted that, this confession has been corroborated by the evidence of Nodal Officer, showing that this accused contacted from his mobile phone to other co-accused. He also categorically stated how he came in contact with other co-accused. Further, his confession shows that he was in conscious possession of firearm without license. Confession of accused no.9 also corroborated by the evidence of PW-14. Further, PW-22 and PW-59 also

corroborated the statement made by accused no.9 in his confession. No reason came on record to disbelieve the evidence. These evidence corroborates confession Ext.592 of accused no.9. The confession of accused no.9 and evidence of other witnesses clearly demonstrates *inter-se* connection of accused nos.1 to 5 and other co-accused 6, 7, 8, 10 to 12 and absconding accused no.13. He further submitted that, the evidence of panch witnesses PW-18, 19, 20 shows that they have proved the disclosure statement made by accused and recovery of articles at the instance of accused. PW-21 Police Head Constable Sawant also proved panchanama Ext.437. PW-3 I.O. in MCOC Special Case No.02/2015 proved the recovery of pistols from possession of accused. PW-15 identified 06 accused and also proved seizure of articles. He further submitted that, PW-37 has proved that the firearm was handed over to the person at the instance of accused no.2. This fact also corroborated by confession of accused no.9. PW-27 proved the arrest of accused nos.9, 10 and 11 and recovery of mobile phones from their possession.

11. The Ld. SPP further submitted that, PW-51 has downloaded the SMS on computer from the cell phone of PW-49. Those messages were copied in CD. PW-51 proved CD Article- 28, its label Article-28-A and also, hard copy of message Article- 30. This evidence of PW-51 corroborates evidence of PW-49 in respect of receiving threatening messages by PW-49 from the accused. No reason appeared on record to discard and disbelieve evidence of PW-51. He further submitted that, the evidence of PW-61 Investigating Officer supports the evidence of PW-52, thus the incident of firing at Shagun bungalow of informant has been proved by the prosecution.

12. The Ld. SPP Mr. Gharat further submitted that, arrest of accused

nos.9 to 11 and recovery of mobile phones have been proved by the evidence of PW-27 and PW-54. PW-33 proved disclosure statement of accused no.1 and recovery of articles at his instance. PW-40 proved the recovery of firearm at the instance of accused no.9. PW-64 supports prosecution case in respect of recovery of articles at the instance of accused no.9. PW-50 proved threatening message received from wanted accused no.13 in the office of Cineyug company. PW-32 deposed regarding cell phone number of accused no.6. PW-36 gave cell number of accused no.12. PW-35 gave cell number of accused no.10. PW-53 and PW-38 proved that mobile handset was in the use of accused no.1. PW-43 gave cell number of accused no.11 and identified him. PW-45 gave cell number of accused no.9. PW-46 gave cell number of accused no.13. These evidence corroborated by Nodal Officers- PW-6, PW-7, PW-10, PW-11, PW-12. PW-55 proved FIR, spot panchanama. PW-56 proved disclosure statement and recovery of articles at the instance of accused no.10. PW-58 proved identity of accused. PW-61 is Chief Investigating Officer, he has proved all links of involvement of accused in present case. PW-65 has proved sanction order Ext.608. PW-61 proved confession of accused no.9. As per his submission, the oral evidence came on record from the mouth of witnesses and supported by the documentary evidence suffice to hold that prosecution has proved the guilt of accused beyond reasonable doubts.

13. The Ld. Counsel Mr. Manerkar representing to accused submitted that, on complaint lodged by PW-52, C.R. No.288/2014 was initially registered with Juhu police station. The alleged incident took place on 23.08.2014 at about 10.30 p.m. At the relevant time, PW-52 was not present at his house. According to prosecution case, he came to know about the incident from Vishal, the driver of car of his brother. Then, on the basis of hear-say information PW-52 lodged the complaint Ext.536 and

then FIR as per Ext.537 was registered by PW-55. He further submitted that, the evidence of PW-52 is not consistent with FIR. Not only this but there are material controversies and discrepancies in the evidence of PW-52 and PW-55 in respect of recording complaint and registering the FIR. Not only this but Vishal, the driver of car of brother of PW-52 who alleged to have been given information about the incident to PW-52 has not been examined by the prosecution. The brothers and daughter of PW-52 who alleged to have been received threatening phone calls and threatening messages from the wanted accused from foreign countries have not been examined in this case. PW-4 watchman who is victim of alleged incident only examined but his evidence shows that he is a brought up witness and was not present at alleged spot at the time of firing as alleged by the prosecution. Car on which the bullet was hit not seized or no panchanama drawn in respect of any scratch or dent on said car vehicle. The photographs of the tree on which the bullet was hit also not snapped. Another watchman who was present at the time of alleged incident also not examined by the prosecution. Not only this but there are material discrepancies and material controversies in the evidence of PW-52 and PW-55 who has recorded the complaint of informant. Thus, as per his submission absolutely there is no evidence about alleged firing at the residence of informant PW-52 and his brothers as alleged by the prosecution. The other corroborative evidence in the form of CCTV footage, CD, pen-drive also not supporting and helpful to the prosecution case. Thus, as per his submission the prosecution has utterly failed to prove the alleged incident of firing at Shagun bungalow and also failed to prove the alleged incident of attempt to commit murder of watchman PW-4.

14. Advocate Mr. Aditya Sharma submitted that, in present case at hand the prosecution has failed to prove the alleged incident of firing at

Shagun bungalow. It has failed to prove the nexus of accused no.13 with this case and also nexus of accused nos.1 to 12 with accused no.13. There is no material on record to link all accused nos.1 to 12 with wanted accused nos.13 to 15. Mere allegations of prosecution not sufficient to hold that prosecution has proved guilts of accused beyond reasonable doubts. He adopted rest of the arguments advanced on behalf of accused nos.1 to 4, 6, 7, 10 and 12, by the Ld. Counsel Mr. Manerkar.

15. Advocate Mr. Satish Mishra representing to accused no.9 submitted that, alleged recovery and discovery at the instance of accused not proved. He was arrested on 16.11.2014 in C.R. No.104/2014 and then his custody was handed over in C.R. No.105/2014 i.e. in present case. There is no document showing connection of this accused with other co-accused. The alleged confession not recorded following provisions of S.18 of MCOC Act and Rule-3 of MCOC Rules. He was not informed that he is not bound to give confession and if he gave confession it can be used as an evidence against him. Not only this but many lacunas have been left while recording alleged confession, therefore the alleged confession can not be relied upon. Moreover, there is no corroborative evidence to the confession of accused no.9. Thus, as per his submission, evidence came on record not sufficient to hold that prosecution has proved guilts of accused beyond reasonable doubts.

16. Ld. Counsel Ms. Anjali Awasthi representing to accused no.11 submitted that, role of accused no.11 not established by the prosecution in present case. No evidence came on record that he was involved in any illegal activity with knowledge or intention. There is no evidence on record that he was involved in continuous illegal activities of the gang headed by wanted accused no.13. Thus, as per his submission, accused is entitled for

acquittal.

17. Ld. Counsel Mr. Jitendra Mishra representing to accused no.8 submitted that, no evidence brought on record by the prosecution showing complicity of accused no.8. The main incident of firing alleged to have been taken place has not been proved. Alleged threatening messages not proved by examining material and important witnesses. No link brought on record showing that really wanted accused made threatening phone calls and sent threatening messages to informant and his family members as alleged by the prosecution. The alleged recovery, discoveries have not been proved in accordance with S.27 of Evidence Act. Thus, as per his submission, the prosecution has failed to establish the guilts of accused beyond reasonable doubts. Thus, as per his submission accused are entitled for acquittal.

INCIDENT OF FIRING AT SHAGUN BUNGALOW

18. At the outset, it reveals that it is not in dispute that informant (PW-52) and his brothers owned and possessed Company namely Cineyug Entertainment Private Limited. It is not in dispute that the movie namely “Happy New Year” was produced by the company namely Red Chilly Entertainment owned by actor Shah Rukh Khan. The accused have raised defence of total denial. As per their contentions, they are having no concern with wanted accused no.13- Ravi Pujari, wanted accused no.14- Charanjit Singh @ Sunil Raniyal @ Bittu and also having no concern with wanted accused no.15- Sarvar Inder Singh and they have been falsely implicated in this case.

19. According to prosecution case, the work of promotion of movie namely “Happy New Year” produced by Red Chilly Entertainment was

going on at USA and Canada through Shree Balaji Entertainment Company. Cineyug Company owned by PW-52 was helping Balaji Entertainment Company in promotion of said movie at USA. Further, according to prosecution case wanted accused no.14 was well acquainted with PW-52 and his brothers since last more than 15 years. Accused no.14 was intending to get the work of promotion of movie namely "Happy New year". However, he could not get the said work, therefore accused no.14 was became annoyed and was sending threatening messages to the PW-52, his brothers and his daughter. According to prosecution case, accused no.14 sent such *WhatsApp* messages to PW-52 between 04.07.2014 to 07.07.2014. Even then, PW-52 and his brothers not bothered, therefore accused no.14 through wanted accused no.13 made threatening phone calls to PW-52, his brothers and his daughter. Accused no.13 asked informant, his brothers to give work of promotion of movie "Happy New Year" to accused no.14 and if they avoided to do so, their lives and business would be in danger. Even thereafter, the informant and his brothers not bothered, therefore, on 23.08.2014, at about 10.30 p.m. accused no.3 alongwith his associates accused nos.4 and 5 came on the road near Shagun Bungalow i.e. residential premises of PW-52, his brothers and his daughter and thereat accused no.3 fired bullets through firearms possessed by him on watchman of Shagun Bungalow, attempted to commit his murder. Accused no.3 also fired bullets through firearms possessed by him and caused damage to the BMW Car owned by brother of PW-52 and also broken the glasses of windows of bathroom of the house of brother of PW-52.

20. In order to substantiate these contentions the prosecution has placed reliance on oral evidence of PW-52, PW-4 and other corroborative evidence in the form of CCTV footage and other circumstantial evidence.

21. On appreciation of oral evidence of PW-52, it appears that he has tried to prove the contents of complaint Exh.536. He testified that, in the month of July 2014, he and his family members including his daughter, brothers started receiving phone calls and messages of wanted accused no.13 and wanted accused no.14 and their associates. They were asking to allot the work of promotion of movie "Happy New Year" to accused no.14.

22. PW-52 further testified that, the incident of firing at Shagun Bungalow took place at 10.30 p.m. as on 23.08.2014, in said firing glasses of windows were broken, dent was caused over the BMW car parked nearby Shagun Bungalow which was owned by his brother. In examination-in-chief itself PW-52 categorically stated that at the relevant time of incident he and his entire family members were not present at their house. They had gone for taking dinner outside on occasion of birthday celebration of his wife. He came to know from the driver Mr. Ramkesh Yadav @ Vishal on next day at about 12.30 p.m. regarding incident of firing. He further testified that, Vishal @ Ramkesh made phone call and informed the incident to Mohammad, the brother of PW-52 and then Mohammad informed said incident to PW-52, by making phone call. From this evidence of PW-52 it is obvious that complaint Ext.536 lodged by him is based on hear-say information. No doubt, as per settled principle of law the hear-say evidence can be relied upon, but only for the purpose of corroboration. No reliance can be placed directly on such hear-say evidence. Not only this but in Para 27 of his cross-examination, PW-52 categorically stated that his statement that Vishal informed about incident of firing, damage to car, tree and window pane, but said statement not appearing in his complaint filed before the police. Thus, this portion is an omission in the complaint filed by him. Which amounts to material contradiction. Thus, the sole testimony of PW-52 is not suffice to gather

that he has proved the incident of firing at Shagun Bungalow and causing damages to the Car, causing damage the window of Shagun Bungalow, unless corroborated by other substantive evidence.

23. The prosecution also placed much reliance on evidence of PW-4, the watchman who was serving at Shagun Bungalow. According to prosecution case, he is a star witness and victim of incident of firing. On appreciation of evidence of PW-4 at Ext.235, it appears that he is far away from the truth and his testimony is not reliable one. He testified that, on date of incident between 08.00 p.m. to 08.00 a.m., he was on duty as a Security Guard at Shagun bungalow at Gate No.2. Another Security Guard Sharma Jagganath Shah was on duty at Gate No.1. He further testified that, both of them were present on their duty. One BMW car was parked there. He was present near the car, at that time three persons came on motorcycle and person seated in the middle as pillion rider on motorcycle opened firing on car. He testified that, the bullet was hit on car. He noticed firing and sat down to avoid firing on him. He further stated that, one of the person on said motorcycle had worn helmet, therefore he could not see face of said person. He further testified that, he identified the accused in T.I. Parade conducted in Arthur Road Central Prison. In his cross-examination, he categorically stated that Shagun bungalow was facing towards East. Gate Nos.1 and 2 were situated towards Eastern side of said bungalow. The distance between Gate Nos.1 and 2 was 15 feet. Compound wall was having height of 08 feet. He categorically stated that, person inside the compound was not visible from outside and vice-versa. Road beside the bungalow was passing South-North in direction. He categorically stated that, he had not noticed motorcycle from long distance. It is pertinent to note that, PW-4 stated that he had not informed the incident of firing to the owner of Shagun bungalow immediately. He

did not know when owner of Shagun bungalow received information about the incident. He was not called by the owner after the incident. He further stated that, he had not stated the incident to the owner of Shagun bungalow on same night or later on. He had not seen registration number of motorcycle. He further stated that, the incident of firing was lasted for about 05 minutes, he heard two sounds of firing. He also stated that, he did not attempt to take search of offending articles on spot. He also stated that, he did not talk with anyone about the said incident till 25.08.2014. He stated that, the assailants made fire by stopping their motorcycle. Except another Security Guard Mr. Sharma and this witness nobody was present there at the time of incident. The watchmen from the bungalows in the vicinity came towards them when they heard sound of firing. He saw places where bullet was hit. He further stated that, except car and tree, bullet was not hit on any other object. He further stated that, the family members of owner of bungalow were present at that time.

24. From the above testimony of PW-4, it appears that his evidence is contradictory to the case of prosecution and also discrepant from the evidence of PW-52. According to PW-52 no one from his family was present at his residence at the time of incident of firing, whereas evidence of PW-4 shows that the family members of bungalow owner were present in their bungalow. Further, according to PW-52 bullet was hit on window whereas evidence of PW-4 shows that except car and tree, the bullet was not hit on any other object.

25. Apart from above discussion, it is pertinent to note that PW-4 was Security Guard according to prosecution case and the assailants tried to kill him or attempted to kill him. However, there is no whisper or single word from the mouth of PW-4 that assailants made fire on this witness PW-

4 or atleast by his directions. Hence, by stretch of imagination it can not be held that the assailants attempted to commit murder of PW-4 as alleged by the prosecution. Not only this but it is pertinent to note that if such incident of firing has taken place in absence of the owner of bungalow and in the presence of Security Guard in natural course the Security Guard used to inform such incidents to the owner of bungalow immediately by making phone calls in case the owner of bungalow is went outside. Atleast, the Security Guard in natural course used to disclose the incident of firing immediately after his arrival at his residence. In present case at hand, PW-52 the owner of bungalow returned back late hours of night on 23.08.2014 i.e. intervening night of 23.08.2014 to 24.08.2014. However, this witness PW-4 not reported the incident of firing to PW-52 at any point of time. Not only this but the version of PW-4 shows that he has not disclosed said incident to anybody till 25.08.2014. It is highly impossible that the Security Guard kept mum and not disclosed the incident of firing to the owner of bungalow where he is serving.

26. PW-4 also testified that, one of the assailant was wearing helmet, this statement made by him, is an omission in his statement recorded u/S.161 of Cr.P.C. This material omission amounts to contradiction. Further, in Para 18 of his cross-examination, he stated that he had stated description of two assailants. However, Portion Mark 'A' in his statement u/S.161 of Cr.P.C. pointed out to him shows that he had narrated description of three assailants. He confronted that, it would be wrong if physical description of three assailant is mentioned in his statement u/S.161 of Cr.P.C.. Portion Mark 'A' in his statement u/S.161 shows that he has given description of three assailants. On this ground also, evidence of this witness PW-4 is not trustworthy, reliable and acceptable one in respect of incident of alleged firing at Shagun bungalow. Hence, the inference

which can be drawn from the evidence of PW-4 is that he is far away from the truth and he is a brought up witness. This conclusion supported by PW-13, as he stated in his evidence that except Mr. Sharma no other watchman was employed on bungalow.

27. It is pertinent to note that, the alleged incident took place on 23.08.2014 at about 10.30 p.m.. In City like Mumbai, 10.30 p.m. is not so late hours of night to the people. Many people are on public road till such timing. Not only this but evidence of PW-4 shows that after incident of alleged firing watchmen from bungalows in the vicinity were came towards him after hearing noise of firing. However, the Investigating Officer has not taken pains to examine any such witness from the said locality who had heard the firing of firearms.

28. Apart from above discussion, though the prosecution come with a case that the firing took place at Shagun bungalow owned by PW-52 and his brothers, the evidence came on record from the mouth of PW-52 shows that it is not a separate bungalow of PW-52 and his brothers. It is an Apartment having seven floors, it is a housing society, as PW-52 in his evidence stated that, society had installed CCTV cameras and for collecting the recording in CCTV footage, the office bearers of society were required to be contacted. He had not contacted any office bearer of the society for collecting the recording in CCTV footage installed at his society. Thus, from this version of PW-52 it appears that the Shagun bungalow is not an independent bungalow of PW-52 and his brothers and it is a society of houses alongwith other people. If it is a society and other members of society resides in said Apartment, certainly such residents of the Apartment must have heard the noise of fire of bullet through firearm, however, not a single witness examined by the investigating agency from said society

during course of investigation. All these lacunas left by the investigating agency are fatal to the prosecution case.

29. PW-55 testified that, in August 2014, he was attached to Juhu police station. On 24.08.2014, he was on duty as SHO. At about 02.30 p.m., he received message of incident of firing took place at Shagun bungalow. He reached to the said spot. He recorded complaint of PW-52 as per Ext.536. He called FIR book, registered said complaint vide C.R. No.288/2014, filled contents in printed FIR and obtained signature of informant and also put his signature on it, it is at Ext.551.

30. PW-55 further testified that, he drawn the spot panchanama Ext.374 in presence of two panchas. He found glasses of window were broken and lying on the spot. He had seized those pieces of glass (Art.6) while preparing spot panchanama.

31. PW-55 further testified that, technician from CCTV installation company was present at the spot. He had copied the recording in CCTV footage in pen-drive. PW-55 had seized said DVR and pen-drive in presence of panchas. He has identified Article- 26 and 27. He further testified that, the recording in CCTV footage shows that three motorcycle riders passing by road from Shagun bungalow made fire on Shagun bungalow with gun. Accordingly, he prepared panchanama Ext.524, regarding seizure of Articles- 26 and 27.

32. In cross-examination of PW-55, it has come on record that when he departed from the police station, he had not taken entry in station diary. He had not taken entry of information received by him, though it was cognizable offence. He also stated in his further cross-examination that on

24.08.2014 at about 08.00 p.m., he was present at the spot and recorded statement of Security Guard Mr. Sharma Shah, at about 06.00 p.m., he further testified that two brothers of informant were present on spot. This evidence of PW-55 shows that his evidence is discrepant from the evidence of PW-52 and alleged eye-witness PW-4. According to evidence of PW-52, his both brothers were out of station during that period and they were not present either on the day of incident of firing as on 23.08.2014 or on next day as on 24.08.2014. From this evidence of PW-55, it appears that he has tried to cook a story other than reality. Further, it is pertinent to note that in Para 8 of his cross-examination PW-55 stated that, he do not remember whether or not any other occupants from the building beside Morani brothers were present at said spot. He also stated that, the building is 4-5 storied. He had not made inquiry with other residents of said building. In Para 9 of his cross-examination, he deposed that he made inquiry with Security Guard- Sharma Shah in police station. He was present in police station at about 09.00 p.m. This version of PW-55 shows that, he has adduced self-contradictory evidence. In Para 7 he testified that, on 24.08.2014, he was present at the spot and recorded statement of Security Guard- Sharma Shah around 06.00 p.m. Whereas, in Para 9 he deposed that he recorded statement of Sharma Shah in police station at about 09.00 p.m. These controversies and discrepancies appearing in the evidence of this witness PW-55 who is responsible Police Officer creates shadow of doubt about happening of incident of firing at the residence of PW-52 as alleged by the prosecution. Thus, evidence of PW-55 is not trustworthy, reliable and acceptable one.

33. PW-13 is a panch witness of spot panchanama Ext.374. In his evidence at Ext.373, he testified that on 24.08.2014, he approached to the spot situated near Shagun bungalow at about 06.30 to 06.45 p.m.. Police

reached there and requested to participate in the panchanama. He and Police Officers saw three places. They saw cracked spot on window pane glass of a room at 01st floor. Then, they saw cracked spot on the side view mirror of BMW car parked near gate of Shagun bungalow. They also seen hole on stump at middle portion of a tree which was situated near said bungalow. Broken pieces of glass were collected in brown packet and label was affixed on it. He signed the panchanama. He proved the recitals of spot panchanama Ext.374. He also identified Art.A-6 broken pieces of glass and label Art.A-7. In his cross-examination, PW-13 stated that he was working as Supervisor in office of Cineyug company. It means at the relevant time he was employee of PW-52. In his further cross, it has come on record that he know Security Guards at bungalow since prior to incident. He further testified that, similar broken pieces of glass can be obtained from anywhere. He do not remember what was the writing on label. In Para 8 of his cross-examination, he testified that no other watchman other than Sharma was employed at bungalow. His evidence also shows that he was working in the office of Morani since last 15 years before the incident. Members of Morani family were not present at that time as they had gone outside. No workers from bungalow were present with them at the relevant time. Further, it is pertinent to note that in Para 10 of his cross-examination, he categorically stated that police did not inquire about the cause of glass braking with anyone in his presence. Nobody told how glass was broken. He also stated that police had not told him the cause of braking glass. He also stated that, police had not read over any writing to him.

34. From the evidence of PW-55 and PW-13, it can be inferred that panchanama Ext.374 was prepared by PW-55 in presence of this witness PW-13 and another panch- Ramprasad. The recitals of panchanama shows

that the glass of the window which was at the height of 50 feet from ground was broken due to shot of bullet of firearm. It further shows that, there was dent on top of BMW car bearing registration No.MH 04 GB 23 in frontal portion and there was hole in the stump of Gulmohar (Royal Poinciana) tree which was at the distance of 12 feet from the gate of bungalow. These recitals of spot panchanama Ext.374 also creates shadow of doubt about happening of incident of firing at Shagun bungalow. PW-4 stated that, two shots of bullet from firearm were fired. In which direction those firing was made has not been specifically stated by PW-4. If the bullet from firearm was fired from outside gate of Shagun bungalow as stated by PW-4, then how it was fired on window at the height of 50 feet has not been pointed out by the prosecution. Moreover, no evidence came on record that the tree of Gulmohar and BMW car were in one lane. Apart from this, evidence of PW-13 the panch witness also not corroborates total contents of spot panchanama Ext.374, as in Para 2 he stated that side view mirror of BMW car was cracked, whereas recitals of panchanama at page 2 shows that dent was caused on top of the BMW car. The recitals of panchanama does not disclose that side view mirror of BMW car was cracked. Thus, the story put-forth by the prosecution appears to be doubtful. The corroborative evidence brought on record in the form of spot panchanama Ext.374 and evidence of PW-55 and PW-13 not corroborates the prosecution case. In short, these evidence which is discrepant in nature from the case of prosecution not trustworthy and reliable one. In short, the panchanama Ext.374 has not been proved beyond reasonable doubt. Apart from this, it is pertinent to note that PW-13 is an employee of PW-52. The spot of incident Shagun bungalow of PW-52 is in the crowded locality, this fact reflect from the evidence came on record from the mouth of witnesses. In these set of facts and circumstances, the PW-55 was able to take independent panch witness for spot panchanama Ext.374 but he chosen to

take PW-13 who is employee of PW-52. Thus, the evidence of PW-55 and PW-13 not reliable and acceptable one considering the discrepancies in their oral testimony and also considering the discrepancies in the recitals of panchanama Ext.374 and oral testimony of both witness PW-55 and PW-13.

35. Further, it is pertinent to note that if really there was hole on stump of Gulmohar tree, to bring this fact on record, it was possible to PW-55 to snap the photographs of said part of Gulmohar tree and bring the said fact on record, however no such photographs are brought on record for the reasons best known to the PW-55. Not only this but it was possible to PW-55 to snap the photographs of the damaged part of BMW car on which dent was caused due to alleged firing. However, no such steps have been taken by PW-55. Thus, these lacunas left by PW-55 in his investigation are fatal to the case of prosecution. Which creates doubt in respect of happening of incident of firing as alleged by the prosecution.

36. The FSL report of BMW car bearing registration no.MH-04-GB-23 is filed on record at page 257 (Ext.676) . It shows that, the car bearing registration no.MH-04-GB-23 was sent for scientific examination to CFSL, Kalina, Mumbai with letter at page 255 dated 01.09.2014 by PI Powar of Juhu police station. On its analysis, CFSL issued above referred report Ext.676. The report of analysis shows that, dent on front side of top of motor car was found on it. However, it is pertinent to note that no evidence brought on record by the prosecution that this car was seized during investigation of this case. No evidence brought on record to show that car was sent to CFSL, Kalina, Mumbai. The prosecution has not examined PI R.R. Powar so as to prove this letter at page 255 and also not examined carrier who carried motor car for examination by Scientific

Expert. Therefore, this report Ext.676 can not be relied upon. Moreover, as discussed above the evidence of PW-13, panch witness of spot panchanama shows that side view mirror of car was cracked and he has not stated dent was caused over the top of car. On this ground also, the FSL report Ext.676 not much helpful to the prosecution case.

37. The prosecution also placed reliance on panchanama Ext.384 (page no.69) and evidence of PW-18 which is a corroborative piece of evidence. PW-18 testified that, on 01.09.2014 Police Officer Pawar called him to act as a panch. He, 4-5 Police Officers and three persons from Kalina were present inside the gate of Shagun bungalow. Another panch Ramkesh Yadav was present. All they inspected the spot. It was time of 01.15 p.m. Some article was removed from aluminum pane of Shagun bungalow. He was told that, it is bullet. It was packed in the envelope and then, it was sealed and label of his signature was affixed on said envelope. Panchanama Ext.384 was prepared in his presence. Both panchas put their signature on it. He identified part of bullet Art.A17 and label Art.A18 in his evidence before this Court. However, in his cross-examination he categorically testified in Para 4 that the Police Officers and the panchas had not gone to upstairs in the bungalow. Photographs were not snapped. Not only this but he categorically stated that, “ *It is true that I had not seen the place from which part of bullet was removed. I was not told by anyone about from which the said article was removed. None of the police team went upstairs* ”. Not only this but in his further cross-examination in Para 5, he categorically stated that article of bullet was removed from outer side glass pane, it was hit at a height of 15-20 feet. He also stated that, material in which the bullet was hit was not seized by the police. In Para 7 of his cross-examination he further testified that, “ *It is true that it would be wrong to say that said place was at a height of 50 feet. I was not told that*

the said place was at the height of 50 feet ”. This evidence came on record from the mouth of PW-18 not suffice to hold that the prosecution has proved the fact beyond reasonable doubt that part of the bullet of firearm was really recovered from the pane of window of bathroom at second floor in Shagun bungalow which was according to prosecution case at the height of 50 feet. According to prosecution case the bullet of firearm was hit in the pane of window of bathroom at second floor which was at the height of 50 feet. Evidence of this witness shows that neither Police Officers nor any panch witness or any other person went to second floor and found the part of bullet stuck in the pane of window of bathroom and it was removed in the presence of this witness. Thus, this evidence of PW-18 is not sufficient to hold that really the prosecution has proved the discovery of part of bullet from the pane of window. The recitals of panchanama Ext.384 shows that the part of bullet was found in the pane of window of bathroom which was at the height of 50 feet. These recitals in the panchanama not proved by the evidence of this witness PW-18. Therefore, the evidence of PW-18 is not supporting and helpful to the case of prosecution. Not only this but the alleged incident took place on 23.08.2014 at about 10.30 p.m., whereas this panchanama Ext.384 has been drawn on 01.09.2014 after lapse of approximately 08 days. On 24.08.2014, PW-55 had visited the spot, on same day he had seized Art.6 glass of broken window, at that time he had not found part of bullet of firearm at said spot i.e. in window of bathroom. Then, how after a gap of 08 days this part of bullet found in the pane of window of bathroom has not been explained by the prosecution. It is not brought on record how after 08 days from date of incident this fact of stuck part of bullet of firearm in window of bathroom came to the notice of investigating agency. Thus, these evidence put-forth by the prosecution on record not free from doubts.

38. It is pertinent to note that, the prosecution has neither examined another witness Ramkesh Yadav nor examined the Investigating Officer PI Mr. Ramesh Powar who has drawn the seizure panchanama Ext.384. Hence, it can not be said that the prosecution has proved the seizure panchanama Ext.384 and recovery of article Art.A17, the part of bullet. Thus, this corroborative piece of evidence also not supports prosecution case.

39. The CFSL report is filed at Ext.677 (page 261) in respect of fired deformed 7.65 mm copper jacketed pistol bullet. It shows that, the used bullet having brushing marks was sent to CFSL, Kalina, Mumbai with letter dated 06.09.2014 at page 259 of charge-sheet. This report of CFSL Ext.677 shows that the analyser contended that, the said article is a fired deformed 7.65 mm copper jacketed pistol bullet having superficial length wise brushing marks. However, the prosecution has not proved its recovery beyond reasonable doubt from the pane of window of bathroom at second floor of the house of PW-52. The prosecution also not examined PI Mr. Pandit Thackeray who had sent this article for its scientific examination to the ballistic expert. The carrier not examined. Hence, the CFSL report Ext.677 can not be relied upon.

40. Further evidence of PW-55 shows that, with the help of technician, he had copied the recording in CCTV footage in pen-drive. He had seized said pen-drive and DVR under panchanama Ext.524 (page no.67). In support of this evidence of PW-55, the prosecution has placed reliance on evidence of PW-47 and PW-48. PW-48 testified that, on 24.08.2014, he was called at Shagun bungalow. 3-4 Police Officers were present alongwith technician PW-47 Rahul Pandey. PW-47 Rahul copied recording in CCTV footage in pen-drive and handed over the same to PW-

55 Mr. Pagare. The pen-drive and DVR were packed in envelope and label of his signature was affixed on it. Seal was affixed on said envelope. Thereat panchanama Ext.524 (page 67-68) was prepared in his presence. He identified Art.27 pen-drive and envelope with label Art.27A. He also identified CCTV box Art.26 and envelope alongwith label Art.26A. In his cross-examination, he stated that in the year 2014 he was conducting film shooting events. He was acquainted with persons relating to film business. In Para 6 of his cross, he categorically admitted that in panchanama Ext.524 it is not mentioned that DVR and pen-drive were sealed at the time of panchanama. Not only this but he further stated that he had no opportunity to go through the panchanama and contents therein were not read over to him. Thus, evidence of PW-48 is not fully supporting to the prosecution in respect of seizure of DVR Art.26 and pen-drive Art.27 in his presence, under seizure panchanama Ext.524.

41. PW-47 testified that, he know Shagun bungalow owned by PW-52. He testified that, he had installed CCTV cameras in said bungalow. He further testified that, on 24.08.2014 he was called by PW-52 at his residence. When he reached there, PW-52 and Police Officers were present. He copied CCTV footage dated 23.08.2014 in pen-drive from DVR as told by PW-52. CCTV camera no.1 was installed at entry gate of bungalow. He further testified that, he had seen said CCTV footage wherein out of three motorcyclists one person was firing with gun towards bungalow. He further testified that, he handed over pen-drive and DVR to Police Officers. Police Officers kept both articles in envelope in his presence. He further stated that, he do not remember whether or not he had issued certificate u/S.65-B(4) of Evidence Act. He identified DVR and its hard-drive Art.26 and pen-drive Art.27. The examination of chief of this witness PW-47 was deferred till 23.11.2021. Thereafter, on 23.11.2021 his further examination in chief

was recorded. On that date, he issued certificate u/S.65-B(4) of Evidence Act (Ext.522). The Ld. defence Counsel raised objection for submitting certificate after long delay. In cross-examination, PW-47 categorically stated that he prepared certificate Ext.522 as per request of police.

42. In view of the provision of S.65-B of Evidence Act and in view of the ratio laid down by the Hon'ble Apex Court in recent catena of decisions, electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under Section 65-B(2) of the Evidence Act :

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity.

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

Further, under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied :

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

S.65-B further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen-drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

43. In present case at hand, certificate Ext.522 issued by PW-47 not satisfied the above referred conditions in Clause-(a) to (e). The evidence came in cross-examination of PW-47 shows that there is no document relating to installation and maintenance of CCTV cameras issued by the office bearers of the society or any responsible person who is owner or occupier of Shagun bungalow. On the contrary, in Para 6 of his cross-examination, PW-47 categorically stated that he had prepared the certificate Ext.522 as requested by the police. No document produced on record that LYM Technology Pvt. Ltd., the company in which PW-47 was employed at the relevant time, had installed said CCTV cameras and maintenance work was given to said company either by the society or any

office bearer of the society. Hence, due to non-compliance of the conditions u/S.65-B(4) of Evidence Act, evidence of PW-47 and Articles- 26, 26-A, 27, 27-A can not be relied upon.

44. Apart from above discussion, PW-52 in Para 6 and 7 of his deposition stated that, he had called technical person to verify CCTV footage, his name was Rahul. At the relevant time, his brother Mohammad, Rahul, Vishal and police were present. The footage was copied in the pen-drive and was handed over to the police. Whereas, PW-55, the first Investigating Officer who has visited the spot first after the incident stated in his evidence in Para 10 that, detection staff had called the technician from CCTV maintenance company. He had not collected certificate u/S.65-B(4) relating to copying the CCTV footage. These discrepancies came in the evidence of these material and important witnesses also creates shadow of doubt about this electronic evidence. Thus, these evidence is not much reliable and acceptable one. The CFSL report is filed at Ext.669, it shows disk storage capacity of both articles, partition capacity of both articles and hash value of image file of both articles. It is pertinent to note that, in Para 5 of this FSL report Ext.669, it is clearly contended by the Scientific Officer of FSL that the person present in the video file were not clearly visible due to low resolution camera and distance of said person from camera is long. Thus, this CFSL report Ext.669 not much helpful to the prosecution case.

45. The CFSL report is at Ext.669 (page 19) shows that, DVR, hard-disk and pen-drive were sent to CFSL, Kalina, Mumbai for its analysis. The Scientific Officer tested and conducted analysis and issued this CFSL report as per Ext.669. However, it is pertinent to note that, in Para 5 of report the Scientific Officer categorically mentioned that the persons present in the

video file named “ ch01_20140823214937.mp4” not clearly visible due to low resolution camera and distance of said persons from camera is long. From this report of CFSL, the inference which can be drawn is that this report is not sufficient to gather that the alleged firing at Shagun bungalow was made by accused nos.3 to 5 as alleged by the prosecution. When the images of the persons appearing in this pen-drive and DVR are not clear to identify the assailants / accused, such CFSL report is not helpful to the prosecution to prove the identity of accused nos.3 to 5 and their involvement in the alleged crime of firing bullets on bungalow of PW-52.

46. From the entire evidence came on record discussed above on which the prosecution has placed much reliance, it can not be said that the prosecution has proved the fact of making fire through firearms at Shagun bungalow during the night of 23.08.2014 at about 10.30 p.m. and the assailants tried to kill PW-4 and commit his murder. Similarly, from this evidence came on record it can not be said that the prosecution has proved the fact that the assailants attempted to kill PW-52 and his family members as alleged by the prosecution.

THREATENING MESSAGES AND PHONE CALLS

47. According to prosecution case, on 27.06.2014, wanted accused no.14 had sent messages like threatening messages from his mobile phone to the mobile phone of PW-52 for allotting work of promotion of movie “Happy New Year”. PW-52 informed to accused no.14 that the said movie has been produced by Red Chilly Entertainment and the work of promotion had been given to Shree Balaji Entertainment. Thereafter, accused no.14 sent threatening messages to PW-52 as on 04.07.2014, 07.07.2014. Further, according to prosecution case, since 13th , 14th , 15th July 2014, gangster accused no.13 had made phone calls to PW-52, his

brothers- Mohammad and Karim and also to Shirin, the daughter of informant and gave threats to them, directing them to give the promotion work of movie to accused no.14. He also sent message on 16.07.2014 on mobile phone of PW-52 and gave threat that he shall give the show cost to cost to accused no.14 within 48 hours, otherwise he and his family would be in danger. Even after making firing on Shagun bungalow on 23.08.2014 at about 10.30 p.m., on next day as on 24.08.2014, wanted accused no.13 made phone call in the office of Cineyug company and gave threats of making firing at the office of Cineyug company. Not only this but on 25.08.2014 again accused no.13 sent messages on mobile phone of daughter of PW-52 and also on mobile phones of Karim, Mohammad, the brother of PW-52 and gave threats to them that he would cause death of Shah Rukh Khan, if they had not followed his directions.

48. In order to substantiate these contentions, the prosecution has placed its reliance on evidence of PW-52, PW-23, PW-25, PW-61, PW-50 and other evidence.

49. PW-52 in Para 3 testified that, in the month of July 2014, he and his family members started receiving threatening calls and messages from wanted accused no.13 and his associates. He further testified that, his daughter, brothers were receiving such calls. The caller was telling his name as Bittu Raniyal calling from New York and was demanding cost to cost promotional shows at overseas.

50. PW-52 in his evidence, particularly, in Para 8 testified that police came to his bungalow on 25.08.2014, they inquired about *WhatsApp* message and about Bittu with him. Bittu was doing business as local promoter of shows at New Jersey. He used to make messages to him

on certain occasions. He was sending messages for giving him promotional shows of his movie. At the relevant time, mobile phone number 9867360088 was in the use of PW-52. He also stated that, mobile phone number of accused was starts with digit + 17. He do not remember his exact mobile phone number. He further testified in Para 9 that, accused no.14 sent message to him stating that inspite of Pujari baba killing you, you are not giving him show, he was not asking for giving show free of cost. He identified hard copy of printout of messages Art.22. He also stated mobile phone numbers of his brother and daughter in his evidence.

51. It is pertinent to note that, PW-52 in examination-in-chief itself in Para 10 categorically stated that he had never received international phone calls. He further testified categorically that his daughter and brothers received messages, “ *ye trailer tha picture abhi baki hai Don Ravi Pujari* ”.

52. In his cross-examination, particularly, in Para 14, he stated that he had not lodged report in police station in respect of such threatening calls and threatening messages received to his family members and him till 24.08.2014. He also stated that, he did not bother about such messages. He categorically admitted that, any person can sent such messages in the name of underworld don for his wasted interest. Further, in Para 28 of his cross-examination he stated that he has not stated before police who was making such phone calls during the period of 13.07.2014 to 15.07.2014.

53. From the above referred evidence of PW-52 it can be conclusively held that really he has received the threatening phone calls and messages from wanted accused no.13 and wanted accused no.14, as in Para 10 of his examination-in-chief itself he stated that he never received

international phone calls.

54. The prosecution has placed much reliance on evidence of PW-23, PW-25, and Art.22 printout of *WhatsApp* messages and Art.23 CD and also on FSL reports Ext.666.

55. PW-25 testified that, on 08.02.2015, he was called in D.C.B., Crime branch, Bandra. He met to PW-61. PW-52, two panch witnesses and other police officials were present in said office. PW-61 introduced him with PW-52 and both panch witnesses. He was told that screenshots from the I-phone of PW-52 has to be taken.

56. PW-25 further testified that, he connected I-phone with USB Cord to the office laptop. As per instructions, he opened *WhatsApp* chatting page and copied the same in laptop in a separate folder. He drew printout by using office printer of those messages. He also copied said chatting in a CD using laptop. He identified printout Art.22 and CD Art.23. He also issued certificate u/S.65-B(4) of Evidence Act (Ext.450) regarding retrieving the chatting in *WhatsApp* messages and preparing CD.

57. In his cross-examination, PW-25 testified that, he was working with Sharp Computing System run by Sufiyan Merchant at the relevant time. He was not given authority in writing by his employer to do the said work. Police Officers not asked him about authority letter. After completing said work, he had not given any writing under his signature to the police. In his further cross-examination, particularly, in Para 6, he categorically stated that he has not personally verified whether the said I-phone was owned by Morani. He also stated that police had not recorded his statement. He also stated that, his signature was not obtained on any

document.

58. PW-23 testified in his evidence at Ext.445 that, on 08.02.2015, he was called in office of Crime branch, Bandra. PW-61 and other police officials were present there. He was introduced with informant PW-52. PW-52 told that, he has received threatening calls on his mobile phone. One Zahir bhai (PW-25) was present there.

59. PW-23 further testified that, Zahir bhai connected mobile phone of PW-52 to laptop and copied the messages in CD from the mobile phone. He gone through contents of those messages. Printout was taken from the laptop. Mobile phone of PW-52 was kept in a pocket and it was sealed and then label of his signature was affixed on it. Accordingly, panchanama (page 241, 242) Ext.446 was prepared in his presence. He identified the printout of *WhatsApp* messages Art.22. He also identified CD Art.23. The cross-examination of this witness on behalf of all accused is nothing but series of suggestions, which have been denied flatly by this witness.

60. PW-61 Investigating Officer also testified that, he get copied the call recording from the mobile phone of informant on CD through Technician in presence of panchas. He took printouts of threatening messages received by informant. He has prepared panchanama Ext.446.

61. From the above evidence came on record from the mouth of PW-61, PW-25, it appears that there is no consistency in the evidence of PW-61 and PW-25. PW-25 not stated that, he had copied the call recording from the mobile phone handset of informant. But evidence of PW-61 shows that, call recording from the mobile phone of informant was copied. Moreover, neither PW-61 nor PW-25 stated that, the CD in which the

WhatsApp messages were got copied was shown to the witnesses and confirmed that prior to copying *WhatsApp* messages in CD, it was blank CD. This lacuna left by the prosecution is fatal to its case.

62. Apart from above discussion, it is pertinent to note that PW-52 in his entire testimony on oath before this Court not stated that he went to the office of D.C.B. C.I.D., thereat, he had handed over his mobile phone to PW-25 and *WhatsApp* messages received in his mobile phone were copied in the CD and its printout was taken. There is no whisper from his mouth in that regard. Not only this the prosecution has not bring on record any evidence showing that really mobile phone number 17329217350 was in the use of wanted accused no.14. The prosecution has placed reliance on FSL report Ext.666, hard copy of messages Art.22 and CD Art.23. The FSL report Ext.666 and Art.22 hard copy of *WhatsApp* messages shows that *WhatsApp* messages were received on mobile phone number 9867060088 from mobile phone number 17325961155. However, as discussed above the prosecution has not bring on record reliable evidence showing that really mobile phone no.17325961155 was in the use of wanted accused no.14. Not only this but after going through the messages it appears that most of the messages are pertaining to allotting work of promotion of show. These messages never discloses any threat to the life or limb of informant or his family members or any other person. Hence, by stretch of imagination it can not be inferred that these messages are for getting the promotion show.

63. Apart from above discussion, it is pertinent to note that though PW-52 categorically stated that threatening message was received on mobile phone of his daughter namely Sherin and on mobile phone of his brothers- Karim and Mohammad and the contents of message were that,

“ye trailer tha film abhi baki hai, agla firing Shah Rukh Khan – Don Ravi Pujari ”. The prosecution has not taken pains to examine Sherin, Karim and Mohammad, the daughter and brothers of informant for the reasons best known to it. Not only this but the alleged threatening messages not proved either by producing mobile phones of daughter and brothers of PW-52 or atleast producing copies of such threatening messages received by them.

64. Further, according to prosecution case, on 25.08.2014 at about 11.00 a.m. to 12.00 at noon phone call was received in office of Cineyug Company of PW-52 and the caller gave message that the said person talking from other side is Ravi Pujari, he instructed to give message to PW-52 and his brothers to contact him and also gave threat that within 2-3 days he would make firing on office of Cineyug Company as well as kill Shah Rukh Khan (Actor).

65. In regard to alleged threatening phone call received in the office of Cineyug Company, the prosecution has placed reliance on evidence of PW-50. PW-50 is an employee working as Receptionist in Cineyug Company of PW-52. She testified that, on 25.08.2014 at about 11.30 a.m. to 12.00 p.m., she received phone call on landline phone no.26250400 in office of Cineyug Company. The caller asked her to note down one cell number, last digits of said cell number were 3321. It was cell number of more than 10 digits. The caller asked her to convey his message to her employer for keeping close his office for 2-3 days as firing would be made on his office, and such firing should not affect any poor person to death. She had informed said fact to Manager- Deepak Gere. However, it is pertinent to note that PW-13 Deepak Gere, the employee of PW-52 has not stated anything about such information given to him by PW-50. He

adduced his evidence as a panch witness in this case at Ext.373. However, there is no whisper from his mouth about such information of threatening call received by PW-50 on office telephone number of Cineyug Company and conveying said message by him to his employer PW-52. PW-50 categorically stated that, she had not personally conveyed the message received to her on office telephone, to her employer. In Para 4 of her cross-examination, PW-50 categorically stated that she had no talk with Morani brothers or any of their relatives on 25.08.2014. Even, no CDR etc. of such communication received from accused no.13 brought on record by the prosecution. On the contrary, evidence of PW-52 in Para 11 shows that PW-50 had informed him that some calls she received on office landline telephone and caller was saying that they were associates of Ravi Pujari and they had to talk to employer. This testimony of PW-52 does not disclose that the said telephonic call was from Ravi Pujari, it shows that it was telephonic call of associates of Ravi Pujari. As referred above, PW-13 not stated anything about conveying such telephonic message to PW-52. Thus, considering these controversies and discrepancies in the evidence of PW-50, PW-52, it can not be held that the prosecution has proved the fact that accused no.13 had made telephonic call in office of Cineyug Company on office landline phone number and gave threats as alleged by the prosecution. Thus, the prosecution has failed to prove the fact of receiving threatening phone calls on office landline phone number of Cineyug Company.

Thus, the evidence came on record not suffice to gather that the prosecution has proved the fact beyond reasonable doubt in respect of receiving threatening messages and threatening calls by the PW-52, his daughter and his brothers.

ARREST, DISCOVERIES, RECOVERIES AND OTHER EVIDENCE

66. According to prosecution case, initially C.R. No.288/2014 u/Ss.307 r/w. 34 of IPC and u/S.3 punishable u/S.25 of Arms Act was registered against unknown accused. Later on, the investigation was entrusted to D.C.B. C.I.D., on which C.R. No.105/2014 u/Ss.307 r/w. 34 of IPC and u/S.3 punishable u/S.25 of Arms Act and u/S.66(A) of Information Technology Act was registered. It is also case of prosecution that, during further investigation in C.R. No.104/2014, other four co-accused were arrested by Anti Motor Vehicle Theft Cell. During inquiry it revealed that they were participated in C.R. No.105/2014, therefore custody of all accused was handed over in C.R. No.105/2014. The accused have not disputed that their custody was transferred to D.C.B. C.I.D. in C.R. No.105/2014 from C.R. No.104/2014. Filing Misc. Application No.155/2014 for obtaining their custody also not disputed by the accused.

67. Further, it is not disputed by the accused that they were arrested by Anti Motor Vehicle Theft Cell, Unit, Mumbai in C.R. No.464/2014 registered with Khar police station. Thereafter, the said C.R. was registered as C.R. No.104/2014 with D.C.B. C.I.D.. Apart from this, evidence came on record from the mouth of PW-3 and PW-15 shows that the accused were arrested in said C.R. No.104/2014. PW-3 was P. I. attached to Traffic Control, Mumbai. He adduced his evidence as PW-46 in connected matter Spl. Case MCOC 02/2015. Both parties relied on copy of deposition Ext.169. He testified in his deposition Ext.169 that on 15.11.2014 in-charge PI Jagdish Sahil called other staff and him in his chamber and informed that associate of Ravi Pujari, accused- Ishrat (A2) and his other associates are coming to fire on Mahesh Bhatt (Movie Producer) and his family at Madhu Park Garden, 11th Road, Khar. PI Jagdish Sahil communicated said information to DCP. DCP gave permission

to confirm the news and take legal action. He further testified that, three teams were formed to laid trap on accused and all they went to Madhu Park Garden with material required for panchanamas etc. They parked their vehicles in such a manner that those would not be visible. Team lead by PI Jagdish Sahil was stopped at gate, another team was went inside the gate near Fountain and third team was on corner backside of Fountain. He further testified that, at about 08.45 p.m., two persons came in garden on motorcycle, parked their motorcycle opposite to garden and went inside the garden. After sometime group of 07 persons came inside and went near earlier two persons. The informer told to PI Mr. Jagdish Sahil that accused no.2 is in said group of people. Mr. Jagdish Sahil gave signal to all teams and they encircled all 09 persons, but two of them succeeded in fleeing away from the said spot. 07 persons were apprehended. Two panchas were called and then all 07 accused were taken in custody by preparing arrest panchanama at the spot. The copy of said panchanama is at Ext.378 (page 71 to 75).

68. PW-3 further testified that, personal search of accused was conducted. Firearm and catridges were found in possession of accused nos.2, 7 and 6 (accused nos.1, 2 and 6 in MCOC Spl. Case No.02/2015). Mobile phone also found in their possession. Documents, Aadhar Card etc. also found in the possession of accused. All those articles i.e. Articles- F, F1, G, G1, H, H1 (pistols and catridges) were found in possession of accused nos.2, 7 and 6.

69. PW-3 further testified that, thereafter, they came to police station, Khar. API Mudaliyar had lodged report in police station, Khar, on which C.R. No.464/2014 was registered. Then, PI Mr. Jagdish Sahil preferred application for transfer of crime to D.C.B. C.I.D. for further

investigation. Then, the documents were transferred to D.C.B. C.I.D. and C.R. No.104/2014 was registered thereat. He further testified that, he carried further investigation.

70. PW-3 further testified that, API Gangawane and PI Dhiraj Koli were sent to Malad, Malwani area on 16.12.2014 for search of absconding accused, who fled away from Madhu Park Garden. On 16.11.2014, API Gangawane arrested accused no.1 and accused- Shabbir Amir Shaikh, Rahim Adam Khan (accused nos.8 to 10 in MCOC Spl. Case No.02/2015). They were produced before the Court and they were remanded to police custody.

71. PW-3 further testified that, during interrogation, accused no.1 made disclosure statement that he has brought four weapons and 40 rounds from Madhya Pradesh and out of it one weapon and 10 rounds retained with him and he will produce the same. Accordingly, he recorded his memorandum statement in presence of panchas (Ext.201 in MCOC Spl. Case No.02/2015). However, copy of said memorandum not proved in this case. PW-3 further testified that, thereafter, all they proceeded by Government vehicle alongwith panchas and accused, as per direction of accused via Sion Railway station towards Malad, Malwani area. Thereat, they alighted from the Government vehicle. Then, accused no.1 took them to Sainath Co-operative Housing Society in Malad, Malwani, in A-wing building on 05th floor. Accused no.1 knocked Flat No.502, one lady opened door, she was wife of accused no.1. He introduced members of team to her and disclosed intention of their visit. Then, with her permission all they entered in her house. Accused no.1 took out one bag kept under bed in the bedroom and took out one pistol and 10 rounds from said bag and produced before them. Those were seized under seizure panchanama

(Ext.203 in MCOC Spl. Case No.02/2015). The articles are at (Articles- 19 and 19A in MCOC Spl. Case No.02/2015).

72. PW-3 testified that, accused no.3 (accused no.4- Ashpak Abdul Rashid Sayyed in MCOC Spl. Case No.02/2015) made disclosure statement, it was recorded in presence of panch witnesses (Ext.352 in MCOC Spl. Case No.02/2015) by said disclosure statement, accused no.3 stated that he is ready to produce pistol and rounds hidden by him and the said place. After said disclosure statement, the police officials, panchas alongwith accused proceeded by Government vehicle as per directions of accused no.3, he took them to Mumbra. Near one Masjid they stopped their vehicle and alighted from the vehicle. From said place they proceeded by walk. Accused no.3 took them to building no.4. Accused no.3 took out key kept on door frame and opened door. Then, accused no.3 with the help of stick took one plastic bag kept near water tank of bathroom and toilet and produced one pistol, two magazines those articles were seized in presence of panchas under panchanama (Ext.353 in MCOC Spl. Case No.02/2015). He also identified these articles at the time of recording of evidence before the Court. However, copies of memorandum statement of accused no.3 and copy of seizure panchanama not proved in this case.

73. PW-3 testified that, the plate number used on motorcycle by the accused was of the motorcycle of one Savita Makar. However, the vehicle used in crime by the accused was registered in the name of one Ashpak Basir Sarang.

74. PW-3 further testified that, on 21.11.2014, PI Jagdish Sahil and his team brought accused no.2 (accused no.1 in MCOC Spl. Case No.02/2015) for inquiry from Nalasopara. PW-3 arrested him.

75. PW-3 testified that, on 22.11.2014, he interrogated with accused no.3 (accused no.4 in MCOC Spl. Case No.02/2015). During interrogation, accused no.3 made disclosure statement that he would show the place where he was practicing for firing. Then, he called panch witnesses and his memorandum statement was recorded in their presence under panchanama (Ext.210 in MCOC Spl. Case No.02/2015). Thereafter, he alongwith his officials, panchas and accused proceeded by police van as per directions of accused no.3. Accused no.3 took them to Kalyan Sheelphata road, near Kokan King Hotel. Thereat, all they alighted from the vehicle and went by walk approximately 200 meters through Pipeline. In forest, accused showed the place and told that at said place he and his friends practiced firing. Two empty catridges were found at said place. Those were seized under panchanama (Ext.211 in MCOC Spl. Case No.02/2015). He identified the empty catridges and label of his signature (Arts.20 and 20A in MCOC Spl. Case No.02/2015). However, copies of memorandum and seizure panchanama not proved in present case.

76. PW-3 testified that, on 23.11.2014, he received information from R.T.O. in respect of motorcycle seized from accused. He stated that, it revealed that fake plate number was used on motorcycle. He revealed that, accused are members of organized crime syndicate. Therefore, he submitted proposal for invoking provisions of MCOC Act. On 27.11.2014, he received prior approval order. Then, provisions of MCOC Act were invoked and further investigation was handed over to ACP Mr. Rupwate.

77. After going through the cross-examination of PW-3 conducted on behalf of accused it appears that nothing elicited in his entire cross-examination so as to discard and disbelieve his evidence in respect of apprehending 07 accused persons (accused nos.2, 7, 3, 4, 5, 6 and one

Firoz Abdul Kadar Sayyed i.e. accused nos.1 to 7 in MCOC Spl. Case No.02/2015) by him under the arrest panchanama Ext.378 (copy) and seizure of articles from the possession of accused.

78. PW-15 is a panch witness of arrest and seizure panchanama Ext.378. He testified that, he adduced his evidence in MCOC Spl. Case No.02/2015 vide Ext.168, copy of said deposition is at Ext.168. Both parties relied on said evidence i.e. deposition Ext.168. PW-15 in his deposition Ext.168 testified that, he was called in Madhu Park Garden at Khar (W) in the month of November 2014 at about 09.00 p.m. Police Officers were present there. They had apprehended 07 persons. Personal search of those 07 persons was conducted in his presence. 03 pistols were found in possession of 03 persons. Those were seized in his presence under panchanama Ext.378 (Ext.154 in MCOC Spl. Case No.02/2015). He also identified the articles shown to him at the time of recording of evidence before the Court which were seized in his presence. Those are Article- F, F1, G, G1, H, H1 (pistols and catridges). He also identified labels of his signatures Articles- F2, G2, H2. He also proved seizure of mobile phone Article- A8, cash and Nokia mobile phone handset Art.A9 (Colly.). He also identified seizure of Samsung mobile phone handset and label of his signature Art.10 (Colly.). He also identified seizure of black Samsung Duos mobile phone handset and label of his signature Art.11 (Colly.). He also identified seizure of black Nokia mobile phone handset, currency of Rs.800/- and label of his signature Art.12 (Colly.). He also identified seizure of black with red strip Nokia mobile phone handset, wallet containing PAN Card, ATM Card and label of his signature Art.13 (Colly.). He also identified seizure of black Nokia mobile phone handset and label of his signature Art.14 (Colly.). In his cross-examination, he confronted that contents of panchanama were read over to him. It is also confronted

that, he reached at the spot at about 08.45 to 09.00 p.m. It is also confronted that, 07 accused persons were present there when he reached at the spot. Nothing elicited in cross-examination of this witness so as to discard and disbelieve his evidence in respect of apprehending 07 accused persons (accused nos.2, 7, 3, 4, 5, 6 and one Firoz Abdul Kadar Sayyed) by PW-3 under the arrest panchanama Ext.378 and seizure of articles from the possession of accused. From these evidence came on record from the mouth of PW-3 and PW-15, it can be safely concluded that the accused nos.2 to 7 were arrested under arrest panchanama Ext.378 (copy) and Articles were seized from their possession. However, the evidence of both these witnesses PW-3 and PW-15 not sufficient to gather that these accused are also culprits in C.R. No.105/2014. The acts and offences alleged to have been committed by all accused in C.R. No.105/2014 are required to be proved independently by the prosecution. No inference can be drawn merely on the ground that they were accused in C.R. No.104/2014 due to which they have committed the offence registered against them in C.R. No.105/2014. Thus, evidence of both these witnesses not much helpful to the prosecution in present case at hand.

79. According to prosecution case, during investigation of C.R. No.105/2014 it revealed that accused no.5 had fabricated the documents, made duplicate signatures on Customer Application Forms and purchased five SIM Cards and those were used in commission of crime.

80. In this regard, the prosecution has placed its reliance on evidence of PW-44, PW-56, PW-26, PW-28, PW-16 and PW-17.

81. PW-56 testified that, on 25.12.2014, accused no.5 made disclosure statement that he would show the mobile shop from which he

had purchased five SIM Cards. Accordingly, he recorded memorandum statement Ext.453 (page no.185) in presence of panchas. Thereafter, at the instance of accused, he alongwith panchas as per direction of accused no.5 went to Mulund West, Shanti Nagar, Mehul Cinema Theater. Thereat, accused no.5 shown the shop namely- “ Complete Sports Nutrition”. All they entered in the shop. The person present in said shop was owner. He identified accused no.5. The shop owner shown the record in his shop and handed over dispatch slip Art.32 (page nos.191, 193). Thereat, panchanama Ext.454 (page nos.187 to 189) was prepared. He identified Art.32. However, in his cross-examination PW-56 categorically stated that he has not demanded customer details and relevant documents relating to SIM Cards purchased from the said shop from the shop owner. He categorically admitted that, extract Art.32 does not disclose customer details and subscribers details of SIM Card. He also categorically admitted that, he did not meet the person namely- Shadab Khan. He had not visited residential address given in Art.32. He denied rest of the suggestions given to him.

82. PW-26 is a panch witness of memorandum statement Ext.453 and seizure panchanama Ext.454. This witness in his examination-in-chief testified that, accused no.5 made statement that he would show the shop from which he had purchased the SIM Cards. Accordingly, memorandum Ext.453 was recorded. Thereafter, accused took the Police Officers and panchas to Mulund, in Shanti Nagar area and shown the shop. The shop owner namely- Ravindra Ramane was present there. He told that, accused had purchased five SIM Cards from his shop. Accordingly, panchanama was prepared there as per Ext.454. He identified his signature on both panchanamas and extract Art.32 (Colly.). In his cross-examination, PW-26 testified that he do not recollect registration number of the vehicle,

through which they had travelled.

83. PW-44 the servant from “ Complete Sports Nutrition ” testified in his evidence at Ext.511 that, since 29.05.2013, he was working as CRE in “ Complete Sports Nutrition ” situated at Jawaharlal Nehru Marg in front of HDFC bank, near Mehul Cinema, Mulund (W). He testified that, they were selling SIM cards. He further testified that, accused no.5 approached to said shop and had purchased five SIM Cards in the name of Shadab Khan by saying that same were required for his family. He further testified that, accused no.5 obtained signatures of Shadab on Customer Application Forms of those SIM cards. The documents were sent for activation to his activation hub. They have maintained run-sheet of concern documents with copies of documents. He further testified that, he got the Customer Application Form filled up with copy of Passport for personal identity alongwith other documents. He identified the copies Arts.I to M shown to him. He stated that, those documents bears his signature on each page and stamp of his designation. (The documents collectively marked Ext.512.). He further testified that, in December 2014 Crime Branch Officers approached to his shop with a person veiled. They asked to show the copies of Customer Application Forms and documents attached to those form, in respect of SIM Cards shown by them. Police Officers made inquiry with him. He also testified that, veil of person brought by police was removed and he identified accused no.5. He identified the documents Art.32.

84. In his cross-examination, PW-44 categorically stated that, during training he was told that SIM Cards should not be sold to the person other than signatory of Customer Application Form. Two staff members were working alongwith him. They were not allowed to sell SIM

Cards to the person other than signatory of Customer Application Form. He further testified that, after verifying the required documents they used to sell SIM Cards to the person who is signatory of the Customer Application Form.

85. PW-44 in his further evidence testified that, daily 15-25 customers were visiting their shop. He could not identify such customers after 4-5 years. He further testified that, original Passport was shown by accused no.5 to him. He also testified that, Customer Application Forms were taken outside by the accused for obtaining signatures of the customer. He told that, customer had a problem in his leg and seated in jeep parked outside. He also testified that, accused no.5 had not made signature on those Customer Application Forms in his presence.

86. From this evidence of PW-44, it appears that it was the bounden duty of shopkeeper selling SIM Cards, unless and until he verified the documents and verified the fact that the person purchasing SIM Cards himself is a signatory of Customer Application Form, he shall not sell the SIM Card to any other person. If any illegality committed by the shopkeeper or his servant, then the concerned shopkeeper of selling SIM Cards would be responsible. Considering nature of evidence adduced by PW-44, who is changing his testimony stage to stage, it can not be concluded or gathered that the prosecution has proved the fact beyond reasonable doubt that accused no.5 had purchased five SIM Cards producing Passport of Shadab Khan as alleged by the prosecution.

87. PW-28 testified in his evidence at Ext.461 that, he has two brothers Shadab, Abu Sar and one sister. He testified that, his brother Shadab is working in Dubai since 09.01.2014. On 03.01.2015, he was

called in Crime branch office and photocopy of Passport of Shadab was shown to him by the Officers present there. They inquired whether his brother Shadab had obtained five SIM Cards of Aircel Company for allotting to others, to which he replied that he had not obtained such five SIM Cards. He also testified that, he made phone call to Shadab and made inquiry with him about purchasing five SIM Cards of Aircel Company by him, on which Shadab replied that, he had not purchased such SIM Cards.

88. According to prosecution case, accused no.5 fabricated the documents and on the basis of those fabricated documents, he had purchased five SIM Cards from the shop of PW-44. However, the prosecution has not bring the link of accused no.5 with Shadab Khan, the brother of PW-28. No evidence brought on record how accused no.5 had connection with Shadab Khan, brother of PW-28, how his Passport and other details came in the possession of accused for preparing fabricated documents for purchasing SIM Cards.

89. The prosecution has placed reliance on evidence of PW-16, PW-17 and submitted that, accused no.5 fabricated the document in Cyber Cafe of PW-17 and used those documents for purchasing SIM Cards from the shop of PW-44. In this regard, evidence of PW-17 shows that he is a owner of Cyber Cafe. He testified that, he was running Cyber Cafe under the name and style “ Autospeed and Gamezone” at Shafiya Road, Mumbra, Thane in the year 2014. On 23.11.2014, police alongwith accused approached to his cafe. They inquired whether any document took out by accused, he replied he did not know the accused. Then, police took out 06 hard-disk of 06 computers and one hard-disk of his laptop. Panchanama Ext.381 was prepared and his signature was obtained on said panchanama. He also identified the Article 15 seized from his shop. In his cross-

examination, he confronted that panchanama Ext.381 was prepared in his presence, he had signed the said panchanama after reading contents therein. It is also confronted that, signatures of two other persons were obtained on said panchanama. He has stated that, any other person would have used those hard-disk of his computer.

90. PW-16 is a panch witness of panchanama Ext.381 (page 111 to 113), in respect of seizure of hard-disk from the Cyber Cafe Shop, at the instance of accused no.5. This witness was examined as a witness no.22 in MCOE Spl. Case No.02/2015, copy of his deposition is filed at Ext.181. Both sides relied on this copy of deposition at Ext.181. He testified in his deposition that, on 23.11.2014 at about 03.15 p.m., he was called by Police Officer near one Cyber Cafe. Police Officers were present there. He gave his consent to act as a panch. He testified that, accused was present there. He also testified that, all they entered in the Cyber Cafe, the person present there told his name Mohd. Alam Shafi. Police Officers asked him which computer was used by the accused, on which he replied that he do not remember. Thereafter, Police Officers took out hard-disk of all computers in Cyber Cafe and seized under panchanama Ext.381. He also testified that, those hard-disk were kept in a bag and the bag was sealed, label of signature of both panchas were affixed on it. The Cyber Cafe owner also signed the same. He identified the hard-disk Art.15 (Colly.) and label Art.A16 (Art.21 (Colly.) in MCOE Spl. Case No.02/2015 and label Art.21A). Nothing elicited in his entire cross-examination so as to discard and disbelieve his evidence in respect of seizure of hard-disk (Art.15) in his presence under seizure panchanama Ext.381.

91. From the evidence of both these witnesses inference which can be drawn is that hard-disk of the computers in Cyber Cafe of PW-17 were

seized by the investigating agency. However, it was incumbent upon prosecution or Investigating Officer to retrieve the data from those hard-disk Art.15 (Colly.) seized and traced out whether the documents, particularly, Passport of Shadab Khan was prepared therein or not. It was also incumbent upon investigating agency to bring on record the fact that the accused no.5 fabricated the documents by using computers in the said Cyber Cafe owned by PW-17 and misused those documents for purchasing five SIM Cards. However, no evidence brought on record by the prosecution showing that the data in the hard-disk Art.15 (Colly.) was used by accused no.5 for forging the documents as alleged by the prosecution. Hence, from the evidence came on record discussed above it reveals that the prosecution has utterly failed to establish the fact that accused no.5 fabricated the documents and used those documents as genuine and purchased five SIM cards on the basis of such fabricated documents. Thus, evidence of all these witnesses- PW-16, PW-17, PW-26, PW-28, PW-56, PW-44 not helpful to the prosecution case so as to hold that the prosecution has bring home the guilt of accused for the offences punishable u/Ss.465, 467, 468, 471 of IPC.

92. The FSL report at Ext.668 shows that, 07 hard-disks Art.15 (Colly.) were sent to CFSL and test was conducted. However, Clause (2) of the report of analysis shows that, the incriminating image was not found in the hard-disks provided in Exhibit- 15 (Colly.) i.e. Ex-1, Ex-2, Ex-3, Ex-4, Ex-5, Ex-6 and Ex-7 referred by the Chemical Analyser. Thus, this report Ext.668 also not much helpful to the prosecution case.

93. Further, according to prosecution case accused no.4 made disclosure statement, on the basis of which the place from where Bajaj Pulsar motorcycle was stolen had been discovered. Further, accused no.4

showed the place and person from whom he got prepared fabricated plate number of motorcycle.

94. In this regard, the prosecution has placed reliance on evidence of PW-54 and PW-33 and panchanama Exts.548, 549.

PW-54 Assistant I.O. testified in his evidence at Ext.547 that, during further investigation on 26.12.2014, accused no.4 made disclosure statement that he would locate the motorcycle used in crime as well as place from where he got prepared fake plate number of motorcycle. He recorded said disclosure statement of accused in presence of panchas as per Ext.548 (page nos.203 and 204). Thereafter, he alongwith panch witnesses, accused proceeded by police vehicle as per directions of accused no.4. He took them to Tanwar Nagar, Mumbra, near a building namely Huma Complex. Thereat, accused took them to B-Wing and located the place where the motorcycle was parked. PW-54 further testified that, accused no.4 took them to Panvel-Mumbra Road, Talavpali, Mumbra. Thereat, he showed a shop where he got prepared fake plate number of motorcycle. He took them inside the shop, thereat owner of said shop namely Adil Qureshi was present. Adil Qureshi told that, accused came towards him and got prepared a sticker. PW-54 testified that, thereat he prepared panchanama Ext.549 (page nos.205 to 207).

95. In Para 9 of his cross-examination, PW-54 testified that he did not know in which Court case relating to motorcycle was pending. He did not know accused in that case have been acquitted. He did not know whether any crime relating to theft of said motorcycle was registered. He also admitted that he had not recovered or discovered anything under panchanama Ext.549.

96. PW-33 panch witness of memorandum statement Ext.548 and seizure panchanama Ext.549 in his evidence at Ext.484 testified that, on 26.12.2014, at about 11.00 a.m. near BMC office he was called to act as a panch and he was called in D.C.B. C.I.D., Unit-IX office. Police Officer Sawant requested him to act as a panch. He introduced accused no.4. He further testified that, accused no.4 made disclosure statement that he will show the place from which motorcycle was stolen by him. The said statement was recorded in his presence. Thereafter, accused no.4 lead panchas and Police Officers and took them to Panvel Mumbra road, near one shopping mall namely- Huma Complex. Thereat, accused lead them through main entrance of mall and took them in area like basement and showed the spot near wall from where motorcycle was stolen. However, it is pertinent to note that this witness denied that he signed the disclosure statement and panchanama.

97. From the above referred evidence of PW-54 and PW-33 and also from the recitals of seizure panchanama Ext.549, it appears that nothing recovered or discovered from the alleged spot. Therefore, the evidence of both these witnesses has no much significance. Moreover, the prosecution has not examined the material and important witness- Adil Qureshi who alleged to have been prepared the fake plate number of Pulsar motorcycle as per say of accused no.4. He was the best witness to depose about the act of accused no.4 for got preparing the fake plate number of motorcycle. However, the prosecution has not examined this material and important witness. The evidence of Adil Qureshi, the owner of the shop namely Adil Arts was most important. However, the prosecution has not examined said witness for the reasons best known to it. From which the inference which can be drawn is that this witness was not ready to support the prosecution case in respect of preparing the fake plate number of motorcycle.

Therefore, the corroborative evidence in the form of above referred panchanama Ext.549 has no much importance. Not only this but it is pertinent to note that PW-33 the panch witness of disclosure statement Ext.548 stated that, he had not signed the disclosure statement Ext.548 as well as seizure panchanama Ext.549. Thus, these corroborative evidence of both these witnesses PW-54 and PW-33 not sufficient to hold that the prosecution has proved the fact that accused no.4 got prepared fake plate number for the Bajaj Pulsar motorcycle and used the same as genuine as alleged by the prosecution. Thus, the prosecution also failed to prove the guilt of accused no.4 as alleged.

98. Apart from above discussion, after going through the judgment and order in MCOC Spl. Case No.02/2015, it appears that this accused was co-accused in said case as an accused no.3. He was prosecuted for the offences punishable u/Ss.465, 468, 471 of IPC. He is already convicted in said case for the offence punishable u/Ss.465, 468, 471 of IPC and also sentenced for those offence. On the principle of double jeopardy u/S.300 of Cr.P.C., this accused nos.4 and other co-accused who were accused in said case MCOC Spl. Case No.02/2015 can not be convicted in present case at hand for the offences punishable u/Ss.465, 468, 471 of IPC.

99. Though, the prosecution come with a case that Bajaj Pulsar Motorcycle used in commission of crime by accused nos.3, 4 and 5 was stolen motorcycle, it was owned by one Ashpak Bashir Sarang, the prosecution has not examined material and important witnesses. It was incumbent upon the prosecution to examine owner of said motorcycle, prove the report lodged by him for theft of his motorcycle, to prove the recovery of motorcycle. However, no such evidence brought on record. PW-3 alone deposed in his evidence at Ext.169 that motorcycle used in

commission of crime was stolen motorcycle and it was owned by one Ashpak Bashir Sarang. This statement itself is not sufficient to hold that the prosecution has proved the guilt of accused for committing theft of motorcycle as alleged. Thus, this Court is of the view the prosecution has failed to prove an offence punishable u/S.379 of IPC against any of the accused in this case.

100. The prosecution also come with a case that, accused no.8 had procured firearms from absconding accused no.15 (Sarvar Singh). Further, according to prosecution case said firearms were used by accused no.3 for making firing on Shagun bungalow of PW-52 and his brothers. However, no iota of evidence brought on record in respect of purchasing or procuring firearms by accused no.8 from wanted accused no.15. Hence, by stretch of imagination it can not be held that the accused no.8 had procured the firearms as alleged by the prosecution and those were used in commission of crime.

101. According to prosecution case, during investigation accused no.9 made disclosure statement, on the basis of which pistol and five live cartridges were seized at his instance and thus, he is guilty of the offence punishable u/Ss.3, 25 of Arms Act. Further, according to prosecution case in view of the disclosure statement made by accused no.9, documents were recovered from the hotel where on the date of incident accused no.9 and accused no.1 were stayed.

102. In this regard, the prosecution has placed its reliance on evidence of PW-40, PW-64, PW-22, PW-59 and PW-66.

103. PW-40 testified that, in the year 2014, he was present at Hill

road, Bandra at about 03.30 p.m.. He was called to act as a panch in D.C.B. C.I.D., Unit-IX, Hill Road, Bandra West. It was office of PI Smt. Korke. Another panch was present there. Smt. Korke asked him to act as a panch, he assented for the same. Accused no.9 was present in said office. He made statement that he had concealed a pistol with five cartridges and he would locate that place, accordingly memorandum / disclosure statement Ext.501 (page no.83) was recorded in his presence.

104. PW-40 further testified that, accused no.9 was veiled and then he lead the panchas and Police Officers to Dahisar Nalasopara Highway – Purva Naka. Thereat, as per directions of accused, vehicle was stopped. Then, accused lead them to one three storied building, wherein Kalpana General Stores was situated. Accused no.9 took them to third floor by staircase. He took them in a room, his father was present there namely-Dilshad. Accused took them inside the room and took out a bag kept over a cupboard. He removed wearing apparels and drew a pistol and five cartridges kept in paper pouch in the said bag. He identified pistol and cartridges Art.25 (Colly.) and also label Art.25A. He testified that, seizure panchanama was prepared in his presence as per Ext.502.

105. It is confronted in Para 7 of cross-examination of PW-40 that the disclosure statement of accused no.9 was recorded by lady Police Officer in his presence. It was in handwriting. It was time around 03.30 to 04.00 p.m. He also confronted that, they left the office by Qualis vehicle. However, in Para 11, it has come on record that personal search of panch witnesses was taken by the Police Officers but no personal search of Police Officer was conducted before departure from the office of D.C.B. C.I.D.

106. PW-64 Assistant Investigating Officer in her evidence at Ext.600

testified that, in November 2014, she was attached to Unit-IX, Bandra West as PI. ACP Mr. Sunil Deshmukh issued directions to her to assist him in the investigation of C.R. No.105/2014. Accused no.9 was in the custody of Crime branch, he shown his willingness to make disclosure statement. She called panchas and then recorded disclosure statement of accused no.9 vide Ext.501 (page no.83). She further testified that, thereafter accused lead them and took to Nalasopara junction by Western Express Highway. When they reached at Tulinj Naka near one building accused asked to stop their vehicle. Accordingly, vehicle was stopped. They alighted from said vehicle. Then, accused took them on 03rd floor in a building. Accused entered in one room, the team members and panchas followed him. Accused introduced person present there was his father. Then, accused took them in bedroom near a wardrobe. He drew one handbag kept on wardrobe and produced pistol and five cartridges kept in polythene bag placed below wearing apparels in the said bag. She had packed those articles, sealed and affixed label of her signature and signature of panchas on it. Thereat, she prepared seizure panchanama Ext.502 (page no.84). She identified label Art.25A. In her cross-examination, in Para 13, PW-64 stated that on 19.11.2014, she met to accused no.9 at first time when she recorded his statement. She stated that, personal search of witnesses was not taken but personal search of police officials was conducted. She also stated that, face of accused was veiled, keeping his eyes open. Further, it has come in her cross-examination that she do not remember total floors in the building. She did not remember colour of building. She did not verified recovered gun.

107. The report of FSL is filed at Ext.665. It shows that, the Assistant Chemical Analyser contended that, Ex-1 i.e. Art.25 was sent for analysis and on its analysis it is found that the Art.25 pistol was in working

condition and was capable of chambering and fire 7.65 mm pistol cartridges. Art.1A i.e. Art.26 cartridges were proper jacket pistol bullet. Those are tallied with bullet fired from the country-made pistol.

108. It is pertinent to note that PW-64 has not stated anything in respect of sending pistol and cartridges Art.25 to the Ballistic Expert either by herself or any other Investigating Officer. Even, PW-61 CIO also not stated that, the pistol and cartridges alleged to have been recovered at the instance of accused no.9 were sent to Ballistic Expert. No Carrier has been examined who has carried these firearms to the Ballistic Expert. Thus, complete chain of evidence is not bring on record by the prosecution. Apart from this, it reveals that prosecution has not bring on record the evidence in respect of obtaining previous sanction of District Magistrate u/S.39 of the Arms Act to prosecute the accused no.9 for the offence u/S.3 punishable u/S.25 of the Arms Act. Hence, it can not be said that the prosecution has established the guilt of accused beyond reasonable doubt for possessing firearm without license / permit as alleged.

109. PW-66 the then PI of Crime branch, Unit-IX testified in his evidence at Ext.615 that, on 25.12.2014, accused no.9 was in his custody. He volunteer to make disclosure statement. He called two panch witnesses, they assented to participate in the panchanama. Thereafter, he recorded disclosure statement of accused no.9 as per Ext.443. Thereafter, as per directions of accused, he alongwith other police officials, panchas and accused left the police station and went to Navsari. Accused no.9 took them to hotel Supreme Guest House. Accused no.9 located the reception area. PW-66 took search of guest register with the help of staff and found entry of stay of accused in the said hotel. He recovered original register and copy of driving license of accused no.1 and then prepared

panchanama Ext.443. He also identified the documents Exts.441 and 442. Record shows that accused no.9 has not conducted cross-examination of this witness.

110. PW-22 is a panch witness of disclosure statement made by accused no.9 and seizure of copy of driving license of accused no.1 under seizure panchanama Ext.443 (page nos.195 to 199). He testified that, on 25.12.2014, Mr. Sauratkar, Police Officer called him to act as a panch. Accordingly, he went to office of Unit-IX at Bandra. PI Mr. Padavi and other Police Officers were present. One person in their custody was present, his name was Sufiyan Shaikh (A-9). Police Officer introduced brief facts of case to him. Accused no.9 made statement that he would show the place where he met to co-accused after the incident and the hotel in Gujarat State where they stayed thereafter.

111. PW-22 further testified that, he alongwith police team and accused no.9 proceeded by police vehicle from police station as per direction of accused no.9. Accused no.9 was in veil. Accused took them via highway, Dahisar to Navsari, in front of hotel, opposite to flyover. The name of hotel was Supreme Guest House. Accused no.9 took them to reception counter, they met to Manager and asked for the entry of the earlier stay of accused made in the register. Entry was found, alongwith photocopy of driving license of accused no.1.

112. PW-22 further testified that, accused no.9 took them to first floor in the said hotel. He also stated that, the copy of entry in the hotel register and photocopy of driving license were collected by the police. He identified copy of driving license of accused no.1 which is at Ext.442 (page 201). He also proved the panchanama Ext.443 (page 197 to 199). He also

identified the accused no.9 at the time of recording his evidence before this Court. On perusal of his cross-examination, it appears that PW-22 was acquainted with Mr. Sauratkar. He was participating as a panch witness in the cases as per request of Mr. Sauratkar. From this it reveals that, PW-22 is a habitual panch witness of the Police Officers. In further cross-examination, particularly, in Para 8, he has confronted that they were 07 persons including Police Officers who went to Gujarat. It is also come in his cross that except driving license of accused no.1 nothing was seized by the police. He also confronted in Para 10 of his cross-examination that, he had seen hotel booking register personally. Name of accused no.9 was not found in the said register. He also confronted that, no document of the name of accused no.9 seized from said hotel.

113. PW-59 is a Hotel Manager of Hotel Supreme Guest House at Navsari, Gujarat. He has corroborated the version of PW-22 and PW-66 in respect of visiting hotel by them alongwith accused no.9. He testified that, in December 2014, Police from D.C.B. C.I.D., Mumbai came to his hotel. They checked the visitor register in his hotel. They checked entry no.3823 relating to three persons resided in his hotel. He testified that, copy of driving license was submitted in his hotel at the time of making entry in the register of visitors. Three persons had stayed in his hotel. He identified the entry in the register and also copy of driving license of accused no.1 and also identified the accused no.1. His evidence remained unshaken in his cross-examination.

114. From the above referred evidence of PW-22, PW-66 and PW-59 and from the panchanama Ext.443 and documents Exts.441, 442, it can be inferred that accused no.1 alongwith accused no.9 had stayed in the hotel Supreme Guest House situated at Navsari in Gujarat State. However,

nothing incriminating seized from the said hotel. Whether proving the fact that, the accused nos.1 and 9 had stayed in the said hotel namely Supreme Guest House situated in Navsari, Gujarat suffice to gather that these accused were involved in the incident of firing took place at Shagun bungalow, Morani brothers, the answer to this question certainly in the negative. Because the evidence of PW-22 and PW-66 is in the form of corroborative piece of evidence. In absence of direct or circumstantial evidence in respect of happening of incident of firing at Shagun bungalow as alleged by the prosecution, the corroborative evidence of PW-22, PW-66 and above referred documents panchanama Ext.443, documents Exts.441, 442 not suffice to hold that prosecution has bring home the guilt of accused.

115. The prosecution also placed reliance on reports of handwriting experts filed on record. According to prosecution case, the handwriting on Art.31 in respect of address of Cineyug Company written on counter leaf of photocopy of photograph of brother of PW-52 was in the handwriting of accused no.1. Moreover, the handwriting Ext.441 visitors register in hotel namely- Hotel Supreme Guest House at Navsari in respect of entry no.3823 was in the handwriting of accused no.1. However, the prosecution has not bring on record cogent and reliable evidence in respect of questioned handwriting and not proved the fact that the handwriting in the disputed documents Ext.441 and Art.31 was of accused no.1. Moreover, all these evidence is a corroborative piece of evidence. The prosecution has failed to establish the main episode in respect of firing at Shagun bungalow owned by PW-52. The prosecution also failed to establish the fact that the accused nos.3 to 5 had made firing on PW-4 Watchman and attempted to commit murder as alleged by the prosecution. Hence, these corroborative evidence in the form of reports of handwriting experts has no much significance.

116. According to prosecution case, before the incident of firing dated 23.08.2014 at Shagun bungalow, accused no.13 had gave threats to informant PW-52 and other prosecution witnesses. The statements of those witnesses have been recorded and from which it revealed that wanted accused no.13 had gave those threats. Further, according to prosecution case, accused no.12 was in contact with accused no.13 on his international phone.

117. PW-46 testified that, he runs 2-3 Restaurants namely Hotel Galaxy Bar and Restaurant, Shree Krishna Restaurant at Nalasopara, Udupi Krishna Veg. Restaurant, Vasai East. In the year 2014, he was using mobile phone having cell no.9326665298. He further testified that, in the year 2014, Ravi Pujari made phone call to him and asked inspite of his message he had not met to him. He testified that, it was international phone call from cell no.00989370253321. He became frightened hearing name of Ravi Pujari. Accused demanded Rs.50 lakhs and also gave threat of dire consequences, if his demand is not satisfied. He further testified that, on 06th May, accused no.13 made phone call to him and told that, he should not take it lightly. Accused no.13 was repeatedly demanding extortion money of Rs.50 lakhs. He replied to accused no.13 that he would talk with his partner. Even thereafter, accused no.13 was making phone call to him, but he had not received the same as he was became frightened. He further testified that, he had filed report of said incident to Nalasopara police station. He identified the copy of NOC Ext.517.

118. This evidence of PW-46 remained unchallenged on record. However, from the above evidence only it can be inferred that accused no.13 was making demand of extortion money of Rs.50 lakhs from this witness PW-46. However, his evidence is not sufficient to hold that the

incident dated 23.08.2014 has been proved by the prosecution or his evidence is not sufficient to gather that accused no.13 and accused nos.1 to 12 and 14, 15 are members of gang headed by accused no.13 as alleged by the prosecution. Hence, evidence of PW-46 is not much helpful and supporting to the prosecution in present case at hand.

119. The prosecution has examined PW-49 Sonu Shaktisagar Sood, so as to prove the threatening calls and messages given by wanted accused nos.13 and 14. PW-49 testified that, he acted in movie as an Actor "Happy New Year". It was produced by Red Chilly Entertainment owned by Shah Rukh Khan. The promotion work was conducted by Cineyug Entertainment Private Limited Company, run by PW-52 and his brothers Karim Morani, Mohammad Morani. He further testified that, on 26.08.2014 at about 01.54 a.m., he received SMS, "*don't go to U.S.A. or I will kill you, talk to me and also tell same to Shah Rukh Khan*". He also testified that, this message was sent by accused no.13 by his cell no.989370253321 on his cell no.9820316888. He also testified that, for promotion of movie "Happy New Year", they arranged slam tour to U.S.A. and Canada with actor Shah Rukh Khan, Deepika Padukon, Boman Irani and Morani brothers.

120. PW-49 further testified that, on 03.03.2015, he was called in D.C.B. C.I.D., Unit-IX by PW-61. The Police Officer took his mobile phone handset, it was connected to office laptop and SMS was retrieved from his mobile phone and the SMS was copied in the CD Art.28. Printout of SMS was taken, it is at Art.29. In his cross-examination, it has come on record that he had not received information from Morani brothers, in respect of incident of firing at Shagun bungalow owned by them. He came to know about said incident of firing due to publicity of said incident in the Print and News Media. However, Portion Mark 'A' in his statement u/S.161 of

Cr.PC. shows that, “ दिनांक २४/०८/२०१४ रोजी दुपारी १४.०० वा. च्या सुमारास मला मोरानी बंधूकडून असे समजले की, त्यांचे राहते घर शगुन बंगल्यावर, एन. एस. रोड नं.९, जुहू, मुंबई येथे दिनांक २३/०८/२०१४ रोजी रात्री २२.३० वाजताच्या सुमारास तीन अनोळखी इसमांनी मोटर सायकलवर येवून अग्नी शस्त्रातुन फायरिंग केली व निघून गेले. ” This Portion Mark ‘A’ in his statement has been contradicted by this witness. Thus, it appears that he is not truthful witness.

121. Apart from above discussion, according to prosecution case the work of promotion of movie “Happy New Year” was allotted to Shree Balaji Entertainment Limited owned by Rakesh Kaushal and Darshan Mehta. Whereas, evidence of PW-49 in Para 1 of his examination-in-chief itself shows that the promotion work of movie “Happy New Year” was conducted by Cineyug Private Limited Company run by Morani brothers i.e. informant and his two brothers. Thus, considering these controversies and discrepancies appearing in the evidence of this witness and in case of prosecution, evidence of PW-49 can not be relied upon.

122. PW-51 testified that, on 03.03.2015 at about 09.45 to 10.00 p.m. he was called in the office of Crime branch. PW-61 was present in his office with his staff member. PW-49 and computer expert were also present. He testified that, police told that PW-49 received some threatening messages and requested to co-operate in preparing the panchanama. He further testified that, SMS from mobile phone of PW-49 was downloaded in computer by the computer expert. The SMS was copied in the CD, the CD was seized in his presence, it was packed in the envelope. Printout of SMS was also taken. Both articles were seized in his presence under seizure panchanama Ext.532. He identified CD Art.28, envelope with label Art.28A and printout Art.30. In his cross-examination, he stated that mobile phone and CD were packed in separate envelopes. He stated that,

the mobile handset handed over by PW-49 was of I-phone company. However, PW-49 stated that, the mobile handset was of Vertu make. Though, it is considered that the said SMS received in mobile phone of PW-49 was retrieved and copied in the CD and also printout was taken of said SMS as per Art.30, as discussed herein above evidence of PW-49 himself is not supporting and helpful to the prosecution case, therefore the evidence of this witness PW-51 has no much significance.

123. PW-56 is an Assistant Investigating Officer. He testified that, in the year 2014 he was attached to Crime Branch as API and assisted in the investigation of C.R. No.105/2014. He further testified that, on 19.11.2014 accused no.10 made disclosure statement in presence of panchas and in his presence that he would produce the photograph of Morani, on which address of bungalow was written. Accordingly, disclosure statement Ext.553 (page no.89) was recorded by him. PW-56 further testified that, thereafter accused no.10 took panchas and him to Nalasopara at Tulinj Naka. Thereat as per instruction of accused no.10, the vehicle was stopped. Then, he took accused to them in building namely Shamim Manjil and shown a block on ground floor in that building. Person namely Naim Mohd. Shaikh was present there. He introduced to said person, said person was father of accused no.10. Accused no.10 was unveiled, his father identified accused. He allowed the I.O., A.I.O. and panchas to enter in his house. Accused took out photograph placed below bedding on bed and produced before him. It was seized under seizure panchanama Ext.554 (page nos.91 to 93). The said photograph was having address on its back side. He identified photograph Art.31 (page no.95).

124. In cross-examination of PW-56, particularly, in Para 8, it was specifically suggested to him that he has shown names of both panchas on

imagination and such persons are not in existence. He denied said suggestions. In these set of facts and circumstances, it was incumbent upon the prosecution to examine atleast one witness of panchanama Ext.553 and 554. However, the prosecution has not examined any one witness out of two witnesses on panchanama Ext.553 and Ext.554. Apart from above evidence came from the mouth of PW-56 in his cross-examination in Para 10, he also stated that he did not produce log book or register showing movement of vehicles used for carrying accused and panchas for seizure of Art.31. Thus, the evidence of PW-56 in respect of seizure of photograph Art.31 is not trustworthy and reliable one.

125. PW-6 testified that, in the year 2014-15, he was working as Nodal Officer with Aircel company, Mumbai. Now, said company stopped its working and entire record regarding call communication has been preserved. He testified that, letter Ext.245 (page no.3843) was received in his office from Law Enforcement Agency with a request to supply call communication details. Accordingly, he had supplied said information alongwith covering letter Ext.246 (page no.3845). He also proved certificate u/S.65-B(4) of Evidence Act Ext.247, copy of Customer Application Form Art.I to M. He also testified that, he retrieved the data and issued CDR Ext.248 (page nos.3875 to 4291).

126. PW-6 testified that, letter Ext.249 (page no.4293) was received in his office from Law Enforcement Agency with a request to supply call communication details. Accordingly, he had supplied said information alongwith covering letter Ext.250 (page no.4295). He also proved certificate u/S.65-B(4) of Evidence Act Ext.251 (page no.4297). He also testified that, he retrieved the data and issued CDR Ext.252 (page nos.4299 to 4444).

127. PW-6 testified that, letter Ext.253 (page no.4445) was received in his office from Law Enforcement Agency with a request to supply call communication details. Accordingly, he had supplied said information alongwith covering letter Ext.254 (page no.4447). He also proved certificate u/S.65-B(4) of Evidence Act Ext.255 (page no.4449), copy of Customer Application Form Arts.N to P (page nos.4451 to 4467). He also testified that, he retrieved the data and issued CDR Ext.256 (page nos.4469 to 4499).

128. PW-6 testified that, letter Ext.257 (page no.4501) was received in his office from Law Enforcement Agency with a request to supply call communication details. Accordingly, he had supplied said information alongwith covering letter Ext.258 (page no.4503). He also proved certificate u/S.65-B(4) of Evidence Act Ext.259 (page no.4405), copy of Customer Application Form Arts.Q to R (page nos.4507 to 4517). He also testified that, he retrieved the data and issued CDR Ext.260 (page nos.4519 to 4524).

129. PW-6 testified that, letter Ext.261 (Colly.) (page nos.4525 and 4527) was received in his office from Law Enforcement Agency with a request to supply call communication details. Accordingly, he had supplied said information alongwith covering letter Ext.262 (page no.4529). He also proved certificate u/S.65-B(4) of Evidence Act Ext.263 (page no.4531). He had supplied said information alongwith covering letter Ext.264 (page no.4533). He also proved certificate u/S.65-B(4) of Evidence Act Ext.265 (page no.4535). He also testified that, he retrieved the data and issued CDR Ext.266 (Colly.) (page nos.4537 to 4557). He also testified that, physical addresses of cell ID were routinely provided to Law Enforcement Agency. This evidence of PW-6 remained unshaken in his

entire cross-examination.

130. PW-7 testified that, he was serving as a Nodal Officer in Bharti Airtel since the year 2007 to July 2015. One Stephen Menenzes was also working as Nodal Officer with him in said company during that period. It was part of their duty to supply details of call information and record of call communication to Law Enforcement Agency. He further testified that, letter dated 20.11.2014 was received in his office from Law Enforcement Agency for supply of informations. Stephen Menenzes died in July 2017. He can identify his signatures as he was colleague employee and was conversant with his signatures.

131. PW-7 further testified that, letter Ext.268 (page no.67) was issued by Stephen Menenzes under his signature. Certificate u/S.65-B Ext.269 was also issued by Stephen Menenzes. Certified copies of CAF and relevant record (page 71 to 145), Art.S(Colly.) are true and correct. He testified that, CDR of cell no.9665168378 (page nos.147 to 198) are true and correct, those are at Ext.270. The CDR of cell no.9987401421 is at Ext.271 (page nos.199 to 307). CDR of cell no.9867111711 is at Ext.272 (page nos.309 to 423). CDR of cell no.9867060088 is at Ext.273 (page nos.425 to 701).

132. PW-7 further testified that, letter Ext.274 was received in his office. It bears acknowledgment with signature and seal. The covering letter Ext.275 bears signature of Stephen, contents therein are true and correct. Certificate Ext.276 also bears signature of Stephen. The CDR of cell no.99370253321 (page 709 to 714) is at Ext.277. The CDR at Ext.278 (page 715 to 729) is true and correct. The CDR of cell no.9759820331 at Ext.279 (page 731 to 732) is true and correct. The CDR at Ext.280 (page

733 to 737) is true and correct. The CDR of cell no.18622200002 from page 339 is true and correct, it is at Ext.281 (page 739). The CDR of cell no.18624855507 is true and correct. It is at Ext.282 (page 741). The CDR of cell no.18566260179 from page 743 is true and correct. It is at Ext.283. The CDR of cell no.1822490708 at page 745 is true and correct. It is at Ext.284. The CDR of cell no.17327621462 at page 747 is true and correct. It is at Ext.285.

133. PW-7 testified that, letter Ext.286 (Colly.) (page 749 to 751) were received in his office. Covering letter Ext.287 (page 753) issued under signature of Stephen. Certificate Ext.288 (page 755) also bears signature of Stephen contents therein are true and correct. The certified copies of CAF are at Art.T (Colly.) (page 757 to 773). The CDR of cell no.9867735715 at Ext.289 (page 775 to 1087) are true and correct. The CDR of cell no.9867735715 at Ext.290 (page 1089 to 1093) are true and correct. The CDR of cell no.9967100944 at Ext.291 (Colly.) (page 1095 to 1172) are true and correct. The CDR of cell no.9967100944 at Ext.292 (page 1173 to 1176) are true and correct.

134. PW-7 testified that, letter Ext.293 (page 1177) was received in his office. Covering letter Ext.294 (page 1179) issued under signature of Stephen. Certificate Ext.295 (page 1181) also bears signature of Stephen contents therein are true and correct. The certified copies of CAF are at Art.U (Colly.) (page 1183 to 1185). The CDR of cell no.7738262215 at Ext.296 (page 1187 to 1317) are true and correct. The CDR of cell no.7738262215 at Ext.297 (page 1319 to 1392) are true and correct.

135. PW-7 testified that, letter Ext.298 (page 1393) was received in his office. Covering letter Ext.299 (page 1397) issued under signature of

Stephen. Certificate Ext.300 (page 1399) also bears signature of Stephen contents therein are true and correct. The certified copies of CAF are at Art.V (Colly.) (page 1401 to 1431). The CDR of cell no.9561394554 at Ext.301 (page 1433) are true and correct. The CDR of cell no.9867302222 at Ext.302 (page 1435 to 1574) are true and correct. The CDR of cell no.9867302222 at Ext.303 (page 1573 to 1581) are true and correct.

136. PW-7 testified that, letter Ext.304 (page 1583) was received in his office. Covering letter Ext.305 (page 1587) issued under signature of Stephen. Certificate Ext.306 (page 1589) also bears signature of Stephen contents therein are true and correct. The certified copies of CAF are at Art.W (Colly.) (page 1591 to 1618). The CDR of cell no.9867343198 at Ext.307 (page 1619 to 1657) are true and correct. The CDR of cell no.9867343198 at Ext.308 (page 1659 to 1662) are true and correct.

137. In cross-examination of PW-7 it has brought on record that he has not brought authority letter issued in his favour, authorising him to adduce evidence on behalf of his company. He has not produced any document regarding designation of Stephen Menenzes. He also stated that, he is not signatory of the documents referred in his examination-in-chief. However, on this ground evidence of this witness can not be discarded. Stephen Menenzes, the Nodal Officer of Bharti Airtel died, this witness being his colleague examined by the prosecution so as to prove the documents. This witness has adduced evidence on the basis of record issued by his company. Hence, evidence of this witness can not be discarded.

138. PW-10 testified in his evidence that, he was working as a Nodal Officer with Idea Cellular Ltd. From March 2008 to December 2018. He

testified that, to provide the call communication details to the Law Enforcement Agency was one of his duty. He testified that, letter Ext.314 (page 1, File 1) was received in his office. Covering letter Ext.315 (page 3) issued by him. He has issued certificate u/S.65-B (4) of Evidence Act Ext.316 (page 5). He also issued certified copies of CAF at Art.X (Colly.) (page 7 to 11). He also issued copy of CDR of cell no.8689893157 at Ext.317 (Colly.) (page 13 to 21).

139. PW-10 further testified that, letter Ext.318 (page 41, File 1) was received in his office. Covering letter Ext.319 (page 49) issued under his signature. Certificate Ext.320 (page 51) also bears his signature and contents therein are true and correct. The CDR of cell no.8689893157 at Ext.321 (Colly.) (page 53 to 63) are true and correct.

140. PW-10 testified that, letter Ext.322 (page 43, File 1) was received in his office. Covering letter Ext.323 (page 45) issued under his signature. Certificate Ext.324 (page 47) also bears his signature and contents therein are true and correct.

141. PW-10 testified that, letter Ext.325 (page 23, File 1) was received in his office. Covering letter Ext.326 (page 25) issued under his signature. Certificate Ext.327 (page 27) also bears his signature and contents therein are true and correct. The CDR of cell no.8689893157 at Ext.328 (Colly.) (page 29 to 39) are true and correct.

142. In his cross-examination, PW-10 testified that, CIO Mr. Sunil Deshmukh and PO Mr. Deepak Sawant were not personally met to him in his office. He denied Portion Mark 'A' in his statement u/S.161 of Cr.PC. He also stated that, he had not given detailed chart about cell communications

and tower locations which are in Portion Mark 'B' and 'C' in his statement u/S.161 of Cr.P.C. and he had not stated those charts while recording his statement u/S.161 of Cr.P.C. He also stated that, blanket letterheads like Exts.316 and 327 can be obtained through market. They do not bear stamp of seal of his company. No outward number is mentioned on those documents. No record is available with him about issuing those certificates. In his further cross-examination, he categorically stated that main server is maintained for updation, deletion etc. by technical team of his company. He also stated that, the said work is conducted as per direction of managing body of his company. He denied rest of the suggestions given to him in his cross-examination.

143. PW-11 is a Nodal Officer of TATA Tele services. He testified that, letters Ext.332 (Colly.) (page 1681 and 1683) were received in his office, for providing record of IMEI numbers for the period of 14.10.2014 to 26.10.2014. Accordingly, he provided the information with forwarding letter Ext.333 (page 1685). He also issued certificate u/S.65-B(4) as per Ext.334 (page 1689). He also provided CDR Ext.335 (page 1691 to 1693).

144. He testified that, letters Ext.336 (Colly.) (page 1695) was received in his office, for providing record of CAF, CDR of six cell numbers for the period of 01.04.2014 to 15.11.2014. Accordingly, he provided the information with forwarding letter Ext.337 (page 1697 to 1699). He also issued certificate u/S.65-B(4) as per Ext.338 (page 1701). He also provided true copy of CAF Art.A1(Colly.) (page 1703 to 1727). He also provided copy of CDR Ext.339 (page 1729 to 1920).

145. He further testified that, he retrieved the data of CDR and provided copies thereof as per Exts.340, 341, 342, 343, 344 which are at

page 1921 to 2436.

146. In his cross-examination, PW-11 stated that he do not remember whether CIO Mr. Sunil Deshmukh and Police Officer Deepak Sawant approached to his office for recording his statement. He further testified that, he had not provided call record including exchange of SMS and cell ID with locations in tabular form. He denied Portion Mark 'A' and Portion Mark 'B' in his statement u/S.161 of Cr.P.C. He categorically stated that, he had not provided said information.

147. PW-12 is a Nodal Officer of Vodafone India Ltd. during the period of October 1995 to November 2015. He testified that, letter Ext.346 was received in his office, for providing record of CAF, CDR of cell number no.8390103735 and 9820316888 for the period of 01.05.2014 to 17.11.2014 and 01.05.2014 to 31.08.2014 respectively. He issued certificate u/S.65-B(4) as per Ext.347 (page 3419). He also provided CAF record and documents attached with CAF, as per Art.A2. He also testified that, verified SDR Ext.348 is true and correct. True copies of CDR shown to him Ext.349 (page 3441 to 3624) were retrieved by him and they are true and correct.

148. PW-12 further testified that, letter Ext.350 (page 2579) was received in his office, calling CDR of cell number 9167773535 and 706003087 and 9839744056 for the period of 01.04.2014 to 15.11.2014. He issued certificate u/S.65-B(4) as per Ext.351 (page 2581). The copies of CAF recorded were also provided as per Art.A3 (Colly.) (page 2583 to 2601). He stated that, the copies of CDR as per Ext.352, 353, 354, 355 were issued by him (at page 2603 to 3020).

149. PW-12 further testified that, letter Ext.356 (page 3021) was received in his office, calling CDR of cell number 9821319074 for the period of 01.05.2014 to 17.11.2014. He issued certificate u/S.65-B(4) as per Ext.357 (page 3023). He also provided copies of CAF record as per Art.A4 (page 3027 to 3038). He also provided SDR Ext.358 (page 3039). He also provided CDR Ext.359 (page 3041 to 3305).

150. PW-12 further testified that, letter Ext.360 (page 3649 and 3651) was received in his office, calling CDR for the period of 14.10.2014 to 26.10.2014. He issued certificate u/S.65-B(4) as per Ext.361 (page 3653). He also issued CDR Ext.362 (Colly.) (page 3655 to 3665).

151. PW-12 further testified that, letter Ext.363 (page 3625) was received in his office, calling CDR of 18 cell numbers for the period of 01.05.2014 to 15.11.2014. He issued certificate u/S.65-B(4) as per Ext.364 (page 3627). He also issued CDR Ext.365 (Colly.) (page 3629 to 3647).

152. PW-12 further testified that, letter Ext.366 (page 3307) was received in his office, calling CDR of six cell numbers for the period of 01.08.2014 to till date. He issued certificate u/S.65-B(4) as per Ext.367 (page 3309). He also issued CDR Ext.368 (Colly.) (page 3311 to 3415).

153. PW-12 further testified that, letter Ext.369 (page 3667) was received in his office, calling CDR of cell number 9821043198 for the period of 01.05.2014 to 31.08.2014. He issued certificate u/S.65-B(4) as per Ext.370 (page 3669 and 3671). He had provided CAF record as per Art.A5. He also provided true copy of SDR Ext.371 (page 3685). He also provided CDR Ext.372 (page 3687 to 3808).

154. In his cross-examination, PW-12 also stated that he was informed about the incident by CIO Mr. Sunil Deshmukh and Police Officer Mr. Deepak Sawant. He stated that, his statement was recorded by I.O. However, he categorically stated that, he had not stated Portion Mark 'A' and 'D' in his statement u/S.161 of Cr.P.C. before the I.O. He also stated that, serial number or outward number is not mentioned in the certificates issued by him. The stamp or seal of his company not impressed on those certificates.

155. From the above referred evidence of Nodal Officers PW-6, PW-7, PW-10, PW-11 and PW-12 and from the documents proved by these witnesses only it can be inferred that there was communication between the cell numbers referred in CDR list. However, the prosecution has not bring on record the evidence in respect of possessing particular cell number by particular accused and making phone calls to the victims and witnesses from such cell numbers. There is no reliable and cogent evidence came on record showing that particular cell number was in the use of particular accused and any particular accused gave threatening on such phone calls or by issuing *WhatsApp* messages and SMS. No concrete and cogent evidence bring on record by the prosecution showing that really the accused nos.1 to 12 were in contact with wanted accused nos.13 to 15 and at their instance they have committed alleged offences. Moreover, in view of the evidence came on record this Court has come to a conclusion that the prosecution has failed to establish the alleged incident of firing dated 23.08.2014 at Shagun bungalow and also failed to prove the fact beyond reasonable doubt that wanted accused made threatening phone calls and issued threatening messages to the informant and his family members as alleged. Hence, these corroborative evidence has no much importance. Thus, all these evidence came from the mouth of Nodal Officers not suffice

to hold that the prosecution has proved the guilts of accused for the charges leveled on them.

156. PW-57 is a Nodal Officer in TATA Communications, Fort, Mumbai. He testified that, it was his duty to procure CDR, SDR and related material as demanded by Investigating Agencies. He testified that, letter dated 19.01.2015, issued by Law Enforcement Agency calling CDR, SDR etc. of international mobile phone number 0076108925979 was received in his office. It is at Ext.557. Accordingly, he issued required material with covering letter Ext.558 (page 1675). He also enclosed certificate u/S.65-B(4) Ext.559 (page 1677) and also issued copy of CDR Ext.560 (page 1679).

157. PW-57 further testified that, full form of IRTN is Incoming Road Trunk Number. Full form of ORTN is Outgoing Road Trunk Number. CANAD stands for Canada. He stated that, call came forward from TATA Tele Communication, Canada to TATA Tele Service, India. The first two numbers are calling and called number respectively.

158. In his cross-examination, PW-57 categorically stated that, Portion Mark 'A' in his statement u/S.161 of Cr.P.C. read over to him was not stated by him before the police and it is incorrect statement. He also stated that, police had not made inquiry with him on 28.01.2015. He also stated that, certificate Ext.559 does not bear seal of his company. He also categorically stated that, he can not state whose receiving cell number is. In other words, he can not state who had received those calls and on which cell number those calls were received.

159. From this evidence of PW-57 and documents referred by him in

his evidence only it can be inferred that there was communication on mobile phone number 76108925979 from cell no.00912266699400 on 25.08.2014 at about 01.15 p.m., duration was 0.1.52 minutes from Canada. However, who was the caller from Canada and who was the holder of cell number 00912266699400 has not been proved by the prosecution. Hence, evidence of this witness PW-57 is not much helpful to the prosecution case.

160. PW-1 testified in his evidence at Ext.224 that, on 16.01.2015 at about 12.30 p.m., he was called to act as a panch. One Parvez was accompanied with him. They were called in Crime branch office at Bandra. Police Officers and one person was present in said office. He further testified that, one black Nokia mobile phone was shown to him. Numbers were recorded by opening the mobile phone. The said mobile phone handset was seized in his presence under seizure panchanama Ext.225. He identified Article- S and wrapper Article- S1. However, this witness not stated specifically from whom the said mobile phone handset has been recovered or seized. Panchanama Ext.225 (page 221) shows that, it was drawn by PW-61 Investigating Officer in respect of seizure of one mobile phone handset of Nokia company from the possession of accused no.1. However, there is no whisper from the mouth of PW-61 in respect of conducting seizure panchanama Ext.225 by him and seizure of Article- S in presence of panchas. Hence, it can not be safely concluded that the prosecution has proved the seizure of Article- S mobile phone handset of Nokia company from accused no.1. Thus, the evidence of PW-1 falls short and not supporting to the prosecution case about recovery of said mobile phone handset. In other words, it can not be held that the prosecution has proved the fact of seizure of black colour Nokia mobile phone handset from the possession of accused no.1. Therefore, this evidence can not be

relied upon.

161. PW-58 testified that, in November 2014, he was attached to Crime branch, Unit-IX, Bandra office. On 17.11.2014, he was directed to work as Assistant I.O. as per order of ACP Mr. Deshmukh in this case. He was member in the police team which took custody of three accused persons (accused nos.9 to 11), who were apprehended by Anti Motor Vehicle Theft Cell. However, he had not identified accused, except accused no.11. He further testified that, thereafter panchanama Ext.227 was prepared by PW-61. He also testified that, on 16.12.2014, he had obtained specimen handwriting of accused nos.1 and 2 in presence of panchas as per Ext.562 (page 33 to 35, 38 and 52 to 55). Then, he prepared panchanama Ext.563 (page 137). He testified that, on 17.12.2014, he prepared panchanama of specimen handwriting of accused nos.1 and 2 in presence of two panch witnesses. He contended that, those specimen is at page 36, 37, 40, 41 and 48 to 51. The panchanama is at Ext.564. He also prepared panchanama Ext.565 (page 139).

162. PW-58 testified that, on 17.12.2014, accused no.1 shown his willingness to make disclosure statement. He called two panch witnesses and recorded disclosure / memorandum statement of accused no.1 as per Ext.505. Accused stated that, he would locate the place and person to whom he sent money in month of August and September 2014. Thereafter, accused lead I.O., panchas to Malad West to the shop namely- First Cotton Shop. Accused pointed out the shop owner to whom said amount were sent by his brother. Shop owner namely Shehjad identified accused, verified monetary transactions. Accordingly, panchanama Ext.506 was prepared.

163. PW-58 further testified that, on 18.12.2014, 27.12.2014, 29.12.2014 and 30.12.2014, he prepared panchanamas of specimen handwriting of accused nos.1 and 2. Those specimen are at page 14 to 32, 39 and 42 to 47, those are at Ext.566 (Colly.). Thereafter, he completed panchanama as per Exts.567, 568, 569, 570 (page 145, 209, 215, 217).

164. PW-58 further testified that, on 06.02.2015, he sent six hard-disks seized by Anti Motor Vehicle Theft Cell for analysis to CFSL, Kalina alongwith letter Ext.438 (page 277 to 278). Those six hard-disks were relating to forge documents downloaded for purchasing five SIM Cards of Aircel. He also testified that, on 11.02.2015, he sent seized mobile phone handsets to CFSL, Kalina with forwarding letter Ext.448.

165. PW-2 is a panch witness of seizure of Articles from the possession of accused. He testified in his evidence at Ext.226 that on 17.11.2014, he was called in office of D.C.B. C.I.D. to act as a panch. One lady Police Officer and ACP were present there. Three persons were present there. Another panch was present there. Names of accused were Sufiyan Shaikh, Faiz Shaikh and Arman Shaikh (accused nos.9 to 11). He further testified that, in personal search of accused no.9, blue Samsung mobile phone was found, whitish Samsung mobile phone and wallet containing driving license, currency of Rs.110/- were found in possession of accused no.10 and one Samsung mobile phone was found in possession of accused no.11. Those articles were seized by the police, label of signature of panchas were affixed on those articles. He identified the articles- A to E and also identified the wrappers of those articles bearing Article nos.A1 to E1. He testified that, accordingly panchanama Ext.227 was prepared in his presence. PW-61 CIO also stated that he had arrested three accused persons by calling two panchas. He carried out panchanama

as per Ext.227. He had seized mobile phone handsets, driving license from those accused. He also identified Articles- A to E and wrappers A1 to E1.

166. It is pertinent to note that, neither PW-2 nor PW-61 stated the cell numbers of the mobile phone handsets recovered from the possession of accused nos.9 to 11. Evidence of PW-61 in Para 2 shows that, on 15.11.2014 Anti Motor Vehicle Theft, Crime branch arrested some accused persons and later on, he found those accused were involved in this crime, accordingly he arrested three accused in this pending C.R.. Then, he carried panchanama Ext.227. This evidence of PW-61 is very vague. He was under obligation to state exactly where and when these accused nos.9 to 11 were arrested. If accused no.9 to 11 were arrested already by Anti Motor Vehicle Theft Cell, then how these articles- A to E were remained in the possession of accused nos.9 to 11 has not been properly explained by the prosecution. Thus, the evidence of PW-2 and PW-61 about arrest of accused nos.9 to 11 and seizure of articles- A to E from their possession is not free from doubts. Hence, no much reliance can be placed on these evidence so as to held that the prosecution has proved the seizure of articles- A to E under seizure panchanama Ext.227.

167. PW-24 testified that, from 2014 upto 2015 he was attached to D.C.B. C.I.D., Unit-IX, Bandra as a police constable. On 17.11.2014, arrest panchanama of accused nos.9 to 11 was prepared and they were arrested. The mobile phone handsets and personal articles were seized from their possession under panchanama Ext.227. He further testified that, on 19.12.2014, memorandum of accused no.1 was recorded as per page 82 to 87. On 28.12.2014, memorandum of accused no.8 as per page 211 to 214 was recorded. However, he is neither signatory nor author of panchanama Ext.227. He has not clarified whether accused nos.9 to 11 were handed

over in C.R. No.105/2014 from C.R. No.104/2014 or they were arrested independently. He has not stated anything about arrest form of accused nos.9 to 11. Moreover, he is neither author nor signatory of the memorandum statement made by accused no.1 and accused no.8. Hence, his evidence, in absence of other reliable evidence not acceptable and reliable one.

168. PW-24 further testified that, on 12.02.2015, ACP had given him sealed envelopes alongwith covering letter Ext.448 (page 279). He handed over those envelopes. This evidence of PW-24 is too vague. He had not stated where he had handed over the envelopes given to him with covering letter Ext.448. Not only this but in his cross, he categorically stated that letter Ext.448 shown to him does not bear acknowledgment in respect of depositing articles in CFSL. Thus, evidence of this witness is not much supporting and helpful to the prosecution case, hence can not be relied upon.

169. PW-19 is a panch witness of disclosure statement made by accused no.4 and recovery of chit in respect of the address of bungalow of informant. He testified that, on 20.11.2014 at about 12.00 p.m., he was called to act as a panch by the Police Officers. One person veiled was accompanied with Police Officers. He was taken near Shirin building on 04th floor by the said person i.e. accused no.4 Azim. He took them to Flat No.402. One lady opened the door in response to call. She was mother of accused no.4. Name of said lady was Parveen. Police started taking search in drawer of wooden cupboard, a rolled paper was found. On said paper address- “ *Shagun bungalow, Juhu J.VPD. Road, Juhu* ”. The said chit was seized in his presence under seizure panchanama Ext.386 (page 107 to 109). He also identified chit Art.19 and envelope with label Art.20. In his

cross-examination, he categorically stated that the drawer was opened by the policemen. After opening 2-3 drawers the chit was found.

170. From the above evidence came on record from the mouth of PW-19 it can not be said that the prosecution has proved the disclosure statement made by accused no.4 and recovery of Art.19 chit at his instance. As the above referred evidence came on record from the mouth of PW-19 demonstrates that Police Officers took search of the drawers of the cupboards in the house of accused and they found chit Art.19. There is no whisper from the mouth of PW-19 in respect of any disclosure statement made by accused no.4. Hence, the evidence of PW-19 in respect of seizure of chit Art.19 not trustworthy and reliable one. In other words, it can not be held that the prosecution has proved the recovery of chit Art.19 as per S.27 of the Evidence Act.

171. PW-64 Assistant Investigating Officer testified that, as per order of ACP Mr. Sunil Deshmukh, she was assisting in the investigation of C.R. No.105/2014. She testified that, on 20.11.2014 accused no.11 expressed his wish to make disclosure statement. He called two panch witnesses and recorded memorandum statement of accused no.11 as per Ext.601. Thereafter, as per directions of accused, she alongwith other police officials, panch witnesses and accused proceeded by police vehicle as per directions of accused no.11. He had shown Shagun bungalow situated on S.N. Road No.9. Then, he took them to *Paan-bidi* shop, where he made inquiry about office address of victim. Then, he took away them at the distance of 100 feet and pointed out office of Morani brothers. Accordingly, she prepared panchanama Ext.389.

172. In her cross-examination, PW-64 in Para 8 testified that, C.R.

No.104/2014 was investigated by PI Jagdish Sahil. She also testified that, material collected in C.R. No.104/2014 has been relied in C.R. No.105/2014. In her further cross, it has come on record that she did not know the date of arrest of accused no.11. She confronted that, except preparing this panchanama she has not participated in investigation of C.R. No.105/2014. She also confronted in Para 10 of her cross that she was not aware that accused Armaan was going to make disclosure statement. She did not know who made inquiry to accused no.11 since 18.11.2014 to 20.11.2014.

173. PW-20 is a panch witness of disclosure statement Ext.601 and seizure panchanama Ext.389. He testified that, on 20.11.2014, he was called by the police near Bandra Hill police station. Mr. Sawant, Police Officer requested him to participate in panchanama, he assented for the same. Person namely Armaan (A-11) and another panch Raju Singh was accompanied with Police Officers. He testified that, his signatures were obtained on written papers in police station. He read the contents therein and signed said panchanama Ext.601. He further testified that, he alongwith Police Officers and accused no.11 left the police station and went to Shagun bungalow as per directions of accused no.11. The said bungalow was situated opposite to building namely Sanskriti. Then, accused took them backside of bungalow at the distance of 50-60 feet approaching to Cineyug Media Office. Thereat, panchanama was prepared as per Ext.389. In his cross-examination, in Para 7 he stated that he do not know how many floors are there in Shagun bungalow. Except this nothing brought on record in his entire cross-examination.

174. From the above referred evidence came on record from the mouth of PW-20 and PW-64 Assistant Investigating Officer, it reveals that

the disclosure statement alleged to have been made by accused no.11 has not been proved in view of provisions of S.27 of the Evidence Act. Moreover, the Shagun bungalow, the residence of informant and his brothers as well as the office of the Morani brothers namely office of Cineyug Company are not the facts within special knowledge of accused no.11. It can be safely concluded that, the bungalow and office of informant and his brothers are visible to all people. These facts are not within special knowledge of accused no.11. Hence, the evidence of these two witnesses PW-20 and PW-64 has no much significance, that to in absence of substantive evidence in respect of main incident of alleged firing made on PW-4 watchman of Shagun bungalow and firing made on vehicle and bungalow of Morani brothers. Thus, these evidence is not much supporting and helpful to the case of prosecution.

175. PW-14 is an employee working as a Peon in the office of Cineyug company owned by Morani brothers. She testified that, one week prior to incident of firing dated 23.08.2014 at Shagun bungalow owned by PW-52, one person had visited office of Cineyug company and made inquiry about PW-52. He was thin person. She told to said person that so as to meet PW-52 prior appointment is required to be taken. She further stated that, the said person was accused no.9. She also stated that, she had identified said accused no.9 in Test Identification conducted by PW-5. However, in her cross-examination she has categorically stated that in the month of November 2014, Officers of Crime branch called her, at that time she told that due to lapse of two months of time she is unable to give description of the person who had visited the office of Cineyug company. She also stated in clear words that, she had not made statement regarding description of such person, in respect of age, his clothing etc.. Thus, the evidence of this witness also not much helpful to the prosecution case. It

appears that, this witness is examined so as to prove identity of accused no.9. However, when main incident itself is not proved by the prosecution, this corroborative evidence has no value in eye of law.

176. PW-21 is a Police Head Constable attached to Crime branch, Unit-IX, Bandra. He testified that, on 14.01.2015, he was on day duty. He testified that, PW-61 instructed him to call two panch witnesses in his office, accordingly he brought two panch witnesses namely Abid Shaikh and Hanif Shaikh in his office. They assented to act as a panch of seizure panchanama. He further testified that, Taranum, wife of accused no.1 was present in his office. She handed over one black Samsung mobile phone with silver border having one SIM Card to PW-61 in presence of panchas. It was seized under seizure panchanama Ext.437. He identified Art.21 mobile handset alongwith battery.

177. However, it is pertinent to note that this witness PW-21 is neither author nor signatory of panchanama Ext.437, therefore, it can not be said that panchanama Ext.437 in respect of seizure of muddemal Art.21 mobile phone handset has been duly proved in accordance with law by the prosecution.

178. Apart from above discussion, it is pertinent to note that according to prosecution case panchanama Ext.437 has been prepared by PW-61 Chief Investigating Officer in presence of panch witnesses Abid Shafiq Shaikh and Mohd. Hanif Mohd. Ikarar Shaikh, however there is no whisper from the mouth of PW-61 in respect of seizure of muddemal Art.21 in presence of panch witnesses under seizure panchanama Ext.437. On the contrary, in his cross-examination, particularly, in Para 14, he categorically stated that, “ *It is correct that I personally did not seize*

mobile phone handset of any other witness than the informant ”. Thus, from these evidence came on record it can not be said that the prosecution has duly proved the seizure of mobile phone handset Art.21 and it can not be said that the prosecution has duly proved the seizure panchanama Ext.435.

179. PW-27 is a panch witness of disclosure statement Ext.459 of accused no.1 and seizure panchanama Ext.460 (page nos.151 to 154). He testified that, on 19.12.2014, he was called in the office of Crime branch, Bandra. Thereat, P.O. Kadam requested him to act as a panch. Another panch Aslam Qureshi was present. Police Officer started writing panchanama. Accused in custody of police stated that, he will show the place from where he had purchased the mobile phones. Accordingly, memorandum Ext.459 was recorded in his presence. Thereafter, accused, both panchas and Police Officers left the office of Crime branch, Bandra by police vehicle. They went in Malad, in a mobile shoppe. Accused told that, he had purchased mobile phone from said mobile shoppe. Copies of purchase receipts were collected by police from the shopkeeper. Accordingly, panchanama Ext.460 was prepared in his presence and the purchase receipts Art.24 were recovered. Nothing elicited in the cross-examination of this witness in respect of disclosure statement made by accused no.1 as per Ext.459 and seizure of Art.24 receipt under seizure panchanama Ext.460.

180. PW-8 adduced his evidence as PW-23 at Ext.229 in MCOC Spl. Case No.02/2015. The copy of deposition is filed at Ext.183. Both parties relied on copy of said deposition in this case. PW-8 testified that, he is owner of K.P. Enterprises situated at Gate No.7, Shop No.203, Malad, Malwani. He was selling mobile phones from his shop. He testified that, in

the year 2014 Officers of D.C.B. C.I.D. visited his shop, at that time his servant Sarvan Singh was present in the shop. He was not present at the relevant time, his servant informed him on phone that Police Officers came to his shop. Police Officers asked him whether he had sold mobile phone from his shop, to which he gave affirmative answer. The bill book for month of August 2014 was asked by police, he replied that he will take search of said bill book and produced the same before concerned Police Officer. He identified receipt shown to him in respect of selling three mobile phone handsets of Nokia 105 to the customer. Name of customer was Mohd. Anees Merchant (accused no.1). He identified copy of receipt (Ext.230 in MCOC Spl. Case No.02/2015). In his cross, it has come on record that sale tax number is not mentioned in the bill book. He also stated that, he had prepared printed bill book. He also stated that, receipt (Ext.230 in MCOC Spl. Case No.02/2015) is not printed receipt and there is no sale tax number upon said receipt (Ext.230 in MCOC Spl. Case No.02/2015). The copy of said receipt (Ext.230 in MCOC Spl. Case No.02/2015) is filed in this case at page 155 and it is marked as Art.24.

181. From the above referred evidence of PW-27 and PW-8, an inference which can be drawn is that accused no.1 had purchased three mobile phone handsets from the said mobile phone shop. However, that itself is not suffice to hold the accused no.1 guilty for the charges leveled on him, unless substantial evidence is brought on record in respect of his involvement in the offence registered against him. In other words, in absence of substantial evidence in respect of involvement of accused no.1 in crime registered against him, these corroborative evidence can not be relied upon.

182. PW-29 testified that, he run a shop at Hyder Bahadur Chawl at

Kausa, Mumbra. He know accused no.7. He was knowing cell number of accused no.7 when he had talk with him during the period friend of accused no.7 installed a stall infront of his shop. He gave cell number of accused no.7 to police. He further testified that, he know accused no.3 as he was residing in a building adjacent to his building and used to come to his shop and was helping in his work. He was knowing cell number of accused no.3. He further stated that, he did not give his cell number to anybody. This evidence of PW-29 is not much helpful to the prosecution case in absence of substantial evidence in respect of alleged incident and crimes committed by the accused.

183. PW-30 testified that, on 18.12.2014, he was called in Crime branch office, Bandra. He was asked to act as a panch, he assented for the same. Police Officer Padvi introduced him with accused no.6. He identified accused no.6. He further testified that, accused no.6 made statement that he and his two colleagues met at Juhu galli and then went to N.S.-9 road, at Shagun bungalow. Police recorded his statement as per Ext.464.

184. PW-30 further testified that, accused no.6 lead police team and panchas towards Juhu galli. As per directions of accused no.6, they reached at Vada Pav Vendor at Juhu galli. Accused no.6 told that, he alongwith others conducted meeting there. Thereafter, they went to the spot by motorcycle, Nazim was rider of motorcycle. He was second pillion rider and one person was sitting between them. Accused no.6 took them to Shagun bungalow owned by PW-52. Accused no.6 stated that, due to presence of Watchman and crowd their attempt of firing was failed. PW-30 further testified that, police prepared panchanama as per Ext.465. This evidence of PW-30 is totally vague and without any base. Moreover, such a statement made by accused before Police Officer is not admissible in

evidence in view of S.25 and 26 of Evidence Act. Hence, the evidence of PW-30 not helpful to the prosecution case. Not only this but it is pertinent to note that person namely Nazim was not the rider of motorcycle of accused, according to prosecution case and person namely Nazim is not prosecuted as co-accused in this case. Hence, on this ground also the evidence of PW-30 is not reliable and acceptable one.

185. PW-31 testified that, in the year 2015, he was doing business as an Estate Agent in shop no.6, China Height building, Kadimachin road, Mumbra. He know accused no.2 as he was attending Darga regularly. He testified that, he had contact with accused no.2 on his cell numbers. He do not remember cell numbers of accused no.2 but last digit of first cell number was 25 and last digit of second cell number would be 98 or 67. He identified the accused no.2. This evidence of PW-31 also not much helpful to the prosecution case in absence of substantial evidence in respect of committing crime by accused of making firing on bungalow of PW-52. In other words, in absence of substantial evidence regarding criminal acts of accused such corroborative evidence which is vague in nature is not suffice to hold that the prosecution has established the guilt of accused.

186. PW-32 testified that, since his birth he was residing at Darga Road, Kausa, Mumbra. He know Shahnawaj Pathan, who was working as Real Estate Agent. He had purchased a room from him. He used to make phone calls to him. He do not remember his exact cell number, but the first digits would be 78 or 98 and last one as 1125.

187. It is pertinent to note that, the prosecution has prosecuted accused no.6 whose name is Shahnawaj Sharif Ulla Shaikh @ Shanu. Personal namely Shahnawaj Pathan is not accused in present case. Hence,

the vague evidence of this witness PW-32 not helpful to the prosecution case.

188. PW-34 testified that, he was carrying business of broker and he was using cell number 9022766780. He testified that, he know accused no.8. He further clarified that, he had not given any details to police. Thus, evidence of this witness is not helpful to the prosecution case.

189. PW-35 testified that, he was engaged in business of supplying construction material. Accused no.10 is his cousin. He is residing in adjacent residence of his residence. He told cell number of accused no.10 was 7208519836. They had communication with each other on those cell numbers. From this evidence of PW-35 only inference which can be drawn is that cell no.7208519836 was in the use of accused no.10 and nothing more than that. However, in absence of substantial evidence in respect of criminal acts did by accused no.10, this much evidence of PW-35 not sufficient to hold that the prosecution has proved the guilt of accused no.10 beyond reasonable doubts.

190. PW-36 testified that, in the year 2014-15, he was working with Deal Craft Retailers. He know accused no.12 as his friend. He testified that, in the year 1995, he went to Dubai for working with Baskin Robin till 1998. He had received phone call of accused no.12, he was then in America and his cell number was 0018622200002. Occasionally, they had telephonic communication with each other. Accused no.1 and one Najib are brothers of accused no.12. In his cross-examination, he stated that he did not preserve cell number of accused no.12 in writing with him. He also admitted in his cross that police showed him cell number on computer at police station. He also stated that, accused no.12 was simple term person.

From this evidence of PW-36 it can not be conclusively held that really, he is aware that cell number 0018622200002 was in the use of accused no.12 as alleged by the prosecution. Hence, this evidence also not much helpful to the prosecution case.

191. PW-37 testified that, in the year 2014, he was running photo studio namely Famous Photo Studio in the vicinity of his residence. Accused no.2 is his childhood friend. Initially, he was plying auto-rickshaw and later on went to Dubai. He was making phone calls to this witness occasionally from his cell number 98778734. He further testified that, accused no.2 had his cell number 7827276360966 when he was in India. He further testified that, his own cell numbers were 9172241991 and 9167192240.

192. PW-37 further testified that, in August 2014, he received phone call of accused no.2 saying that, immediately he shall go to the residence of accused no.2 and collect a bag and give the same to one person at Andheri bus stop. Accused no.2 made phone call from Saudi Arabia. Then, he went to the house of accused no.2, collected one bag, while returning back he felt something wrong as the said bag was weighty. He asked accused no.2, what is there in the bag, on which he replied that, there is gun. He got frightened and told him that he would not go to bus stop and he shall sent his person to his studio. He returned to his photo studio and checked the bag, found gun in it. Meantime, person sent by accused no.2 came to his studio, he handed over said bag to said person as per say of accused no.2 and said person left his studio. He also testified that, later on accused no.2 was laughing and told that not to worry and said person would not do anything wrong. He replied that, the said person would tell his name if apprehended by the police. PW-37 instructed accused no.2 not

to make phone calls to him again. He identified accused no.9 while recording his evidence, a person who took away bag containing gun from his studio.

193. In his cross-examination PW-37 testified that, he did not ask name to the person or had no talk with him, who came to collect bag at his studio. From this evidence of PW-37 inference which can be drawn is that at the instance of accused no.2, this witness has handed over a firearm to somebody i.e. persons by accused no.2. However, from this evidence it can not be inferred that either accused no.2 or any other co-accused in this case were found in possession of firearm, thus the evidence of this witness in absence of substantial evidence and in absence of proving criminal acts of accused not much helpful to the case of prosecution.

194. PW-38 testified that, in the year 2010, he was running a dhaba. Cell number in his use was having last digits 808 in the year 2015. He had purchased said mobile phone handset from Naim Lallan Khan (PW-53). He was coming at his dhaba for taking meal. He told that, he found said mobile phone handset under Bandra bridge. He has no money to go to his native place, and sold mobile phone handset to him for Rs.500/-. He further testified that, police had seized said mobile phone handset Art.S from him under seizure panchanama as on 16.01.2015. In his cross-examination, he stated that he had possessed another mobile phone handset with cell number 9819660048.

195. PW-53 testified in his evidence at Ext.546 that, he was working with one Jagdish Jaiswal in the year 2014. He used to sleep in godown, if he was late. In November 2014, due to scarcity of water he went to take bath in Bandra Creek. He was drying his clothes, at that time he found one

black colour mobile phone handset of Nokia company. He had used said mobile phone by inserting SIM Card in it. He was taking meal in hotel of PW-38. He was having no money, therefore he sold said mobile phone handset to PW-38. He had identified mobile phone handset Art.S shown to him at the time of recording his evidence.

196. From this evidence of PW-38 and PW-53, it appears that one mobile phone handset of Nokia company was found to PW-53 under bridge of Bandra Creek and he had sold said mobile phone handset Art.S to PW-38. However, nexus of this mobile phone with present case is not bring on record by the prosecution. Therefore, these evidence of both these witnesses not much helpful to the prosecution case.

197. PW-39 testified that, on 19.12.2014, he went to Bandra BMC office for his work. He was called in Crime branch office, Bandra to act as a panch. Accused no.2 was in the custody of police. Accused no.2 made disclosure statement that he would show place where he had thrown the mobile phone handset. Then, accused no.2 lead Police Officers and panchas to that place via Dahisar Check Naka, Ghodbunder Road and reached to Bhayandar bridge. Thereat, vehicle was stopped and accused no.2 told that he thrown said mobile phone handset below into water. Nothing was found below said bridge. Accordingly, panchanama was prepared as per Ext.498. Since there is no recovery at the instance of accused no.2 in view of the alleged disclosure statement. Hence, this evidence of PW-39 and panchanama Ext.498 has no much significance. Moreover, this evidence is also corroborative piece of evidence, in absence of substantive evidence regarding criminal acts of accused, this evidence has no much significance and not much helpful to the prosecution case.

198. PW-41 is a panch witness of disclosure statement Ext.505 made by accused no.1 and panchanama Ext.506. He testified that, in December 2014, he was called in office of Unit-IX. Police Officers were present there. One of the Police Officer asked him that, person present in their office going to make a statement. He stated that the said person was accused no.1- Mohd. Anis Merchant. Accused no.1 stated that he would locate the place from which he was taking money. Accordingly, memorandum / disclosure statement Ext.505 was recorded.

199. PW-41 further testified that, thereafter, both panchas, police team and accused departed from police station by police vehicle. As per directions of accused, they proceeded and went to Malad. Thereat, accused showed one shop namely- First Cotton. They entered in said shop. Accused pointed out shop owner- Shahzad. Police introduced said shop owner. Shahzad identified accused that he is brother of Obed. Accordingly, panchanama Ext.506 was prepared.

200. PW-9 was examined as PW-24 (in MCOC Spl. Case No.02/2015 at Ext.231). Copy of his deposition is filed at Ext.182. Both parties relied on said copy of deposition. He testified that, in the year 1989, he came in contact with accused no.12. Since 1991 till 2007, he was serving in Abu Dhabi. He returned to Mumbai in the year 2007 and started export business. In the year 2010, he had gone to USA and resided there for about 04 months, during that period accused no.12 gave help to him. He testified that, in the year 2013, accused no.12 was dealing business of garment. He was addicted to play match fixing. In the year 2014, he started business with this witness. Accused no.12 was sending money through hawala to him. In 6-7 months accused has sent him Rupees 10 to 11 lakhs through hawala. In August 2014, he had given some amount to brother of accused

no.12 i.e. to accused no.1. In October 2014, accused no.12 sent Rs. Four lakhs to him, out of which he paid an amount of Rs.1,50,000/- to accused no.1 and remaining amount to Irfan bookie. In November 2014, as per instructions of accused no.12, he had paid Rs.15,000/- to accused no.1. He has identified both accused nos.1 and 12 while recording his evidence before this Court.

201. In cross-examination of PW-9, it has come on record that accused no.12 was engaged in business of cosmetics and garments in USA. He was taking financial help and other helps from the accused. He categorically stated that, family of accused no.12 was depend upon him financially. He further testified that, he used to extend financial help to the family members of accused no.12 and he extended such financial help many time.

202. From the above referred evidence of PW-41 and evidence of PW-9, it can be safely gather that PW-9 had money transactions with accused no.12. Accused no.12 used to send money to PW-9 through hawala. However, no inference or conclusion can be drawn that accused no.12 was collecting funds for terrorists or for any illegal activities and distributed such funds amongst other co-accused. Hence, the evidence of PW-9 and PW-41 not much helpful to the case of prosecution. As the prosecution has not bring on record that accused no.12 was receiving such funds from the gang-leader or any other member of gang out of proceeds of crimes. The evidence of PW-9 clearly demonstrates that out of his own business, accused no.12 was sending money to his family members and was extending financial help to PW-9. Therefore, evidence of both these witnesses not much helpful to the prosecution case.

203. PW-42 testified that, accused no.3 is a brother of his wife namely- Heena. He testified that, in the year 2015, he had possessed mobile phone having cell no.9820617321. He further testified that, he do not remember cell number of his wife Heena and his brother-in-law accused no.3- Ashpak. The Ld. SPP put leading questions to this witness with prior permission of the Court. However, he testified that he do not remember whether or not he had stated Portion Mark "A" before the Investigating Officer. Thus, evidence of PW-42 is not supporting and helpful to the case of prosecution.

204. PW-43 testified that, he know accused no.11. Accused no.11 was working as a Plumber and was residing in Anis Mansion situated in Dhanu baug, Talav area, Nalasopara East. He identified accused no.11 while recording his evidence before the Court. He further testified that, he had communication with accused no.11 on mobile phone. He further testified that, his cell number was 9870781277 and cell number of accused no.11 was 8390103735. In his cross-examination, it has come on record that he had not given details of specific dates of such communications between accused no.11 and him. He had not given screenshot of call log of his mobile phone. Now, said cell number is not with him. He also stated that, now accused no.11 not working with him and he had no contact with accused no.11 after leaving the work. He also testified that, one could not remind phone number of person with whom he had no recent contact. From this evidence of PW-43, only it can be inferred that the cell number which was in the use of accused no.11 was 8390103735.

205. PW-45 testified in his evidence at Ext.516 that, he know accused no.9 as he was his school mate in Merry English High School. In the year 2015, he was using mobile phone having cell no.8087743696. He

was communicating with accused no.9 on his cell no.9665168378 and other cell number having initial digits 809745. He identified accused no.9 while recording his evidence before this Court. In his cross-examination, PW-45 stated that he made last phone call to accused no.9 prior to 2015. He also stated in his cross-examination that, he did not submit any record about *inter-se* communication on phone.

206. PW-5 testified that, he had prepared T.I. Parade as per panchanama Exts.240 and 241 (page 115 to 135 and 161 to 179, 183). In his cross-examination, PW-5 testified that he conducted more than 25 T.I.P. He also stated that, he was aware about rules in Criminal Manual for conducting T.I.P. He also stated that, T.I.P. of maximum two accused at a time can be conducted, still he conducted T.I.P. of three accused persons at a time. He also stated that, the page 163 and 165 does not bear his signature. He also testified that, the witnesses who had identified the accused has not stated to him on which basis they identified the accused. He also admitted that, seal of Superintendent of prison not obtained by him on T.I.P. panchanama Exts.240 and 241 so as to show that those panchanamas were prepared inside the prison. He also admitted in his cross that he told the names of accused to be identified, to the panch witnesses before entering into prison. It has also come on record that, he had not made inquiry with panch witnesses whether photographs of accused were shown to them before entering in the prison to identify the accused. From this evidence of PW-5, it appears that he has not followed legal procedure while conducting T.I.P. of accused. Though, for the sake of argument it is considered that he has followed legal procedure and accused were identified by the prosecution witnesses during T.I.P. These corroborative evidence has no much value in absence of substantial evidence in respect of happening of alleged incidents of firing at Shagun

bungalow, in absence of incident of theft, in absence of evidence about conspiracy hatched by the accused and in absence of evidence regarding alleged offences committed by accused. Therefore, this evidence not suffice to gather that the prosecution has established the guilts of accused.

CONFESSION

207. Ld. SPP Mr. Gharat submitted that, PW-62 recorded confession of accused no.9 u/S.18 of the MCOC Act. After recording said confession it was sent to the Metropolitan Magistrate. Accused no.9 admitted before Metropolitan Magistrate that, he had given confession voluntarily. The confession is at Exts.591 and 592. Certificate of PW-62 is at Ext.593. Accused no.9 has confessed how he came in contact with other accused. It also shows that he was in conscious possession of the firearm used in the commission of crime. PW-14 and 22 corroborates the evidence of PW-62. Thus, as per his submission this confession can be relied upon, which supports the case of prosecution.

208. Ld. Counsel Mr. Satish Mishra representing to accused no.9 submitted that, the accused no.9 has been taken in custody by the Police Officers from his house at Nalasopara. Allegations have been made that, he was engaged in illegal activities with accused no.12. It is also alleged that, he was in possession of firearm without license or permit. However, nothing seized from his possession. He was arrested on 16.11.2014 and D.C.B. C.I.D. took his custody on 17.11.2014. He further submitted that, the evidence of PW-62 shows that the compliance of S.18 r/w. Rule-3 of MCOC Act and Rules there under have not been made while recording confession of accused no.9. Therefore, the confession can not be relied upon. He further submitted that, the certificate Ext.593 shows that, it has been prepared by somebody later on. Voluntariness of accused no.9 has not

been proved by the prosecution. Thus, the confession of accused no.9 can not be relied upon.

209. In view of the above rival contentions of both sides, this Court is of the view that whether there is compliance of S.18 of MCOC Act and Rule-3 of MCOC Rules or not is required to be appreciated. Similarly, whether or not the confession can be relied upon or not is required to be appreciated in the light of evidence came on record. The conditions which are required to be fulfilled in view of S.18 of MCOC Act and Rule-3 of MCOC Rules, 1999 are that,

- (a) The Police Officer before whom the accused was produced for recording confession should be a person who has not taken part in the investigation of the offence.
- (b) Such person shall not be allowed to remain present at the time of recording confession.
- (c) The Police Officer recording a confession shall inform the person / accused making confession that he is not bound to make such confession and if his confession is so recorded it would be used against him in evidence.

210. In present case at hand, after going through the evidence of PW-62 it appears that, he has not taken part in the investigation of the offence registered against the accused. It also reveals that, the Investigating Officer who was investigating offence was not allowed to remain present at the time of recording confession. However, from the evidence of PW-62 and contents of Part-I and Part-II of confession which are at Exts.591 and 593 respectively, it appears that PW-62 has not informed to the accused no.9

that he is not bound to make such confession and if his confession is so recorded, it could be used against him in evidence. Thus, there is serious lapse in recording the confession as it is directly contrary to clause-(3) of Rule-3 of MCOC Rules, 1999. It is therefore, difficult to rely on confession of accused no.9 recorded by PW-62. This view of this Court has been supported very decision of Hon'ble Apex Court in case of, **Tabassum Khan Kayyum Khan V/s. State of Maharashtra, 2005 ALL MR (Cri) 2003.**

211. Apart from above discussion, in cross-examination PW-62, he categorically stated that he had not informed to the accused that in case he had not made confession then also he would not be remanded to the custody of Investigating Officer. He also categorically stated that, he had not informed to the accused that he is not bound to make confession. Not only this but in his further cross-examination, particularly, in Para 10 he categorically stated that there was space below Part-II of confession for writing the certificate. However, he has not issued the certificate below Part-II of confession. The record shows that the certificate Ext.593 has been given separately in the handwriting. It creates shadow of doubt in respect of issuing certificate Ext.593 on the date of recording confession Part-II. Thus, the confession recorded by PW-62 can not be relied upon for the reasons referred herein above.

212. Moreover, in examination-in-chief itself PW-62 categorically stated that due to lapse of time he is not able to identify accused no.9, whose confession he has recorded. It has also come on record that PW-62 had not given letter addressing to Metropolitan Magistrate for producing the accused no.9 before him for verification of confession. Thus, the confession recorded by PW-62 can not be relied upon for the reasons referred herein above.

PRIOR APPROVAL AND SANCTION

213. PW-60 testified in his evidence at Ext.575 that, since 21.08.2012 to 15.02.2015, he was working as Joint Commissioner of Police (Crime), Mumbai. ACP submitted proposal in C.R. No.105/2014 registered with D.C.B. C.I.D. for grant of prior approval. FIR, statements of witnesses, various panchanamas and material collected during investigation was submitted before him alongwith proposal. On scrutiny of those documents, he found that the accused are involved in continuous unlawful activities being members of an organized crime syndicate headed by accused no.13, therefore he granted prior approval u/S.23(1)(a) of MCOC Act and accordingly, passed prior approval order Ext.576 (page nos.53, 54). In his cross-examination, he stated that muddemal articles were not produced before him. However, in his cross he confronted that he had saw CCTV footage of the incident. It was enclosed with proposed. He also testified that, all accused were already arrested in another C.R. 464/2014 registered with Khar police station. He also testified that, in previous two charge-sheets referred in his order accused in this case except accused no.13 were not co-accused. He denied rest of the suggestions given to him.

214. PW-63 the then ACP, D.C.B. C.I.D., Crime testified in his evidence at Ext.598 that, he was attached to D.C.B. C.I.D., Crime as ACP, D-1 Special during period of 22.04.2007 to 30.06.2012. He filed previous charge-sheet in MCOC Spl. Case No.12/2010 and MCOC Spl. Case No.10/2012 against wanted accused Ravi Pujari and arrested accused, cognizance was taken by the Court in those cases. He identified the certified copies of previous two charge-sheets Exts.582 and 583. In his cross-examination it has come on record that arrested accused in present case were not co-accused in earlier two charge-sheets.

215. From the above referred evidence of PW-60 and PW-63 and copies of charge-sheets filed at Exts.582 and 583, it is obvious that previously accused no.13 was prosecuted in those charge-sheets filed at Exts.582 and 583. The defence have not challenged the fact that accused no.13 and his other associates were prosecuted in those cases for the offences punishable u/Ss.387, 120-B, 34 of IPC and Ss.3(1)(ii), 3(2), 3(4) of MCOC Act and in C.R. No.83/2010 for the offences punishable u/Ss.307, 506(2), 387, 120-B, 34 of IPC r/w. Ss.3, 25, 27 of Arms Act r/w. Ss.3(1)(ii), 3(2), 3(4) of MCOC Act. In short, accused no.13 was prosecuted in earlier two charge-sheets in which punishment more than three years and above was provided. It is settled principle of law in view of recent catena of decisions of the Hon'ble Apex Court that so as to invoke the provisions of MCOC Act, 1999 more than one charge-sheet alleging commission of cognizable offence with imprisonment of three years or more is condition precedent. The charge-sheet should consist averments alleging unlawful activities undertaken either singly or jointly by the accused and such unlawful activities undertaken as a member of organized crime syndicate or on behalf of such syndicate. It is not mandate that every accused should be co-accused in earlier two charge-sheets. What is important is the nexus or link of the person with organized crime syndicate. The link with the organized crime syndicate is the crux of the term continuing unlawful activity. Thus, the requirement for grant of sanction u/S.23(1)(a) of MCOC Act have been complied. The defence have not seriously challenged these facts. Hence, this Court is of the view that there is no illegality in the prior approval order issued by PW-60 which is at Ext.576.

216. In regard to sanction PW-61 CIO testified that, initially he had submitted proposal to Joint Commissioner of Police (Crime) for invoking

penal provisions of MCOG Act. Prior approval order was issued by the competent authority. Thereafter, he conducted further investigation in penal provisions of MCOG Act. He had obtained certified copies of previous charge-sheets Exts.582 and 583 (page nos.435 to 459 and 463 to 513). After completion of investigation, he sent proposal for according sanction before designated Officer. On 06.02.2015, sanction was accorded, then he filed charge-sheet against the accused.

217. In his cross-examination, particularly, in Para 18, he stated that accused nos.1 to 11 were not co-accused in previous charge-sheets Exts.582, 583 alongwith wanted accused. Except this his above referred evidence in respect of submitting proposal for grant of approval and for according sanction is remained unchallenged and unshaken in his cross-examination.

218. PW-65 testified in his evidence at Ext.607 that, in the year 2015 he was Commissioner of Police, Mumbai. On 20.01.2015, he received proposal for grant of sanction under MCOG Act in C.R. No.105/2014. Case papers, calendar of evidence, statements of witnesses, reports etc. were submitted before him alongwith proposal. After perusal of proposal, he had discussed the same with legal adviser in his office, thereafter made discussion with CIO relating to matter. He carried out entire procedure and found that it is fit case to accord the sanction under MCOG Act. Accordingly, he issued sanction order Ext.608 (page nos.53, 54).

219. In his cross-examination, PW-65 testified that, investigation in C.R. No.464/2014 was under investigation when investigation in C.R. No.288/2014 was opened. The record of investigation in C.R. No.464/2014 was not submitted before him. He also stated that, accused

in this case were not arrested in any other Special Case under MCOC Act. He denied rest of the suggestions given to him.

220. In recent catena of decisions, the Hon'ble Apex Court and Hon'ble High Court time and again held that, persons who are alleged to be members of an organized crime syndicate need not have more than one charge-sheet filed against them in an individual capacity. Rather, charge-sheet with respect to the organized crime syndicate are sufficient to fulfill the conditions in S.2(1)(d) of MCOC Act. In present case at hand also, though accused nos.1 to 12 who are alleged to have been members of an organized crime syndicate of wanted accused no.13 have not been charge-sheeted earlier in more than one charge-sheet in their individual capacity. However, the evidence came on record shows that wanted accused no.13 was accused in earlier two charge-sheets Exts.582 and 583, in which he was prosecuted for the offences punishable u/Ss.387, 307, 120-B of IPC r/w. Ss.3(1)(ii), 3(2), 3(4) of MCOC Act. Cognizance in those charge-sheet was taken by the competent Court. These facts not disputed and denied by the defence. In order to constitute continuing unlawful activity the requirements of law which are required to be satisfied are that,

- (i) More than one charge-sheet, alleging commission of cognizable offence punishable with imprisonment of three years or more required to be filed.
- (ii) A charge-sheet should consists of averments alleging unlawful activity undertaken either singly or jointly by the accused.
- (iii) As a member of organized crime syndicate or on behalf of such syndicate.
- (iv) The cognizance of such offence is taken by competent Court.

221. In present case at hand, all these requirements have been satisfied by the prosecution and these facts reflected in the evidence of PW-61, PW-65 and PW-63. Thus, the sanction order is legal and proper.

CONCLUSION

222. The Ld. Counsel for defence placed on decision in case of, **John Pandian V/s. State Rep. By Inspector of Police, T. Nadu in Criminal Appeal No.452 of 2007 decided on December 03, 2010**, it is held by the Hon'ble Apex Court that,

“Each one of the circumstances should be proved beyond reasonable doubt and such circumstances proved must form a chain of events from which the only irresistible conclusion is about the guilt of the accused which can be safely drawn and no other hypothesis of the guilt is possible”.

223. In present case at hand, on appreciation of entire evidence oral and documentary discussed herein above this Court is of the view that, the prosecution has failed to prove beyond reasonable doubts that accused nos.1 to 12 during the period of June 2014 to 15.11.2014 at Greater Mumbai agreed to do illegal acts namely to commit unlawful activities jointly by use of violence, with an objective of gaining pecuniary benefits, undue economic advantage by way of getting the promotion show for the region of USA and Canada of movie “Happy New Year” produced by Red Chilly Entertainment to wanted accused no.14 and in pursuant to said common evil desire, did incidental acts of giving threats to informant and prosecution witnesses. The prosecution also failed to establish beyond reasonable doubt that, in furtherance of said common evil desire accused formed an organized crime syndicate with the help of accused no.12 as per the instructions of accused no.13. The prosecution also failed to prove beyond reasonable doubt that the accused procured firearms and used

such firearms for firing on Shagun bungalow owned by PW-52 and his two brothers in order to achieve an objective of crime syndicate as alleged by the prosecution. This Court also is of the view that the prosecution has failed to prove beyond reasonable doubts that accused nos.3, 4, and 5 on 23.08.2014 at about 10.30 p.m. went on motorcycle on road near Shagun bungalow and did an act of firing. Prosecution also failed to prove beyond reasonable doubt that the accused attempted to kill PW-4 watchman of Shagun bungalow. Prosecution also failed to prove beyond reasonable doubt that the accused attempted to commit murders of PW-52, his family members as alleged by the prosecution. The prosecution also failed to prove that, as per instructions of wanted accused no.13, and with the help of accused no.12, accused nos.1 to 12 formed an organized crime syndicate and they were members of an organized crime syndicate headed by accused no.13 as alleged. The prosecution failed to establish beyond reasonable doubt that the accused being members of an organized crime syndicate continued illegal activities for pecuniary benefits or undue economic or other advantage through wrongful activities. Prosecution also failed to establish beyond reasonable doubt that the accused nos.1 to 12 and their other associates conspired, abetted or attempted to commit or to facilitate the commission of organized crime. The prosecution also failed to prove beyond reasonable doubt that accused nos.1 to 12 were members or associates of organized crime syndicate and committed the offences as alleged by the prosecution. The prosecution also failed to prove beyond reasonable doubt that the accused possessed firearms and used such firearms and contravened provisions of Ss.3 and 5 of Arms Act. The prosecution also failed to prove beyond reasonable doubt that these accused committed theft of motorcycle bearing registration no.MH-03-BF-2290. The prosecution also failed to prove that the accused fabricated the number plate of motorcycle and also failed to prove that accused

fabricated the documents as alleged. In short, the prosecution has failed to bring home the guilt of accused beyond reasonable doubts for the offences punishable u/Ss.120-B r/w. 302 r/w. 511, 115, 427, 465, 468, 471, 307 of IPC r/w. Ss.3, 25, 27 of Arms Act r/w. Ss.3(1)(ii), 3(2), 3(4) of the MCOB Act. It is cardinal principle of criminal justice system that the prosecution must established the guilt of accused beyond reasonable doubts otherwise benefit of doubt goes to the accused. In present case at hand, the upshot of all the evidence discussed above is that, in present case the prosecution has failed to prove the guilts of accused beyond reasonable doubts, therefore they are entitled for acquittal. In the result, I pass following order :

ORDER

1] The accused no.1- **Mohammad Anis Abdul Rashid Merchant @ Radiowala**, accused no.2- **Ishrat Badshah Shaikh**, accused no.3- **Ashpak Abdul Rashid Sayyed**, accused no.4- **Azim Nasim Khan @ Shotty**, accused no.5- **Asif Abdul Sattar Khan @ Boss**, accused no.6- **Shahanawaj Sharifulla Shaikh @ Shanu**, accused no.7- **Mohammad Hasnat Hakikkulla Mohammad Shakil Khan**, accused no.8- **Ravikesh Jagdamba Singh @ Ravi**, accused no.9- **Sufiyan Dilshad Shaikh**, accused no.10- **Faiz Naim Shaikh**, accused no.11- **Armaan Abbas Siddhiqui @ Bunt** and accused no.12- **Obedullah Abdul Rashid Radiowala @ Obed Radiowala @ Rabbitwala** are acquitted u/S.235(1) of Cr.P.C. of the offences punishable u/Ss.120-B r/w. 302 r/w. 511, 115, 427, 465, 468, 471, 307 of IPC r/w. Ss.3, 25, 27 of Arms Act r/w. Ss.3(1)(ii), 3(2), 3(4) of the MCOB Act.

2] The bail bonds of the accused nos.4, 5, 8, 10 and 11 stands cancelled.

3] Accused nos.1, 2, 3, 6 and 7 are in Talaja Central Prison, accused no.9 is in Thane Central Prison and accused no.12 is in Mumbai

Central Prison respectively. They shall be released forthwith and set free at liberty, if not required in any other case. Direct accordingly to the Superintendent / Prison Authority of Taloja Central Prison, Thane Central Prison and Mumbai Central Prison respectively immediately.

4] The accused nos.1 to 12 are directed to execute Personal Bond of Rs.25,000/- each and furnish surety in like amount by each of them in compliance of S.437(A) of Cr.P.C., for attending the Court, if in case the appeal is filed.

5] All muddemal documents and articles be preserved as per Criminal Manual, Chapter-VII, Para-73(d), as required during trial of supplementary charge-sheets to be filed against wanted accused nos.13, 14, and 15.

6] The Investigating Officer shall file separate charge-sheets against the wanted accused no.13- **Ravi Sulya Pujari**, wanted accused no.14- **Charanjit Singh @ Sunil Raniyal @ Bittu**, wanted accused no.15- **Sarvar Inder Singh** respectively.

7] The Sheristedar / Registrar (Sessions) are directed to forward the copy of judgment u/S.365 of Cr.P.C. to the District Magistrate of local jurisdiction for information and further action.

8] The proceeding is disposed of, accordingly.

Dated: 16.03.2023



(B.D. SHELKE)
ADDL. SESSIONS JUDGE
& SPECIAL JUDGE UNDER
MCOC/NIA/POTA ACT, GREATER MUMBAI.
(COURT ROOM NO.55)

Dictated on : - Since 24.02.2023 from time to time.
Typed on : - Since 24.02.2023 from time to time.
Corrected on : - 16.03.2023.
Signed on : - 16.03.2023.

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”.		
UPLOAD DATE	UPLOAD TIME	NAME OF STENOGRAPHER
17.03.2023	11.15 a.m.	N.S. Bakre
Name of the Judge (With Court Room No. 55)		HHJ Shri. B.D. Shelke
Date of pronouncement of JUDGMENT/ORDER		16.03.2023
JUDGMENT/ORDER signed by P.O. on		16.03.2023
JUDGMENT/ORDER uploaded on		17.03.2023