IN THE COURT OF DR. PANKAJ SHARMA,
CHIEF METROPOLITAN MAGISTRATE, NEW DELHI DISTRICT,
PATIALA HOUSE COURTS, NEW DELHI

CNR No. DLND02-000056-2007
FIR No. 207/2006
PS : EOW
U/s : 120-B/409/201/109 read with 120B IPC
State Vs. Dinesh Chandra Sharma & Ors.
Filing No. 10653/2007
Registration No. 39858/2016

Date of institution of case	:	22.02.2007
Date of cognizance of case	:	24.02.2007
Date of framing of charge	:	31.05.2014
Date of reserving the judgment	:	07.10.2021
Date of pronouncement of judgment	:	08.10.2021

APPEARANCES :

Present : Ld. Addl. PP Sh. A.T. Ansari for the State.
Ld. Sr. Advocate Sh. Vikas Pahwa alongwith Sh. R. Krishnamurthy & Ms. Neelam Krishnamurthy (Complainant).
Ld. Counsel Sh. Sudarshan Rajan for Accused Dinesh Chandra Sharma.
Ld. Counsel Sh. Manu Sharma for Accused P.P. Batra.
Ld. Counsel Sh. Rohit Sharma for Accused Anoop Singh.
Ld. Senior Advocate Sh. Pramod Dubey alongwith Sh. Vikas Aggarwal for Accused Gopal Ansal.
Ld. Counsel Sh. Tanvir Ahmad Mir & Sh. Sidharth Kashyap for Accused Sushil Ansal.

JUDGMENT

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1. S. No. of the Case :CNR No. DLND02-000056-2007

2. Date of Commission of Offence : During the period started from filing of charge-sheet in case RC No.3/ 97/ SIC IV/New Delhi on 15.11.1997 wherein accused Sushil Ansal, Gopal

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		Ansal and H. S. Panwar were charge sheeted amongst other accused for offence under section 304/304A IPC till 13.01.2003 when the fact of missing documents came into the knowledge of Trial Court.
3. Name of the complainant	:	Mr. R. Krishnamurthy, General Secretary, AVUT
4. Name, parentage & address of accused	:	**(1)** Dinesh Chandra Sharma S/o Sh. Jagram Sharma, R/o 1/1609, Mansarovar Park, Delhi, **(2)**Sushil Ansal S/o Late Sh. Chiranji Lal, R/o N-148, Pachsheel Park, New Delhi, **(3)** Gopal Ansal, S/o Late Sh. Chiranji Lal, R/o 1, 6, Aurangazeb Road, New Delhi, **(4)** Prem Prakash Batra, S/o Late Sh.M.L. Batra, R/o 15, Pocket, B-7, Sector 3, Rohini, Delhi, **(5)** Anoop Singh, S/o Late Sh. Ganga Singh, R/o 554, Sector 3, R.K. Puram, New Delhi, **(6)** Har Swaroop Panwar (Since deceased), S/o Sh. Khem Chand, R/o 1116, Sector 15, Part II, Gurgaon, Haryana, **(7)** Dharam Malhotra (Since deceased), S/o Sh. C.L. Malhotra, R/o 122, Sector 37, Noida, UP,
5. Offence complained of or proved	:	u/s 409/120B/109 & 201 IPC
6. Plea of Accused	:	Pleaded not guilty
7. Final Order	:	All convicted under section 120B and 409/120B and 201/120B IPC

<u>THE BRIEF BACKGROUND & GENESIS OF FIR</u> :

8. The relevant facts leading to registration of instant FIR are connected to the Uphaar Tragedy as on 13.06.1997 a devastating fire occurred at Uphaar Theatre, New Delhi which took 59 human lives including women and children besides leaving large number of persons injured. A case RC3 (S)/97/SIC.IV/CBI/ND under section 304/304A/337 IPC and section 14 of the Cinematograph Act was registered and investigation was taken up by CBI. After completion of investigation, CBI submitted a charge-sheet against Sushil Ansal, Gopal Ansal, H.S. Panwar and several other accused persons. The charges were framed against accused persons in the said case and Sushil Ansal and other accused persons challenged the said order by Crl. Rev. Petition no. 238/01 and 175/01 before Hon'ble High Court of Delhi but without success. While the trial in the said CBI case is at a sufficiently advanced stage, the Public Prosecutor noticed that several important documents which were seized by the IO during the course of investigation and which were filed along with the charge-sheet and which formed part of the judicial record were missing from the record of the case while some other documents had been tampered with and / or mutilated by tearing of a portion of the documents and defaced. Vide an application dated 13.01.2003, the Ld. SPP brought this fact to the notice of Ld. Presiding Officer and who in turn apprised the same to Ld. District & Sessions Judge. On 20.01.2003, Ld. PP sought permission of the Court to lead secondary evidence in respect of missing documents and the documents which had been tampered with in the above manner and the said prayer was allowed by the Ld. Court and the prosecution was permitted to lead secondary evidence in regard to the missing and tampered documents. Thinking this to be a handy work of accused persons who were keenly watching the progress of the trial and became apprehensive about the sanctity and fairness of the trial, got Tampered / Mutilated the record in connivance with the Court official who was In-charge of the custody of the judicial record. Thereafter, an application under section 439 (2) Cr.P.C was moved seeking cancellation of bail of the accused persons indicating that they were instrumental in Removal/ Tampering with the judicial record with the clear motive of escaping their responsibility from the commission of offence and with a view to subvert the course of justice. The said prayer was declined by the Court and the petitioner moved Crl. Main 2380/2003 before the Hon'ble High Court of Delhi praying for cancellation of bail of three accused persons. During the pendency of said petition, it was prayed on behalf of

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the petitioners to summon the copies of the Fact Finding Report conducted by Ms. Mamta Sehgal, Ld. ASJ, New Delhi where Mr. S. C. Malik, Ld. ASJ was appointed as an Enquiry Officer by Ld. District & Sessions Judge in a Disciplinary Enquiry instituted under Rule 14 of the CCS (CAA) Rule 1965 and also the final order passed by the disciplinary authority against enquiry instituted qua Dinesh Chandra Sharma, the Court official. The said prayer was allowed and copies of the report of the Fact Finding Enquiry conducted by Ms. Mamta Sehgal, the then Ld. ASJ dated 03.04.2003, the report of Enquiry dated 30.04.2004 of enquiry conducted by Sh. S. C. Malik, Ld. Addl. District & Session Judge, Inquiry Officer and the order dated 25.06.2004 passed by Ld. District & Sessions Judge, Delhi against Dinesh Chandra Sharma was placed on record. Upon receipt of said report, petitioners moved another Crl. Main 2229/2006 under section 482 Cr.P.C seeking direction of registration of a Crl. Case (FIR) on the basis of inquiry reports and order passed by Ld. District & Sessions Judge owing to the conduct of the Ahlmad of the Court. While disposing of Crl. Main 2229/2006 Hon'ble High Court of Delhi directed the Special Branch of Delhi Police to register a case under appropriate provisions of law in regard to the incident of Removal/ Tampering/ Mutilation of the documents from the judicial record of the Trial Court and also directed that investigation shall be entrusted to an officer not below the rank of Asstt. Commissioner of Police who will conduct the investigation expeditiously and endeavour to conclude the same within a period of three months from the date of the order. However, later on, Hon'ble High Court of Delhi modified its order dated 05.05.2006 and directed EOW to investigate the case. Accordingly, the instant FIR was lodged on the complaint of Mr. R. Krishnamurthy, General Secretary, Association of victims of Uphaar Tragedy (AVUT) in terms of the order dated 05.05.2006 passed by Hon'ble High Court of Delhi in Crl. Misc. Main No. 2380/2006 and Crl. Misc. No. 2229/2006 which was moved by AVUT seeking registration of FIR and investigation by an officer not below the rank of Asstt. Commissioner of Police against the accused persons which were involved in Removal/ Mutilation and Tampering of documents from the Court records of the case pending trial before the Ld. Addl. Sessions Judge, Delhi Smt. Mamta Sehgal titled as *"State v. Sushil*

Ansal and others" in RC3 (S)/97/SIC.IV/CBI/ND under section 304/304A/337 IPC and section 14 of the Cinematograph Act. As per the FIR, the said tampering and disappearance of material evidence was owing to a conspiracy hatched by Sushil Ansal, Gopal Ansal, H.S. Panwar with Dinesh Chandra Sharma, Ahlmad to subvert the free and fair trial at the cost of denting the truth. The action has been launched by AVUT to bring the culprit to book so as to send a signal of deterrence to those who tried to fiddle with the process of law so as to maintain sanctity and fairness of a criminal trial and majesty of rule of law.

9. The list of documents that were alleged to be Tampered / Removed / Mutilated are as below :

9(i). Documents no. D-20 which is a Seizure Memo dated 18.08.1997 which deals with the seizure of following documents :-

(a) Register of Director of Green Park Theatres;

(b) Register of Members;

(c) Register of Contract under section 301 of the Companies Act;

(d) Register of Directors of shareholding and shareholders;

(e) Register of share transfer;

(f) Share capital ledger;

(g) Counter foil register;

(h) Original letter with respect to Mr. Pranav Ansal;

(i) Original resignation letter of Mr. Vijay Aggarwal;

(j) Three pages of minutes of meeting of Directors of Ansal Theatres and Club Hotels dated 02.06.1997;

9(ii). Document no. D-84 deal with letter dated 28.11.1996 from Ansal Properties and Industries Ltd to the Divisional Officer DFS vide no. API VP(S) 1996 intimating the removal of the defects pointed out by DFS vide their inspection report dated 18.11.1996;

9(iii). Document no. D-89 is the occurrence book of control room Headquarters DFS dated 12.05.1997;

9(iv). Document no. D-91 is the occurrence book of BCP Fire Station;

9(v). Document no. D-92 is the casual leave register maintained in Hdqs. Delhi Fire Service. The document contains seizure memo of the register to which page no. 50 deals with casual leaves (CL) status of H.S. Panwar;

9(vi). Document no. D-24 is the seizure memo dated 27.08.1997 alongwith original cheque no. 955725 dated 26.06.1995 for Rs. 50,00,000/- drawn on Punjab National Bank, Rajinder Nagar signed by Sushil Ansal in his favour;

9(vii). Document no. D-25 is the seizure memo dated 18.08.1997 with cheque no. 805578 dated 30.11.1996 for Rs. 1,50,000/- drawn on Punjab National Bank, Tolstoy House, signed by Gopal Ansal in favour of Music Shop and cheque no. 805590 dated 20.02.1997 for Rs. 2,96,550/- drawn on Punjab National Bank, Tolstoy House in favour of M/s Chancellor Club signed by Gopal Ansal;

9(viii). Document no. D-26 is the seizure memo dated 27.08.1997 alongwith cheque no.183618 dated 23.05.1995 for Rs.9,711/- in favour of Chief Engineer (Water) drawn on Syndicate Bank, Green Park Extension signed by Gopal Ansal;

9(ix). Document no. D-28 deals with the file containing minutes of MD's conferences of the Uphaar Grand containing 1 to 40 pages. Page nos. 1, 9, 12, 14,16 & 19 were missing. The missing pages being nos. 1,9,12 deal with the MD's conference of various dates being meetings / conferences held on 07.05.1997, 02.04.1997 & 01.05.1997 which indicate that conference with respect to the management of the Uphaar Grand held under the Chairmanship of Mr. Gopal Ansal as the Managing Director circulating under the signatures of Major Ajit Chaudhary, Manager (Admn.), Uphaar Grand;

After the registration of the present FIR, investigation was entrusted to ACP Mr. Vijay Malik and later the investigation was carried out by ACP Amit Roy, SIT/EOW, Crime Branch, Delhi.

INVESTIGATION CARRIED OUT BY POLICE

10. During investigation, it was revealed that the case No. RC3 (S)SIC.IV(CBI) was pending trial in the court of Hon'ble ASJ Ms. Mamta Sehgal, Patiala House. On 19.07.2002, while the deposition of PW R.C. Sharma was being recorded, a letter dated 28.11.1996 written by Mr. Vimal K. Nagpal, Vice President (Service) Ansals Properties and Industries Ltd. to Delhi Fire Services was found missing from the judicial file. Thereafter, under the directions of the Ld. Trial Court judicial file of the case was

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subjected to scrutiny and Ld. Prosecutor Mr. Y. K. Saxena submitted a report dated 20.01.2003 mentioning therein that the following documents were found Missing/ Torn and Obliterated.

10(i). Seizure memo dated 18.07.1997 for seizure of documents prepared by IO, SIT, Crime Branch, Delhi Police-left side lower corner of second page of the seizure memo is torn;

10(ii). Correspondence page no. 123 of file of Delhi Fire Services regarding Uphaar Cinema, Green Park, New Delhi was found half torn from lower portion the file was seized by the IO, SIT, Crime Branch vide seizure memo dated 12.07.1997;

10(iii). One Register of Occurrence Book of Control Room Headquarters, Delhi Fire Services seized by the IO during the investigation – pages 363 to 400 are missing. The relevant page is 379 which pertains to departure for inspection of H.S. Panwar, Fire Officer, (an accused in the case) Delhi Fire Services on 12.05.1997;

10(iv). One Occurrence Book register of Bhikaji Cama Place Fire Station, New Delhi containing pages 1 to 400. Pages 95 to 104 are missing and on pages 109 to 116 ink has been spread. The relevant pages are 96 to 113 which contains the inspection of Uphaar Cinema from the safety point of view and movements of fire officers to attend fire calls;

10(v). Casual Leave Register maintained at Headquarter Delhi Fire Services for the period 1995-1996. Page nos. 45 to 50 are missing. Relevant page is page no. 50 which deals the casual leave status of accused H.S. Panwar on 22.12.1996;

10(vi). Four cheques dated 26.06.1995, 23.05.1996, 30.11.1996 & 20.02.1997 signed by accused persons Mr. Sushil Ansal and Mr. Gopal Ansal as authorized signatory of Green Park Theaters and Associated Pvt. Ltd and Ansal Theatres and Club Hotels Pvt. Ltd alongwith seizure memos of these cheques;

10(vii). File containing minutes of MD's meeting and correspondence containing 40 pages. Its page nos. 1, 9, 12, 14, 18 & 19 are missing. The relevant pages are 1 to 17;

That an internal enquiry (Fact Finding Enquiry) was conducted by the Hon'ble ASJ Ms. Mamta Sehgal with regard to Missing/

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Obliterated documents. During enquiry, accused Dinesh Chandra Sharma, the then Ahlmad was found responsible for the same being custodian of the judicial records. Accordingly, a regular Departmental Enquiry was ordered vide order no.49206/F-962/Vig., dated 10.12.2003. The Departmental Enquiry was conducted by Mr. S. C. Malik, Addl. District & Sessions Judge, Delhi. During Departmental Enquiry, accused Dinesh Chandra Sharma mentioned in column no. 3 was held responsible of **High Carelessness and Negligence** amounting to serious misconduct on his part resulting in loss of documents from the judicial file. Since the charge was proved against accused Dinesh Chandra Sharma, he was dismissed from the service by the Hon'ble District Judge Mr. J.P. Singh vide order dated 25.06.2004. During the course of investigation, certified copies of all the Missing/ Torn and Obliterated documents are collected from the Court after observing all legal formalities. Thereafter, concerned PWs related to the Missing/ Torn and Obliterated documents were examined including Mr. Raj Singh Khatri, IO of main Uphaar CBI case and Spl. PP Mr. Y.K. Saxena. Their examination revealed that the said Missing/ Torn and Obliterated document were exhibited on the basis of photocopies of the same by the PWs being secondary evidence with the approval of the Ld. Trial Court under the provisions of section 65 of The Evidence Act. During the examination, all the PWs pertaining to said Missing/ Torn and Obliterated documents the same PWs corroborated their earlier statements made in the Trial Court and had got exhibited the photocopies of the said Missing/ Torn and Obliterated documents being secondary evidence. During course of investigation, the Court staff who remained associated with the case file of Uphaar Tragedy case during the trial since 15.11.1997 were examined. During the course of investigation, Mr. Y. K. Saxena, Spl. PP CBI, Inspr. Raj Kumar, CBI, Pairvi Officer for the case and Const. Virender Singh, Naib Court in the Trial Court from CBI were also examined. During investigation, Smt. Neelam Krishnamurthy and Mr. R. Krishnamurthy were examined. Also, Mr. Dayal, Mr. Deepak Katpalia, Mr. P.P. Batra, Mr. Laxmi Narain Soni, Mr. Vijay Katiyal were interrogated and they all stated that they had nothing to do with Missing/ Torn and Obliterated documents and they used to go only to assists their Advocates in the pairvi of the case.

During the course of investigation, Call Data Records for the relevant period i.e. 2002 to 2005 of mobile no. 9811027522 of accused Dinesh Chandra Sharma was obtained from Hutchinson Cellular Company and it was found that accused had made several call to Mr. P.P. Batra, Steno in the Legal Cell of Ansal Properties & Industries. Mr. P.P. Batra was interrogated. During the investigation, sufficient evidence came on record against accused Mr. Dinesh Chandra Sharma, accordingly, he was arrested in this case on 22.11.2006. Accused Mr. Dinesh Chandra Sharma was granted bail by the Hon'ble Court of ACMM on 04.12.2006. An application was moved to the Hon'ble Court of Sessions for cancellation of bail and the Hon'ble Court of Sessions canceled his bail on 23.12.2006 and he was directed to surrender on the 8th January, 2007 to the court of Ld. ACMM. Subsequently, accused Dinesh Chandra Sharma appealed in the Hon'ble High Court of Delhi against the said orders of cancellation of bail but the Hon'ble High Court of Delhi did not admit his bail application. Accordingly, accused surrendered on 08.01.2007 and continued in judicial custody till he got bail. During custodial interrogation, accused Dinesh Chandra Sharma disclosed that he took charge of pending trial cases including of Uphaar tragedy case from his predecessor Ahlmad Mr. Sunil Kumar Nautiyal and during taking over charge he did not check each and every document. During interrogation, accused Dinesh Chandra Sharma disclosed that after dismissal from service, he met Mr. P.P. Batra who worked in the legal division of Ansal Properties, in the Tis Hazari Court and he requested Mr. Batra for some job. Mr. Batra gave him the address of A-Plus Securities at Saket Delhi. He went to A-Plus Securities and got a job of Supervisor for Rs. 15,000/- per month. He worked with A-Plus Securities for about 8 months and left this job as his father asked him to help him in running a school. Verification made at the office of A-Plus Security & Training Institute Pvt. Ltd., A-96, MB Road, Saidulazab, Delhi revealed that fluid was applied over the name of one of the employees in monthly wages and remuneration register from November 2004 to June 2005. On questioning, Mr. Anoop Singh, Chairman of A-Plus Security, he stated that they had applied fluid over the name of Dinesh Chandra Sharma when they came to know that Dinesh Chandra Sharma was linked with Uphaar tragedy case.

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Mr. Anoop Singh and other Directors Mr. Shiv Raj Singh and Mr. Anokhe Lal Pal also told that monthly payment i.e. Rs. 15,000/- was given in cash by Brig. (Rtd.) Mr. D.V. Malhotra, General Manager, Star Estate Management Ltd. to Dinesh Chandra Sharma. However, they did not produce any documentary proof of having received cash payment from Brig. D.V. Malhotra, General Manager, Star Estate Management Pvt. Ltd in the matter. During investigation Brig. D.V. Malhotra, General Manager, Star Estate Management Pvt. Ltd was interrogated and he denied having given any cash payment towards monthly wages of accused Dinesh Chandra Sharma while he worked with A-Plus Security. Investigation revealed that Dinesh Chandra Sharma after he was removed from service as Ahlmad was provided a job in A-Plus Security & Training Institute, A-96, Saidulazab, MB Road, New Delhi at the instance of Mr. P.P. Batra, Steno in the Legal Cell of Ansal Properties & Industries Ltd. Further more, Mr. P.P. Batra along with other staff has also been frequent visitors and doing pairvi of case on behalf of Mr. Sushil Ansal and Mr. Gopal Ansal in the Trial Court in case FIR No. RC3 (S)/97/CBI/SIC.-IV/ND and used to interact with Mr. Dinesh Chandra Sharma. The possibility of Dinesh Chandra Sharma tampering with the record at the instance of Mr. P.P. Batra acting in the interest of his employer Mr. Sushil Ansal and Mr. Gopal Ansal cannot be ruled out. This view also gets strengthened from the nature of some documents which either missing or tampered with namely D-24, being the cheque No.955725 which was signed by Mr. Sushil Ansal for Green Park Theatres Associated Pvt. Ltd. and D-28, being the minutes of MD's conference which shows the direct control of Mr. Sushil Ansal and Mr. Gopal Ansal over Uphaar Theatres. So far as missing document D-92 is concerned which is a casual leave register and inspection proforma whereby accused H.S. Panwar was shown that the inspection of Uphaar Cinema was carried out by H.S. Panwar while being on casual leave. During investigation, two wages and remuneration register of employees of in which fluid were applied over the name of accused Dinesh Chandra Sharma were seized through seizure memo and FSL report obtained. Initially, charge-sheet was filed against accused Dinesh Chandra Sharma on 12.02.2007 and thereafter, first supplementary charge-sheet containing

CFSL report and some document was filed on 23.5.2007. Thereafter, second supplementary charge-sheet dated 18.01.2008 was filed where following persons were arrayed as accused :

i. Mr. Sushil Ansal;

ii. Mr. Gopal Ansal;

iii. Mr. H.S. Panwar;

iv. Mr. P.P. Batra;

v. Mr. D.V. Malhotra;

vi. Mr. Anoop Singh.

All these persons were summoned by Ld. ACMM vide order dated 15.02.2008, the said summoning order was assailed before Hon'ble High Court of Delhi by Mr. Sushil Ansal, Mr. D.V. Malhotra, Mr. Gopal Ansal and Mr. P.P. Batra, however, their petitions were dismissed with cost of Rs. 25,000/- each vide order dated 03.09.2009. Thereafter, third supplementary charge-sheet was filed on 17.02.2014 alongwith fresh documents. Vide order dated 31.05.2014, the Court ordered framing of charges against Mr. Dinesh Chandra Sharma, Mr. Sushil Ansal, Mr. D.V. Malhotra, Mr. Gopal Ansal, Mr. H.S. Panwar, Mr. Anoop Singh and Mr. P.P. Batra for offences punishable under section 120B/109/201/409 IPC. The said order was assailed by accused persons before Hon'ble High Court of Delhi. Accused Anoop Singh, Sushil Ansal, D.V. Malhotra, Gopal Ansal, however, the same was dismissed vide order dated 12.05.2017.

11. The Charge was framed as under : -

I, Sanjay Khaganwal, Chief Metropolitan Magistrate, Patiala House Courts, New Delhi do hereby charge you (1) Sushil Ansal, (2) Gopal Ansal, (3) H. S. Panwar, (4) Dinesh Chandra Sharma, (5) P. P. Batra, (6) D. V. Malhotra and (7) Anoop Singh as follows :

That during the period started from filing of the charge sheet in case RC No. 3/97/SIC IV/New Delhi on 15.11.1997, wherein accused Sushil Ansal, Gopal Ansal and H. S. Panwar were charge sheeted amongst other accused persons for offence alleged under section 304 and 304A IPC. Till 13.01.2003 when the fact of missing documents came into the knowledge of the trial court of said case you all already entered into criminal conspiracy for committing, the various offences like criminal *breach of trust by a public servant by missing / destruction / tampering / obliterating and spreading the ink over the documents which are vital for the trial of the case to give advantage to accused Sushil Ansal, Gopal Ansal and H. S. Panwar during the trial of the above mentioned case, which was being tried in the court of Ms. Mamta Sehgal, Ld ASJ, PHC, New Delhi.*

You, accused Dinesh Chandra Sharma in the capacity of the Government servant entrusted with the judicial record and having dominion over the file and documents of the above mentioned case had committed an act of criminal breach of trust regarding those documents. Thereby all the accused aimed at causing, disappearance of evidence of offence punishable with imprisonment which may extend to 10 years, or giving false information to screen the offender of the above mentioned case, Accused P. P. Batra acted as connecting link between Gopal Ansal, Sushil Ansal, H. S. Panwar and Dinesh Chandra Sharma. He remained in constant touch with Dinesh Chandra Sharma on his mobile phone and land line phone installed in the office of Ansal Properties and Industries Limited. Through accused P. P. Batra, Sushil Ansal, Gopal Ansal and H. S. Panwar remained in touch with accused Dinesh Chandra Sharma for the execution of the said agreement to commit various offences.

In pursuance to the said agreement after the dismissal from the job accused Dinesh Chandra Sharma was provided a job through P. P. Batra on the directions of Sushil Ansal and Gopal Ansal with A Plus Security Agencies. D. V. Malhotra who was the General Manager of SEML actively participated and paid a sum of Rs. 15,000/- per month to the A Plus Securities Agencies for paying salary to the Dinesh Chandra Sharma for the work he has done for the accused Sushil Ansal, Gopal Ansal and H. S. Panwar. Anoop Singh, the Chairman of A Plus Securities Agencies employed him secretly and paid him salary of Rs. 15,000/- per month more than the existing rate of salary and also tamper with the data showing Dinesh Chandra Sharma as employee in the said firm by applying fluid on the record of A Plus Securities Agencies over the name of accused Dinesh Chandra Sharma and the amount paid to him. Over this fluid the name of other employee was mentioned. All this was done to keep the conspiracy secret and out of the reach of the investigation agency. Thereby, all of you *in furtherance of your common intention in pursuance of said agreement committed an offence punishable u/s 120B IPC and within my cognizance.*

Secondly, in furtherance of the above mentioned criminal conspiracy accused Dinesh Chandra Sharma who was entrusted with the having dominion over the case file of case no. RC No. 3/97/SIC IV/New Delhi on 15.11.1997 in his capacity as a public servant Ahlmad of court committed criminal breach of trust by destructing / missing / tampering / obliterating / spreading over the ink on the documents of the said case file so entrusted to him and thereby all of you have committed an offence punishable u/s 409 IPC r/s Section 120B IPC.

Thirdly, in furtherance of above mentioned agreement of criminal conspiracy Dinesh Chandra Sharma, knowingly or having reasons to believe that in the said case offence alleged against the accused Sushil Ansal, Gopal Ansal and H. S. Panwar is an offence punishable with imprisonment which may extend to ten years and caused the evidence connecting with the said offence to disappear / missing / tampering / obliterating / spreading over the ink over the documents or knowingly gave false information with the intention to screen the offender Sushil Ansal, Gopal Ansal and H. S. Panwar from legal punishment and thereby committed an offence punishable u/s 201 IPC r/w 120B IPC and within my cognizance.

Fourthly, during the above mentioned period you Sushil Ansal, Gopal Ansal, H. S. Panwar, Dinesh Chandra Sharma, P. P. Batra, D. V. Malhotra and Anoop Singh abetted in the above mentioned manner of commission of the offence falling u/s 409/201 IPC by accused Dinesh Chandra Sharma and thereby committed the offence punishable u/s 109 IPC r/w Section 120B IPC and within my cognizance.

And I hereby direct you all be tried by this court on the above mentioned offences.

All the accused persons pleaded not guilty for the charges and claim trial.

PROSECUTION EVIDENCE

In Prosecution Evidence 43 witnesses were examined :

12. **PW-1 Sanjay Singh Tomar** was examined who was

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Divisional Officer, Delhi Fire Service, Fire Station, Shankar Road, New Delhi. In his examination-in-chief, he stated that he has seen the seizure memo dated 02.08.1997 by which certain record of Delhi Fire Service (HQ), Connaught Lane, New Delhi was seized. On that day, he was working there as Sub-Officer and record was seized in connection with RC3 (S)/97/SIC.IV, New Delhi. As per seizure memo, Nine OB registers of Bhikaji Cama Place, Fire Station and Safdarjung Fire Station were handed over to CBI. That day, he had seen bunch of documents running into page nos. 1 to 400 in which page nos. 95 to 104 were missing. Page nos. 109 to 116 cannot be read because of being ill-legible. When he handed over the register the pages which are found missing were existing in the record and ill-legible pages were legible. The bunch of documents from 1 to 400 (missing page no. 95 to 104) is marked as **Mark PW1/A (Colly.)**. These documents are marked since the original of the same are stated to be lying in Hon'ble Supreme Court as submitted by Ld. SPP and at the time of arguments on charge IO obtained the copy as per procedure being adopted in Hon'ble Supreme Court for providing such copies.

In his cross-examination conducted on behalf of accused D.V. Malhotra, Sanjay Tomar has stated that he was posted temporarily at Bhikaji Cama Place Fire Station for a period of 15 days in the year 1993. The register Mark PW-1/A is maintained by the operational staff. The witness denied the manner in which the operational register Mark PW1/A was requisitioned and said that it was handed over to him by his senior and he does not know his name. He further stated that no written order was received by him from any of his superior Officer to carry the files to CBI office from the Office of Delhi Fire Service HQ. He voluntarily stated that he did not carry any file to CBI Office rather the files mentioned in Ex. PW1/A were seized in the Office of Delhi Fire Services by the CBI officers. He further stated that no list was given to him by CBI specifying the files required to be seized by them, however, the list was given to the department. He again stated that the requisition might not have been in the form of list rather it may be general requisition. He denied the suggestion that he was not present when the seizure memo Ex. PW1/A was drawn by the CBI officer. He further denied the suggestion that he was merely called by the CBI officer and his name was filled in the column "from whom seized and where" and was made to sign on the page 2. The witness stated that the documents were handed over in the Office of Delhi Fire Service Headquarter and not in the Office of CBI as mentioned in the seizure memo.

In his cross-examination conducted on behalf of accused **H.S. Panwar,** PW1 stated that he cannot tell the exact date when he came to know that some pages are missing or are illegible. He also stated that he cannot tell even the month and year. He volunteered that he came to know of this fact in the court of Smt. Mamta Sehgal, Ld. ASJ. He also volunteered that he came to know of this through CBI Counsel who showed him certain documents in the Court. The witness stated that he had not counted but certain number of pages were missing. He also stated that he was not asked to count but only asked to verify whether the pages which have been torn off from the documents were earlier present at the time in the record when he handed over the same to CBI. The witness stated that police officer did not record his statement.

In his cross-examination conducted on behalf of accused **Gopal Ansal,** PW1 stated that he did not know the IO of the case and he has come to depose in around 2003, he met with the IO of the case. The witness replied to the Court question that IO seized seven registers. The witness stated that he cannot tell the year in which these seven registers pertained, however, these registers pertained to period before 1997. They pertained to period between 1990 to 1997. He further stated that he deposed that he submitted seven registers, however, same was without seeing the seizure memo and he was not knowing the exact number, therefore, there is a difference. He further stated that the register pertains to the year 1994 to 1997 but earlier stated to period 1990 to 1997. He denied the suggestion that he lied about it or he is shifting stand. He stated that he did not put initials on the registers while handing over the same but he counted the pages. He stated that he did not know whether the IO put his initials on the register while taking over the registers from him. He stated that no page numbering was done on the registers by him, however, there was paging existing already. The witness denied knowledge about its pagination. The

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witness stated that this record was seized from him by Sub- Inspector of CBI and at that time, his statement was recorded at the CBI, Headquarter. The witness stated that his statement was recorded at the CBI Headquarter whereas the documents were seized at his office and as such there is no contradiction. The witness denied the suggestion that he is shifting his stand on his lies being caught as earlier he has stated that his statement was recorded at the time of seizure. The witness stated that he did not know where are these original registers. These registers were called to the Headquarter from the Station which it belonged to. The witness further stated that these registers with General Office of Staff as generally other office record is kept. He denied about the exact name of the staff who handed over it to him. He further stated that no memo was prepared when he took these registers from the staff. He stated that he checked the pages when he took the registers from the staff. He further stated that he checked these registers and all pages while receiving these registers from the staff. He denied the suggestion that he is deliberately withholding the name of the staff so as to prevent his lies from being exposed. He stated that he cannot say whether in the instant case when records move from station to Head Office whether any such entry was made. He volunteered that the record was not received by him directly and no entry was made in Office Movement Register when he took charge of these register. He also volunteered that the registers were called from the office and handed over directly to the CBI under seizure memo. He could not tell the time he received these registers in the Head Office and handing over to CBI. He stated that while handing over these registers to CBI, proper seizure memo was obtained and the copy of the same was submitted in the Office. He further stated that he gave copy of this seizure memo to his senior ADO Mr. A. K. Bhatnagar. He denied the suggestion that he is deliberately withholding the relevant facts. The witness denied the suggestion that neither while receiving nor while handing over to CBI, he counted the pages. He further denied the suggestion that while receiving nor while giving to CBI he checked whether all pages were legible. He stated that in one of the bunches pages were 1 to 400, however, he did not remember about other bunches. He denied the fact that he refers to any of his notes while giving the page number during examination-in-chief. He stated that he was having copy of the seizure memo vide which he had submitted all these registers to CBI. He further stated that these missing pages and illegible pages, he deposed from the seizure memo Ex. PW1/A. He denied the fact that he is deposing falsely as no such page numbers of missing and illegible pages are mentioned in the seizure memo. He further stated that he did not remember the record mark PW1/D is the same file and the bunch of documents contained in the same file shown to him while recording his examination-in-chief. The witness denied the suggestion that said page is perfectly legible and he is deposing falsely on oath and same is the reply in respect of pages 110 to 116. He denied the suggestion that his examination-in-chief was result of tutoring.

Accused **Anoop Singh, Dinesh Chandra Sharma and P.P. Batra** were afforded opportunity to cross-examine this witness but no cross examination was done.

In his cross-examination conducted on behalf of accused Sushil Ansal, he stated that he had not countersigned the pages of the register. He again stated that he did not remember if he had put his signature on those pages. He affirmed that he is not the author or scribe of Mark PW1/A. He volunteered that it was belonging to some other fire station. He stated that he had not paginated the register in question. He affirmed that he did not have any personal knowledge about the facts of this case. He further stated that he had not filed any complaint with any authority in the context of the register which was seized by the CBI. He affirmed that he had been examined by the CBI only in the year 1997 and not thereafter. He denied the suggestion that he had deposed falsely in his examination-in-chief. He denied the suggestion that he had become a witness in the present case on the pressure of investigating agency.

The following exhibit has been marked in the examination of PW-1 :

1	D-91 SEIZURE MEMO DATED **02.08.1997** of 9 OB REGISTERS OF BHIKAJI CAMA PLACE & SAFDARJUNG FIRE STATIONS	**Ex PW 1/A**

13. **PW-2 Mr. Y. K. Saxena** was examined. In his examination-in- chief, he deposed that he was Special Public Prosecutor, CBI in case bearing no. RC-3/97/SIC-IV,CBI, New Delhi and stated that in the present case, some documents were not traceable. He stated that he had noticed some documents were either removed, tampered with by sprinkling blue ink on the pages of some of the documents and some of the documents were torn. He stated that he had moved a petition before the Ld. Trial Court of Ms. Mamta Sehgal, Ld. ASJ, Delhi. He stated that upon perusal of the petition, Ld. ASJ had ordered for inquiry. He stated that he had seen certified copy of the petition moved by him in his handwriting dated 20.01.2003 as Special P.P, CBI, New Delhi, the said certified copy of the petition were running in two pages **Ex.PW-2/A** containing the details of such torn, missing or tampered with putting ink therein at Sr. No. 1 to 9. He stated that he had the copy of application bearing the noting of Ld. ASJ with the remark of "Ahlmad to report by 21.01.2003". He stated that no other application was moved to bring the said fact by him.

The cross-examination of this witness could not take place due to his demise.

The following exhibit has been marked in the examination of PW-2 :

1	COPY OF PETITION 20.01.2006 MOVED BY Spl.PP IN THE MAIN UPHAAR CASE	**Ex PW 2/A**

14. **PW-3 Mukesh Chander Khullar** was examined. In his examination-in-chief, he stated that he was posted as Assistant Manager in Punjab National Bank, Rajender Nagar (Fire Station Branch), New Delhi. He stated that on the instructions of the Senior Manager of the Bank, he went to the Office of CBI and handed over a cheque of Rs. 50 lakhs issued in the current account of Green Park Theater Association Pvt. Ltd. He stated that he did not know who was the authorized signatory of the said cheque but it was issued in favour of Sushil Ansal. He stated that the said cheque was taken over by the CBI officer through a seizure memo and he had also put his signatures. The certified copy of the cheque is **Ex. PW-3/A**, seizure memo **Ex. PW-3/B**. He stated that he had retained a copy of the said cheque before handing over to the CBI officer which is Ex. PW-3/C. He

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stated that in his examination-in-chief, the original cheque was not shown to him.

PW-3 was cross-examined by accused P. P. Batra. In his cross-examination, he stated that prior to this statement he had given his statement in the court of Ms. Mamta Sehgal.

The opportunity of cross-examination of this witness was afforded to accused **Anoop Singh, Dinesh Chandra Sharma, Gopal Ansal** and **Sushil Ansal**. However, no cross examination was conducted.

The following exhibits have been marked in the examination of PW-3 :

1	D-24, CERTIFIED PHOTOCOPY OF CHEQUE OF Rs 50 LACS SIGNED BY SUSHIL ANSAL	**Ex PW 3/A**
2	D-24, CERTIFIED PHOTO COPY OF THE SEIZURE MEMO Dt **27.08.1997** OF CHEQUE OF Rs 50 LACS SIGNED BY SUSHIL ANSAL DRAWN ON PNB	**Ex PW3/B**

15. **PW-4 Jagannath** was examined. In his examination-in-chief, he stated that he was posted as Stenographer in the court of Smt. Mamta Sehgal, the then Ld. ASJ, Patiala House Court, New Delhi. He stated that earlier he was posted as Stenographer in the court of Sh. L. D. Malik, the then Ld. ASJ, Patiala House Court and after he proceeded to deputation, Smt. Mamta Sehgal, the then Ld. ASJ had taken over the charge. He stated that at that time, Sh. Gajraj Singh was the Ahlmad posted in the court of Sh. L. D. Malik, Ld. ASJ and the case files were in the custody of Sh. Gajraj Singh, Ahlmad. He stated that after transfer of Sh. Gajraj Singh, Ahlmad, Sh. Sunil Nautiyal had joined as Ahlmad and after transfer of Sh. Sunil Nautiyal, Ahlmad, Dinesh Chandra Sharma had joined as Ahlmad in the court of Smt. Mamta Sehgal, the then Ld. ASJ. He stated that he was aware that Uphaar tragedy case is pending in that Court and said case file was being kept by Dinesh Chandra Sharma, Ahlmad. He stated that he came to know while recording of his evidence that some documents were found missing from that file and upon this, notice was issued to Dinesh Chandra Sharma to trace out those missing documents.

He stated that thereafter he got transferred from the Court of Smt. Mamta Sehgal, the then Ld. ASJ and he was not aware about the fate of the inquiry. PW-4 had identified Dinesh Chandra Sharma.

PW-4 was cross-examined on behalf of Dinesh Chandra Sharma. In his cross-examination he stated that he had joined as Stenographer in the year 1973. He did not tell the date of his joining as Stenographer in the court of Ms. Mamta Sehgal, the then Ld. ASJ. He stated that as per his memory, he was transferred from that Court in the year 2005 or 2006. He worked as Stenographer in the Court of Ms. Mamta Sehgal, the then Ld. ASJ for about 3 – 4 years. He could not remember the total number of staff with designation posted in the Court of Ms. Mamta Sehgal, the then Ld. ASJ at that time. He stated that there might be 5-6 staff members in number. He did not remember about number of cases pending in that Court at that time. He stated that Ahlmad room and Court room was on same floor and the distance between the said two rooms were 5 to 10 yards. He did not remember the date when Sh. L. D. Malik, the then Ld ASJ was transferred nor he remember when Ms. Mamta Sehgal, the then Ld. ASJ had taken over the charge of that Court. He did not remember the date when Mr. Nautiyal had joined the said Court or transferred to the said Court. He did not remember the date when Mr. Gajraj Singh had joined the said Court as Ahlmad or transferred to the said Court. He did not remember the date when Dinesh Chandra Sharma had joined the said Court and taken over the charge of the Ahlmad of that Court. He could not tell the number of pages and volumes of the case file of Uphaar Tragedy case. He could not tell during whose examination, it transpired that documents were missing of the said case. He could tell how the files come in the Court room on their date of hearing. He stated that he was not part of the departmental inquiry conducted against the accused Dinesh Chandra Sharma. He did not know about the number of pages and the nature of documents found missing in the Uphaar Tragedy case. He stated that he was called to join investigation in the present case only once. He could not tell when he was called to join investigation, the day, date or time. He stated that IO did not make any inquiry from him regarding any documents. He stated that as per his memory, some documents were found later on. He did not know about the re-construction of the missing documents. He denied the suggestion that he was not aware about the facts of the case.

PW-4 was cross-examined on behalf of accused P. P. Batra. He stated in his cross-examination that he could recognize some of the accused who were charge-sheeted in the case. The witness was recalled for further cross-examination upon application under section 311 Cr. P.C. He stated that his statement under section 161 Cr. P. C was recorded by the IO in the present case. He did not remember the date nor the name of the IO. He could not tell whether it was recorded by Sh. Amit Roy, ACP or his Assistant. He stated that he did not know about Chiranjiv Bharti School, Palam Vihar, Gurgaon (Haryana). He did not have any idea if any of his relative or acquaintance was given an employment in the said school while he was serving as Steno in the court of Ms. Mamta Sehgal, the then Ld. ASJ during the pendency of trial of main Uphaar case. He denied the suggestion that name of the relative / acquaintance is Mr. Thakur who got the said job in the said School. He denied the suggestion that he was deposing falsely on this line. He denied the suggestion that only on his disclosure qua the said fact investigation was carried out by the IO at Chiranjiv Bharti School, Palam Vihar Gurgaon. He denied the suggestion that he is deliberately concealing this fact in order to cover up the lapses / illegalities committed by him during his tenure as Steno in the Court of Ms. Mamta Sehgal, the then Ld. ASJ.

PW-4 was cross-examined on behalf of accused Gopal Ansal. In his cross-examination, he stated that whenever the case was fixed for hearing, Reader of the Court used to receive the file from the Ahlmad. Cause list was prepared one day before and date of hearing and files were handed over to the Reader in the evening of the previous day to the Reader of the Court. After completion of proceedings, all files were sent back to Ahlmad probably in the evening or next date of hearing. He stated that during the intervening period, file remain with the Reader. He did not know when the evidences were recorded, the files remains with the Ld. PP and who was In-charge of the case for conducting prosecution. He stated that he did not remember who assisted the Ld. PP during evidence of any witness. He denied the suggestion that he was deliberately giving evasive answers. He identified the complainant, however, he could not tell her name. He stated that lunch time of the Court is from 01.30 p.m to 2.00 p.m. He stated that during the lunch time, the files remain with the Reader and kept in open Court. He affirmed that during that period, the files were not kept under the lock. He stated that most of the time, Peon used to carry files from Reader to Ahlmad and from Ahlmad to Reader. He stated that he cannot tell whether file was inspected by the parties. He stated that when Steno types the order during that period, file remains with Steno for typing the orders and after typing the order by the Steno, Peon used to place the file for signing before the Ld. Judge. He could not tell whether the file sent for signature of the Ld. Judge remained on the table during the absence of Ld. Judge. He could not tell whether the file of main Uphaar case was accessed by the Naib Court for preparation of the summons. He stated that during lunch time, Court room remained open, Advocates and litigants used to come in the Court. There was one Assistant Ahlmad to assist the Ahlmad. He did not know whether file was also accessed by Assistant Ahlmad. He did not know the roles and duties of Court staff. He denied the suggestion that he was giving evasive answers deliberately. He stated that when Ahlmad used to be on leave, the responsibility of handling files lies with Assistant Alhmad. He did not know whose responsibility was it to take care of the file in the absence of Ahlmad and Assistant Ahlmad. He stated that the charge of the files were never handed over to any of the Ahlmad in his presence. He stated that some documents were missing from the file of Uphaar tragedy which he heard from Ld. PP of the Uphaar case and he had not checked the Uphaar case personally about the missing documents. He stated that he never checked the documents of the Uphaar chase during his entire tenure in the said Court. He did not know whether 10 days notice was given to the Ahlmad Dinesh Chandra Sharma in writing or orally. He denied the suggestion that he deposed falsely in his examination-in-chief at the instance of the prosecution.

Opportunity to cross-examination of PW-4 was granted to accused **Sushil Ansal and Anoop Singh**, however, no cross-examination was conducted.

16. **PW-5 Usha Gogia**, Branch In-charge (Vigilance Branch) Tis

Hazari Court, Delhi was examined. She stated in her examination-in-chief that she had brought the original order dated 25.06.2004 passed by Sh. J. P. Singh, the then Ld. District & Sessions Judge, Delhi. Certified copy of the same is marked as **Ex. PW-5/A**. She stated that he had also brought the original departmental inquiry report dated 30.04.2004 prepared by Sh. S. C. Malik, Inquiry Officer and the then Ld Addl. District & Sessions Judge. Certified copy of the same is marked as **Ex PW-5/C**. She stated that the said documents were pertains to Dinesh Chandra Sharma, the then Ahlmad.

In her cross-examination on behalf of accused Dinesh Chandra Sharma, she stated that she had never been associated with the department inquiry proceedings conducted with respect to Dinesh Chandra Sharma and she had no personal knowledge of the present case.

Opportunity to cross-examination of PW-5 was granted to accused **Sushil Ansal, Gopal Ansal, Anoop Singh and P. P. Batra**, however, no cross examination was conducted.

The following exhibits have been marked in the examination of PW-5 :

1	ORDER Dt. 25·**06.2004** OF LD. DISTT. & SESSIONS JUDGE (J.P. SINGH)	**Ex PW 5/A**
2	DEPARTMENTAL ENQUIRY DATED **30.04.2004**,(LD. ASJ S.C. MALIK)	**Ex PW 5/B**
3	ENQUIRY REPORT(FACT FINDING REPORT), DTD. **03.04.2003** BY LD. ASJ MAMTA SEHGAL	**Ex PW 5/C**

17. **PW-6 Shyam Lal,** (Senior Assistant) Retired was examined. He stated in his examination-in-chief that he had worked as Ahlmad in the court of Sh. Brijesh Sethi, the then Ld. MM, Patiala House Court and the charge-sheet of the present case was filed on 15.11.1997. He stated that the said case was committed to the Court of Sh. L. D. Malik, the then Ld ASJ. He stated that before committal of the present case, he had checked the list of documents including charge-sheet, seizure memo etc. and found all documents intact. He stated that neither any document was missing nor ink was found sprinkled on any documents nor any document was torn. He

stated that he had handed over the case file complete in all respect to Sh. Gajraj Singh, Ahlmad in the court of Sh L. D. Malik, the then Ld ASJ.

PW-6 was cross-examined on behalf of accused Dinesh Chandra Sharma. In his cross-examination, he stated that he was already working in the court of Ld. MM before joining the court of Ld. Presiding Officer Sh. Brijesh Sethi. He did not remember the date when he joined the Court but joined as Ahlmad. After promotion, he was transferred to Bail Branch and same was probably in the month of August, 2004. He stated that the court of Ld. MM Sh. Brijesh Sethi was either Court no. 20 or 25 but it was on the corner of First Floor. The chair and table on the Ahlmad was itself in the Court room. He could not tell the size of the Court room. He received the case file of Uphaar case in the Court room itself but he did not remember the exact date. The record of the case was used to be kept in the Court room. He was called by police at HQ somewhere situated in New Delhi. He joined investigation only once but he did not remember the date. At the time of his joining in the investigation, IO, DCP and one Inspector were present. He said that the IO of the case was probably Inspector. He stated that one Steno, one Reader, one Peon, one Naib Court apart from Ld. Presiding Officer were posted at the time of filing of the charge-sheet of main Uphaar case. He stated that he had not taken any assistance from the Assistant Ahlmad posted at that time in that Court. He did not remember the total number of pages of that case. He stated that the whole day was spent in scrutinizing of the documents of the said case and on that day, he had no other work to do and other work was done by Assistant Ahlmad whose name he could not remember. He stated that in the absence of Reader on account of leave, the work was looked upon by either Assistant Ahlmad or Ahlmad. He stated that he took so many leaves between the period from filing of the charge-sheet till its committal. He stated that IO had filed only the original case file of that case. He stated that he did not check the charge-sheet after returning from leave. He did not know when the copy of charge-sheet and its documents were provided to accused persons in the Court. He could not say about any application being filed by any of the accused for supply of the deficient copies of documents saying that it was not part of his job. He stated that he prepared the index of the

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documents and charge-sheet and handed over the same to Gajraj Singh in his Court and he had checked the documents. He handed over the said case file after the order of committal of the Court. He did obtain the receipt of handing over the said case file. He stated that the court of Sh Brijesh Sethi, the then Ld. MM was not shifted during the period of filing the charge-sheet till its committal. He stated that he was alone when his statement was recorded in the present case by the police. He could not remember as how many leaves he had taken during the said period. He affirmed that case file of main Uphaar case contained voluminous documents. He affirmed that when the matter was used to be called out for hearing, accused persons, complainant, IO used to appear in Court but they did not not use to come to him. He stated that department inquiry was also conducted against him in respect of some other case but he was not found guilty. He stated that he received the entire case file on the same day. He denied the suggestion that he had not received the entire case file on the same day or he himself had paginated the case file before handing over to Mr. Gajraj Singh. He stated that he had also prepared list of documents of the case and handed over to Mr. Gajraj Singh. He stated that IO had not prepared any seizure memo with respect to receipt of charge sheet by him and handing over the same to Mr. Gajraj Singh. IO also not taken the copy of index prepared by him qua the said case. He used to keep the charge-sheet in the almirah kept in that room. He stated that there were 12- 13 almirah in that room with one key each. The case files listed for the next day were to be handed over to the Reader by him or Assistant Ahlmad or Peon. The Reader used to keep the files in the almirah and he was having one almirah at that time. He stated that he did not know how Reader used to place the files of next date of hearing. He affirmed that he was promoted from Ahlmad to Reader. He stated that after Court hours, Court room was locked by the watchman who used to lock the Court room. He knew about department inquiry being conducted by accused Dinesh Chandra Sharma regarding the present case. He stated that he was also summoned in the inquiry only once. He could not tell the name of the inquiry officer and the conclusion of the inquiry. He denied the suggestion that he had not counted the pages of the charge-sheet filed by the IO at the time of receiving. He denied the suggestion that he had not checked the paper of charge-sheet or he had received the same in routine manner nor he kept the charge-sheet in proper manner. He denied the suggestion that he had handed over the case file to Mr. Gajraj Singh in routine manner without verifying / checking the file or that Mr. Gajraj Singh had also received the file in routine manner. He denied the suggestion that he had deposed falsely at the instance of the prosecution and accused Dinesh Chandra Sharma has been falsely implicated. He stated that he cannot tell the colour, size and the number of the bag. He could tell the number of pages as well as documents inside each bag. The bags were not sealed. The charge-sheet had been paginated by the IO. He affirmed that he has no knowledge about total pages of charge-sheet and documents. Mr. Gajraj Singh checked the documents of charge-sheet and took one and half hour.

PW-6 was cross-examined on behalf of accused Sushil Ansal. In his cross-examination, he has stated that he has no personal knowledge about the present case. He had not handed over any document pertaining to this case to the IO during investigation. He was never involved in the present case. The room where Ld. Presiding Officer used to hold Court comprised of even Ahlmad room in one corner. The files used to be kept within the same room where the Court used to be presided over and the Ahlmad and Assistant Ahlmad during his tenure apart from litigants used to remain there within. He volunteered that litigants did not use to sit with him. The litigants and their respective counsels very often used to come and meet him and would make inquiries regarding the pending cases. He stated that they would often conduct inspection of the case records after filing inspection applications. He affirmed that very often Investigating Officer / police personnel related to the cases pending in the said Court used to make inquiries from him. He did not know if the Investigating Officer / police personnel who used to come for their respective cases used to have discussion with the Ld. Prosecutor or not. He did not know whether the Prosecutor used to have discussion with the police personnel / IO along with Court file. He stated that at the time when Court file used to be perused by Ld. Prosecutor or the Investigating Officer / police personnel, they never used to take permission from him for inspecting the files.

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PW-6 was cross-examined on behalf of accused Gopal Ansal. In his cross-examination, he has stated that the charge-sheet filed in the Uphaar case was first put before the Ld. MM and then on the directions of the Ld. MM, he received the charge-sheet and checked it. The charge-sheet was not sealed and was in loose form. The documents along with charge-sheet were in plastic bags (bora). He could not tell as how many bags containing documents were handed over to him. He did not open the said plastic bag and boras and handed over the same as it is to the Ahlmad of Ld. ASJ were the case was committed. The boras were not sealed and he had seen it and same were containing maps etc. He used to come in the Court room around 09.45 a.m or 10 a.m. He stated that when he used to come to Court room, he used to find the same opened. He had checked the charge-sheet on the same day when it was filed. When it was revealed that some documents of Uphaar tragedy case was missing he was also called in the court of Ms. Mamta Sehgal, Ld. ASJ for query. Police did not visit him for inquiry in the Court. Police gave him a notice to join inquiry. He denied the suggestion that he is deposing at the instance of the prosecution to avoid his prosecution as accused in the said case. He stated that the bags were also kept in the Court room in the open space and not in the almirah. He could not tell as to how many leaves he availed during the period from received the charge-sheet till handing over the same to the court of Ld. ASJ. In his absence, it was the duty of the Assistant Ahlmad to look after his work and he had all access to the files. He stated that whenever any application for obtaining certified copies of any case was filed, the concerned file was sent to concerned Copy Branch. He stated that after files were received from Copying Agency, he used to check all pages of the files. He could not tell as to whether Uphaar Tragedy case file was ever sent to Copying Agency or not. He stated that files and documents were handed over to the Ahlmad of Ld. Sessions Judge by him.

Ld. Special Prosecutor re-examined PW-6 after due permission and in re-examination, PW-6 stated that he had checked the entire records including the bags before handing over the same to Mr. Gajraj Singh. He also stated that the bags contained documents like seizure memo and maps and volunteered that when he handed over the documents

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he had checked all the documents and had received the same.

PW-6 was again cross-examined by Ld. counsel for accused Gopal Ansal and he stated that he cannot tell as how many bags were there but more than one. He stated that bags were already opened when the same were handed over to Mr. Gajraj Singh and seen by him. He could not tell how many number of papers / documents were handed over to Mr. Gajraj Singh. He remained in the room of Mr. Gajraj Singh around one and half hour at the time of handing over the documents. He denied the suggestion that documents along with charge-sheet were checked by Ahlmad Mr. Gajraj Singh from handing over memo and same were checked from the list of documents with the charge-sheet. He denied the suggestion that each and every documents was not checked or he deposed falsely in re-examination. He stated that he has experience of 20 years of working as Ahlmad. He stated that when the case is listed files comes to the Court room from Ahlmad room and thereafter, Ahlmad has no control over the file until the files received back. What happens in the Court room with the files, Ahlmad has no control. He stated that in the Court, the prosecution files goes in the hands of the Ld. Judges, goes to the hands of prosecutor, goes to the hands of witness and to the IO. He stated that when the files come back from the court to the Ahlmad, he used to check only the order sheet and it was not possible to check whether all pages of all the files have come back intact. When inspection is allowed by Court, the files are handed over to Court clerks and lawyers also by the Ahlmad and again it is not possible to check whether the files are intact. He stated that there were multiple files along with the charge-sheet and he could not tell the numbers whether it was 10, 20, or 200. He stated that even if PP requires inspection, he would also come to Ahlmad. He could not tell as how many times who inspected the files despite various inspections were done. He could not tell as how many times the files went to Copying Agency Branch. He stated that when certified copies were asked, he used to pull out the required pages and sent those pages to Copying Agency Branch. The files are also sent to Ld. Sessions Court and they are checked pagewise when they are received back, however, no report is prepared as same is done through index and complete files are checked. Main Uphaar case file was not sent to

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Ld. Sessions Court during his tenure as Ahlmad. In his absence, Assistant Ahlmad has dealt with the file and he never checked the file after coming back. Index was prepared at the time of sending over along with pages and same would be available in Ld. Sessions Court. He took acknowledgment of receipt from Mr. Gajraj Singh and said *"woh receiving to pata nahi kaha ki kaha hogi"*. He did not remember whether he signed his statement given to IO and IO_did not ask him about the index of file. He stated that it was the duty of Mr. Gajraj Singh to each and every page of file at the time of receiving.

PW-6 was cross-examined on behalf of accused **Sushil Ansal** wherein he denied the suggestion that he had deposed falsely in his examination-in-chief and re-examination.

Opportunity to cross-examination of PW-6 was granted to accused **Anoop Singh and P. P. Batra**, however, no cross-examination was conducted.

18. **PW7 Sh. Sanjay Kumar Dubey**, Judicial Assistant (Administrative Branch-II) (Personal File), Tis Hazari Court, Delhi was examined. He stated in his examination-in-chief that he had brought the summoned record i.e. personal files of Dinesh Chandra Sharma, Gajraj Singh and Sunil Nautiyal containing the original of appointment letter of Dinesh Chandra Sharma, joining letter of Dinesh Chandra Sharma, charge report prepared by Sunil Kumar Nautiyal for handing over the pending case file of the documents to Dinesh Chandra Sharma containing 10 pages, joining report of Dinesh Chandra Sharma dated 30.04.2001, handing over charge / relinquish report by him to his successor Dinesh Chandra Sharma on 22.05.2001 and handing over / relinquish report dated 01.05.2000 by then Ahlmad Gajraj Singh in the court of Ms. Mamta Sehgal, the then Ld. ASJ. He stated that the photocopies of the said documents are already on record and the appointment letter of Dinesh Chandra Sharma is marked as **Ex. PW-7/A (OSR)**, joining letter of Dinesh Chandra Sharma as **Ex. PW-7/B (OSR)**, charge report prepared by Sunil Kumar Nautiyal for handing over the pending case files of documents to Dinesh Chandra Sharma containing 10 pages as **Ex. PW-7/C (Colly.) (OSR)**, joining letter of Dinesh Chandra Sharma dated 30.04.2001 as **Ex. PW-7/D (OSR)**, handing

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over charge / relinquish report by Sunil Kumar Nautiyal to Dinesh Chandra Sharma dated 22.05.2001 as **Ex.PW-7/E(OSR)**, handing over / relinquishment report dated 01.05.2000 of Gajraj Singh as **Ex.PW-7/F(OSR)**. He stated that personal file of Dinesh Chandra Sharma also contains the original dismissal order dated 25.06.2004 and same is already exhibited as **Ex.PW5/A**.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, the witness stated that he does not have any personal knowledge of the charge report and of departmental inquiry conducted upon accused Dinesh Chandra Sharma.

Accused **Sushil Ansal** had adopted the cross-examination done on behalf of accused Dinesh Chandra Sharma.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness stated that none of the documents brought by him have not been prepared or signed in his presence.

Opportunity for cross-examination of PW7 was granted to accused **Anoop Singh and P.P. Batra** but no cross-examination was conducted by them.

The following exhibits have been marked in the examination of PW-7 :-

1	APPOINTMENT LETTER OF DC SHARMA, AHLMAD	**Ex PW 7/A**
2	JOINING LETTER OF DC SHARMA, AHLMAD	**Ex PW 7/B**
3	CHARGE REPORT PREPARED BY S.K. NAUTIYAL, AHLMAD	**Ex PW 7/C (COLLY)**
4	JOINING REPORT 30.04.2001, OF D.C. SHARMA AHLMAD	**Ex PW 7/D**
5	HANDING OVER/RELINQUISHMENT REPORT 22.05.2001 BY S.K. NAUTIYAL TO DINESH CHANDRA SHARMA	**Ex PW 7/E**

6	HANDING OVER / RELINQUISHMENT REPORT 01.05.2000 BY GAJRAJ SINGH AHLMAD	Ex PW 7/F

19. **PW8 Sh. Sunil Kumar Nautiyal**, Sr. Judicial Assistant / Reader was examined. He stated in his examination-in-chief that in the year 2000, he had worked as Ahlmad in the court of Sh. J. P. Narayan, the then Ld. MM, Patiala House Court, and then he was transferred to the court of Ms. Mamta Sehgal, the then Ld. ASJ, Patiala House Court, New Delhi and on 27.04.2000, he took charge of files along with documents pertaining to the cases pending in that Court from the concerned Ahlmad Gajraj Singh. He joined the said Court on 27.04.2000. He stated that on 27.04.2001, pursuant to the order of Ld. District & Sessions Judge, he was transferred to the court of Sh. Sanjay Garg, the then Ld. MM/PHC and thereafter, handed over the complete charge of all the cases including documents to Dinesh Chandra Sharma, his successor. He prepared the complete list of said pending case files along with their documents and registers maintained at that time and handed over the same to his successor Ahlmad Dinesh Chandra Sharma alongwith files and documents and the said list is already exhibited as **Ex.PW7/C**. The said files, documents and registers were duly received by Dinesh Chandra Sharma who appended his signatures on list Ex.PW7/C at point A. The files which were pending with Sh. R. S. Verma, the then Reader of the Court was also received by him (Dinesh Chandra Sharma) and he put his signatures on the said list Ex.PW7/C in his presence. He handed over the said list and the case files, documents and registers alongwith handing over charge / relinquishment report Ex.PW7/E. Dinesh Chandra Sharma had checked all the files and matched the same with the said list. He stated that the case file pertaining to Uphaar Tragedy bearing RC no.3(S)/97 State Vs. Sushil Ansal etc. was also included in the files as mentioned as Ex.PW7/C which were handed over by him to Dinesh Chandra Sharma. He had also checked the page numbers of the files and documents and there were no shortcoming in the files and documents. He volunteered that all the files and documents, each of the files with

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documents were got checked by Dinesh Chandra Sharma and all the files and documents were duly paginated and were intact and no document was torn and the documents were in proper order and tidy condition and none of them were smeared. He stated that the file containing order sheet of the said case used to remain in the custody of Stenographer as the matter was tried on day to day basis and orders were to be passed on daily basis. He stated that he got this file (Main Uphaar case) checked by Dinesh Chandra Sharma in the presence of the then Stenographer Sh. Jagan Nath and this fact was also in the knowledge of the Reader of the Court. He stated that after his relieving from the court of Ms. Mamta Sehgal, the then Ld. ASJ, he along with Gajraj Singh were called by Ms. Mamta Sehgal, the then Ld. ASJ number of times during the period from December, 2002 to January, 2003 on account of missing documents and whenever they went to the Court Dinesh Chandra Sharma used to be present there but avoided them and would go out of the Court on one and other pretext and never returned in their presence. He stated that he visited number of times to the Court and brought this fact into knowledge of Ms. Mamta Sehgal, the then Ld. ASJ and complaint about the conduct of Dinesh Chandra Sharma. He stated that he along with Gajraj Singh and Shyam Lal had joined the departmental proceedings conducted against Dinesh Chandra Sharma by Sh. S.C. Malik, the then Ld. ASJ, Patiala House Court. After registration of this case, he joined investigation and IO recorded his statement. He stated that he did not know what sort of documents were missing from file and Dinesh Chandra Sharma never helped him to locate the missing documents.

Opportunity for cross-examination of PW8 was granted to accused **Anoop Singh** but no cross-examination was conducted by him.

In his cross-examination conducted on behalf of accused Sushil Ansal, he affirmed that while preparing the list Ex.PW7/C (Colly.), he had not mentioned the number of pages that every file contained and he denied the suggestion that he had deposed falsely in his examination-in-chief.

In his cross-examination conducted on behalf of accused P. P. Batra, he affirmed that once he had or once any Ahlmad hand over charge of his office to his successor, he ceases to be the custodian of the

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files. He stated that as per his recollection, he handed over the charge of the case file in question to accused Dinesh Chandra Sharma on 03.05.2001. He affirmed that post that date i.e. 03.05.2001, he was not the custodian of the files. He affirmed that some papers i.e. bail bonds of different cases as mentioned in his list of charge were handed over by him on 22.05.2001. He volunteered stated that he had brought the fact of handing over the charge of this case to Ahlmad Dinesh Chandra Sharma in the notice to Ms. Mamta Sehgal, the then Ld. ASJ and she in turn inquired from Dinesh Chandra Sharma whether he received the complete charge and he confirmed the same to Ld. Presiding Officer. He affirmed that as per Ex.PW7/D Mr. Dinesh Chandra Sharma had joined his duty as Ahlmad in the court of Ms. Mamta Sehgal, the then Ld. ASJ on 30.04.2001 (afternoon). He affirmed that he (Dinesh Chandra Sharma) had taken over the files/ documents on 03.05.2001. He denied the suggestion that between 03.05.2001 and 22.05.2001, he had ideally no right to be in control of any files/ documents. He denied the suggestion that he had given false explanation on this point during his volunteer part in the preceding part of the cross-examination. He further denied that due to this reason, there is no documentary evidence to support the portion deposed by him in the volunteer part. He further denied the suggestion that he was in illegal custody of files/ documents even after having parted with the charge as Ahlmad of the court of Ms. Mamta Sehgal, the then Ld. ASJ. He volunteered that on 03.05.2001, he had handed over the charge to Dinesh Chandra Sharma and he could not remember the dates when he had handed over the files apart from the file of Uphaar case which were in the custody of the then Reader Sh. R.S. Verma to Dinesh Chandra Sharma and a separate list was prepared in that regard. He denied the suggestion that during the Court hours when the proceedings of the case used to be conducted, the custody of the file used to be with the Naib Court of the Central Bureau of Investigation. He denied the suggestion that in case the inspection of the case file was allowed by the Hon'ble Court, the Naib Court of CBI as well as the Ahlmad used to be present during this time. He further stated that as and when inspection was allowed, he used to get it conducted in the Court if the file used to be there in the Court or in the Ahlmad room as the case may be. He further stated

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that he would only allow a counsel to conduct the inspection of the case file of the case only if the same was allowed by the Hon'ble Court and most of the time he used to check the vakalatnama of the counsel and only then allow inspection of the file. He denied the suggestion that he is deposing falsely on this point. He further denied the suggestion that the record of the case shows several instances in breach of the legal procedure governing inspection of case files.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, the witness stated that it took him around 2/3 days to take charge from Sh. Gajraj Singh. He is unable to recollect the date but it was in between 27.04.2000 to 01.05.2000. He affirmed that he had sent a letter regarding the charge taken from Sh. Gajraj Singh to Ld. District & Sessions Judge (HQs.). He stated that he did not check each and every paper of all the files at the time of taking over the charge as there was no paging, indexing made by Sh. Gajraj Singh, previous Ahlmad on judicial files. He further stated that the documents pertaining to main Uphaar case were duly checked as per pagination on the document files contained in iron trunk. He denied the suggestion that it was his fault that he had taken over the charge without paging and indexing. He could not remember how many pages of documents were there in main Uphaar case file. He further could not remember the dates and times when he joined the investigation of the present case, however, he joined the investigation 4/5 times. He stated that he used to be called in the morning and sometimes in the evening. He could not remember whether he had provided any document to IO during investigation. He stated that previous Ahlmad Sh. Gajraj Singh had prepared hand written list of files. He could not remember if he had appended his signature on that list and it must have taken 2/3 days to hand over the charge of files to Dinesh Chandra Sharma. He affirmed that there was no pagination on main Uphaar case judicial file, however, the documents annexed therewith were paginated. He stated that the file used to be in the Court room. He stated that he had worked as Ahlmad in the court of Ms. Mamta Sehgal, the then Ld. ASJ for about one year. He affirmed that he did not paginate the judicial file of main Uphaar case but the documents were paginated as it was already done by the CBI. He further stated that he had taken over the charge of files from previous Ahlmad Gajraj Singh in the Ahlmad room attached with the court Ms. Mamta Sehgal, the then Ld. ASJ, PHC, New Delhi. He affirmed that if Reader is on leave, Ahlmad or Assistant Ahlmad as the case may be take care of the work of the Reader. He stated that in the room where he used to sit as an Ahlmad, his Assistant Ahlmad also used to sit with him. He further stated that one Ahlmad from different Court was also used to sit in the said room and he used to use separate table. He further stated that the files of the cases listed for the next day, sometime used to be handed over to the Reader by the Peon and some time he also used to hand over the same. He stated that they used to put lock in the Ahlmad room after closing the office. He stated that there were two keys of that room. One used to be kept by him and other key was used to be with Ahlmad of another Court. He further stated that they used to have separate keys of their almirahs for keeping the files. He further stated that it was the same lock and keys which were being used by Sh. Gajraj Singh and there was no missing document in the files which were handed over to him by Sh. Gajraj Singh nor he told anything in this regard. He further stated that during his tenure, the Ahlmad room was not shifted anywhere. He further stated that it might be possible that before he arrived the office, the other Ahlmad who reached the office before him, used to open the room. He further stated that some time in December, 2003 to January, 2004, it came to his notice that some documents were not traceable in main Uphaar case. He further stated that he came to know from Ms. Mamta Sehgal, the then Ld. ASJ. He stated that Sh. Gajraj Singh and probably Mr. Shyam Lal also called by Ld. ASJ in this regard. He could not remember whether before joining of Dinesh Chandra Sharma as Ahlmad, the copy of charge-sheet were supplied to the accused persons or not. He stated that the Ahlmad room was adjacent to the Court room and they used to keep the files of CBI and State cases together in the same almirah. He stated that he himself had taken charge of all the files including Uphaar case including documents thereof from previous Ahlmad Gajraj Singh and he did not take help of Assistant Ahlmad in this regard. He stated that he had checked judicial files as per list and documents which were pertains to CBI case/ cases. The documents were properly checked by him while he had taken over the charge from previous Ahlmad and he had also checked the said files and documents before handing over the same to his successor Ahlmad Sh. Dinesh Chandra Sharma. He could not remember if during his tenure as Ahlmad some application was filed for deficiency of documents. He could not remember whether during his tenure, application regarding inspection of judicial file of Uphaar case was moved or not by counsel for accused persons or any individual, however, he voluntarily stated that in case of inspection, an entry used to be made in the inspection register. He affirmed that during his tenure as Ahlmad in the court of Ms. Mamta Sehgal, the then Ld. ASJ, during the course of the day, Naib Courts, court staffs, IO of related cases and other concerns used to visit the Ahlmad room. He could not remember that whether IO of main Uphaar case and his assisting staff had seen the file. He voluntarily stated that they were allowed to see the reports on summons, etc. as per directions of the Hon'ble Court. He further stated that he joined in the month of September, 1992 as LDC. He further stated that till date, no inquiry has been conducted against him regarding missing of any file/document. His statement was recorded in the department inquiry by Sh. S.C. Malik, the then Ld. ASJ, PHC, New Delhi conducted against Dinesh Chandra Sharma. He could not remember as to how many times he was called to join inquiry. He could not remember whether IO of the present case had taken charge report of the handing and taken over the files of the present and other cases from him. He denied the suggestion that he had not taken care of case files/ documents properly or that he had not looked after those files and documents carefully being Ahlmad during his tenure in the present case. He denied the suggestion that accused Dinesh Chandra Sharma has been falsely implicated in the present case. He denied the suggestion that he is deposing falsely.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness could not remember the date when his statement was recorded by the IO. He cannot even tell the month or year. He could not remember how many times he joined the investigation but he can say that it was many times, however, his statement was recorded once. He voluntarily stated that on the other occasions, the IO confronted accused with him. He further stated that on 03.05.2001, all the files and records were handed over by him to Dinesh Chandra Sharma. He affirmed that he had prepared list of all the pending cases and had got checked all the documents kept in the trunk pertaining to Uphaar Tragedy case. He further stated that the said list dated 03.05.2001 was shown to him in the Court during his examination-in-chief. He further stated that apart from this list dated 03.05.2001, no other list was prepared by him. He voluntarily stated that the receiving list pertaining cases showing endorsement of receiving by the then Ahlmad Dinesh Chandra Sharma and by Sh. R.S. Verma, the then Reader and the files of Uphaar Tragedy case which was in the custody of the then Steno Sh. Jagan was prepared. He further stated that this list dated 03.05.2001 was submitted by him to Ld. District & Sessions Judge (HQ), THC, Delhi and this list was sent by him through dak, duly forwarded by the then Ld. Presiding Officer Ms. Mamta Sehgal, the then Ld. ASJ and this list was handed over by him on 03.05.2001. He voluntarily stated that Ld. Presiding Officer had called him and the then Ahlmad Sh. Dinesh Chandra Sharma in the Chamber, wherein confirmation was sought from Dinesh Chandra Sharma as to whether the files and documents had been received properly and as to whether there was any discrepancies, however, the Ld. Presiding Officer inquired from him as to whether he had consigned all the decided files to which he said that the same were pending and would take 10 to 15 days on which the Ld. Presiding Officer directed him that he would be relieved after the said task is over. He further stated that he had experience of over 10 to 12 years working as Ahlmad during which he had worked in different Courts. He affirmed that when the matter is listed before the Court, the file of the listed matter is placed before the Court and only after the matter is over that the file returns back. He voluntarily submitted that sometimes the files is retained by the Court for various purposes including passing of order and in such cases the file is received by the Ahlmad as and when it returns. He did not say anything about the period when the file is passing hands of Naib Court/ Public Prosecutor/ Witnesses, etc. He could not say about control of Ahlmad on the file at that point of time. He voluntarily stated that it is not possible to check each and every page of the file when the file is received back. He affirmed that file of main Uphaar case was inspected. He could not tell who applied for the said inspection, however, he permitted inspection only after same was allowed by the Court. He could not remember whether the said inspection were done by the person concerned individually or with the assistance of someone. He could not remember the fact that during his tenure as Ahlmad in main Uphaar case, whether certified copies were sought for which the files were sent to the Copying Branch. He stated that there is CA register which contains the details of files sent for certified copies to CA Branch. He further stated that when the file is received back from CA Branch most of the time, same is checked but the same is not checked per page. He further stated that there is an Assistant Ahlmad, who assists the main Ahlmad and the files are also in the custody of Assistant Ahlmad. The witness was shown his cross examination in chief dated 14.11.2018 and asked whether this statement regarding Dinesh Chandra Sharma had checked all the files and matched the same with list was made by him to IO and recorded in his statement, to which the witness stated that he has told this and it was so recorded in his statement. However, again said that he cannot say whether this fact was recorded in his statement by IO. Upon being confronted with statement dated 20.06.2006, the witness stated that same is not so recorded and which is now exhibited as **Ex. PW8/D1**. The Ld. Addl. PP objected to the mode of confronting the witness with previous statement, however, the objection raised was not found sustainable in view of the provisions contained in the explanation to the section 162 Cr.P.C that an omission, if material may amount to contradiction. He stated that his statement was recorded by the IO for approximately 35 to 40 minutes. He could not remember the actual time but it was during the day. He further stated that he had read his statement recorded by hand by the IO. He stated that he did not take the copy of the statement but he also could not tell whether he had signed the statement or not. He further stated that it was put to him by Ld. Prosecutor during his examination in chief. He further stated that during examination in chief the list was put to him and was shown to him in the open Court. He could not recollect after seeing Ex.PW8/D1 that it was the same which recorded by the IO, however, Ex.PW8/D1 bearing almost the same content as hand written statement. On Court question he replied that his statement recorded by the police by hand and Ex.PW8/D1 are the same. He explained that all the facts regarding handing over and taking over including checking and matching with the list by Dinesh Chandra Sharma was told to IO, however, same is missing in Ex.PW8/D1 which he cannot tell. He affirmed that he had stated all above mentioned facts to the IO when his statement Ex. PW8/D1 was recorded. While recording his statement by the IO of this case, he has very much recorded that no short coming has been mentioned by Dinesh Chandra Sharma, the then Ahlmad, who took over complete charge from him. The witness affirmed that the statement has not been recorded with exact words in Ex. PW8/D1 in reply of the question put to him regarding his examination-in-chief dated 14.11.2018. He affirmed that "iron trunk" is not mentioned in his statement Ex.PW 8/D1 but it was so stated by him to the IO. He affirmed that "bulky and voluminous" is not mentioned in his statement Ex.PW 8/D1 but it was so stated by him to the IO but not so mentioned. He could not remember that how many cases had iron trunks out of 324 cases but there were iron trunks in one and two more cases. He was unable to recall the said one or two more cases out of 324 cases. He could not remember how many files were there in case mentioned at serial no. 1 in list Ex.PW7/C (Colly.). He could not recall as to whether they were 1,2,5, 10,20, 50 or more, however, the same is the answer with respect to the entire list of 324 cases. He stated that the list contains even those cases in which the Lower Court record (LCR) was attached, however, he was not in a position to remember the number of files of the same nor he can tell as to whether they were 1, 2, 5, 10, 20, 50 or more. He could not remember the number of pages which were there in case mentioned at serial no. 1 in list Ex. PW7/C (Colly.). He could not recall as to whether they were 100,200,500,1000,5000 or more and the same is his answer with respect to the entire list of 324 cases. The list contains even those cases in which the LCR (Lower Court Record) was attached, however, he was not in a position to remember the number of pages of the same nor he can tell as to whether they were 100,200,500,1000,5000 or more. He stated that all the 324 cases mentioned in the list Ex. PW7/C (Colly.) were pending trial cases. He further stated that it is quite possible that the 324 cases may also have articles/ case property, however, he could not exactly recall. He could not say whether the articles/ case property are in the Court or with Police, however, the knife or pistols are kept in the custody of Police/ Malkhana. He stated that the list Ex. PW7/C was prepared one or two days prior to 03.05.2001. The witness stated that the statement recorded in his evidence dated 04.01.2019 regarding confirmation from Dinesh Chandra Sharma relating to files and documents by Ld. Presiding Officer and inquiry from him qua consigned files has not been recorded in his statement Ex.PW8/D1. He further stated that this list was handed over on 03.05.2001 itself to the Ahlmad Sh. Dinesh Chandra Sharma and the same was forwarded by the Presiding Officer on 22.05.2001 because the Ld. Presiding Officer had asked him to first consigned the decided files in the record room, otherwise he would not be relieved. He affirmed that the list was sent to the Ld. District & Sessions Judge (HQ) on 22.05.2001 and not on 03.05.2001. He further stated that when he had made his statement on 04.01.2019, he did not remember the exact date, however, after going through the document Ex.PW7/E, he had recalled the correct date which was 22.05.2001. He denied the suggestion that he had made a false statement before the Court only to falsely implicate accused persons. He could not remember whether out of the 324 files as per list Ex.PW7/C, any of the file was with the Steno, however, the file mentioned at Serial No. 114 was in the custody of Steno as day to day proceedings were going on and orders were being passed on day to day basis by the Ld. Presiding Officer. He further stated that there is no signature of the Steno on the list Ex. PW7/C. He affirmed that in the list Ex. PW7/C, it has only been stated at point B to B1 that " I have received charge as per list 324 files". He further stated that he had not been shown any handing over memo with respect to his receiving the files from his predecessor Ahlmad Sh. Gajraj Singh. He further stated that he had himself checked the files and records of pending cases in the presence of Sh. Gajraj Singh. However, he affirmed that there is no documentary evidence in this regard. He further affirmed that Ex. PW7/C does not refer to any trunks. However, Ex. PW7/E refers to records. He voluntarily stated that there is a separate list of trunks at page no. 117 at list Ex. PW7/C which contained the record of pending case including main Uphaar case. He further stated that he took about one and half to two days in preparing of list. He took about

2-2 ½ days to hand over the files to Dinesh Chandra Sharma. He voluntarily stated that the charge of files were handed over to Dinesh Chandra Sharma on day to day basis in accordance with the list prepared by him. He could not tell as to when he had taken charge of the files from his predecessor Ahlmad Sh. Gajraj Singh, how many files were paginated and how many were not. He further voluntarily stated that he did not remember the same. He could not even tell whether the same were 2,5,10,50, 100 etc. He could not tell as to how many files were at the trial stage. He further stated that he did not check each and every page of the files but he had checked the records of 2 to 4 cases including main Uphaar case. He affirmed that he taken the files from Sh. Gajraj Singh as per the procedure. He further stated that he did not check each and every page of the files because the same were not paginated by Sh. Gaj Raj Singh as they both got transferred vice versa and Ld. Presiding Officer Ms. Mamta Sehgal, Ld. ASJ directed him to take charge as it is from Gaj Raj Singh because of vice versa transfer with Gajraj Singh and if some problem arises, he would call Sh. Gaj Raj Singh to sort out the same as they were posted in same Court complex. He further stated that these directions were given by the Presiding Officer Ms. Mamta Sehgal, Ld. ASJ jointly to him and Sh. Gaj Raj Singh and these directions were not received in writing. He further stated that he had checked the records of the files at the direction of the Ld. Presiding Officer Ms. Mamta Sehgal, Ld. ASJ because he had already checked the files and found that there was no page numbering in the same and the Ld. Presiding Officer Ms. Mamta Sehgal, Ld. ASJ said that the Predecessor Ahlmad Sh. Gaj Raj Singh was in the same Court complex and he can call him. He further stated that the main Uphaar case used to remain with Steno Sh. Jagan Singh as matter used to be listed on day to day basis and documents of the case used to be referred on day to day basis. He further stated that Ld. Presiding Officer Ms. Mamta Sehgal, Ld.ASJ had specifically directed him to only check the records of the files and not the files. He further stated that when he had taken the charge of the file, the same was already going on day to day basis. He did not remember whether he had mentioned in writing on the handing over memo/ taking charge memo that he had not checked the files and only checked the records. He further stated that on his joining in the court of the Ld. ASJ in April, 2000, he had given the joining report to the Ld. District & Sessions Judge, wherein he had mentioned that he had taken over charge from Sh. Gaj Raj Singh and further stated that he had not mentioned in the joining report that he had not checked the files on the direction of Ld. ASJ. He also stated that there is no record in which he had mentioned this fact. He further stated that he had told to the IO during recording of his statement that he had only checked the records and not the files. He denied the suggestion that when he was cross-examined, he cooked up a false story for the first time. The witness stated that he had stated the fact "All the files and documents, each of the files with documents were got checked by Dinesh Chandra Sharma and all the files and documents were duly paginated" to the IO. He further confronted with statement Ex. PW8/D1 where it is not so recorded. He further stated that he cannot explain the said fact has not been so recorded in his statement by the IO. He denied the suggestion that he had deposed falsely in the case. He denied the suggestion that there were lapses on his part and in order to protect himself, he had falsely implicated the accused persons. He denied the suggestion that all the voluntary portion of the evidence during cross-examination have been cooked up by him in order to protect himself.

The following exhibits have been marked in the examination of PW-8 :

1	TRANSFER ORDER	**Ex PW 8/A**
2	STATEMENT U/S 161	**Ex PW 8/D1**

20. **PW9 Sh. Sudhir Kumar**, Judicial Assistant, the then Reader in the court of Ms. Rich Gusain Solanki was examined. He stated in his examination-in-chief that in somewhere in the year 2006, he was posted as LDC in Vigilance Branch, Tis Hazari Courts, Delhi and he had handed over the photocopies of appointment letter and joining letter of Dinesh Chandra Sharma, charge report prepared by Sunil Kumar Nautiyal for handing over the pending case file documents of documents containing 10 pages, joining report of Dinesh Chandra Sharma dated 30.04.2001, handing over charge by Sunil Kumar Nautiyal to his successor Dinesh Chandra Sharma on 22.05.2001 and handing over / relinquishment report dated 01.05.2000 by Gajraj Singh, the then Ahlmad in the court of Ms. Mamta Sehgal, Ld ASJ to ACP. He further stated that ACP seized the said documents vide seizure memo **Ex. PW9/A** bearing his signature at Point A and the said documents are already Ex. PW7/A to Ex. PW7/F.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, PW9 stated that he had not joined the investigation of the case except the handing over of photocopies of above-said documents. He further stated that he had handed over said documents in the office of ACP. He could not remember the date and time of handing over said documents. He remained there around 30 to 60 minutes. He was not inquired except the abovesaid documents. He could not remember the date of joining the Vigilance Branch, Tis Hazari Court, Delhi but he worked there 3-4 years. He had seen those documents before handing over to the ACP. He stated that he did not have any knowledge about the departmental inquiry conducted against accused Dinesh Chandra Sharma. He denied the suggestion that he has no knowledge about the documents provided by him to ACP.

In his cross-examination conducted on behalf of accused Gopal Ansal, he stated that he was not served any notice by the police to hand over above-said documents but he was sent by Incharge Vigilance Branch to hand over the said documents. He could not remember if it was oral or written instruction given by Incharge. He stated that no specific job was assigned to him in the Vigilance Branch and he was doing the general duty. He stated that he did not claim any TA/DA for visiting the office of ACP. He further stated that he did not make any entry in any record before leaving the office for ACP Office. He voluntarily stated that there is no such provision. He denied the fact that he did not hand over any documents and deposed falsely in his examination in chief.

Accused **Sushil Ansal, Anoop Singh and P.P. Batra** were afforded opportunity to cross examine this witness but no cross examination was done.

The following exhibit has been marked in the examination of PW-9 :

1	SEIZURE MEMO Dt. **03.07.2006** 1. Photocopy of appointment letter & Joining letter of DC Sharma 2. Charge report by Sunil Nautiyal. 3. Joining report of DC Sharma in ASJ's Court 4. Handing over/relinquish report by Nautiyal. 5. Handing over/relinquish report of Ex Ahlmad Gaj Raj Singh.	**Ex PW 9/A**

21. **PW10 Sh. Rai Singh Khatri**, ACP (Retired) was examined. He stated in his examination-in-chief that he got retired on 31.12.2014. He stated that he had been on deputation in the CBI from 01.01.1988 to 31.03.2002. He stated that case FIR no. 432/1997, PS Hauz Khas pertaining to the Uphaar Tragedy was taken over by CBI in the year 1997 and RC No. 3(S)/97/SIC-IV/New Delhi was registered by CBI on 26.07.1997 as per the order of Government of India, investigation was marked to him. He stated that during the course of investigation, all the original documents along with record seized by Delhi Police was taken over by him. He stated that he had seized various documents from various departments including Delhi Police, Licensing Branch, CPWD, MCD, Delhi Fire Service, Uphaar Cinema Management and Hospitals. He stated that after investigation, he had filed the charge-sheet along with relevant original records in the court of Sh. Brijesh Sethi, Ld. M.M. on 15.11.1997. He did not remember the date when the case was committed to Sessions Court. He stated that matter was heard at length by Ld. M.M. before its committal. He stated that before filing the charge sheet, photocopies of charge-sheet and its documents were prepared under his direct supervision for supplying the same to accused persons as well as for keeping the same for the purpose of his record. He stated that he himself had kept one set of charge sheet and documents annexed with him. He stated that he came to know from Sh. Y. K. Saxena, Ld. Special PP that some documents annexed with charge-sheet were found

missing and some of were torn and some documents were sprinkled with ink. He stated that Mr. Y. K. Saxena told him the nature of the documents and its number which were found in the above said condition during the trial and total nine documents were found to be affected in the said manner. He stated that on the instruction of Ld. Spl. P.P, he arranged the documents which were relevant for the purpose of trial from his set of charge-sheet and documents in CBI office and filed the same in the court of Ms. Mamta Sehgal, the then Ld. ASJ along with affidavit sworn by him. He stated that the copy of the same were also prepared for the accused persons and supplied to them. He stated that he also annexed list of documents alongwith the said affidavit and relevant pages which were submitted by him in the Court therewith also describing their nature. Certified copies of the affidavit and list of document attached therewith are **Ex. PW10/A (colly.)** bearing his signature at Point A. Original of Ex. PW10/A (colly.) was seen from the case file of main Uphaar Case and returned. Those documents were D-20, D-84, D-89, D-91, D-92, D-24, D-25, D-26 and D-28. He was shown original document Mark D-20 seized through memo dated 26.07.1997 from the original record of main Uphaar case and he correctly identified and stated that same was filed along with the charge-sheet. ***Court observation was recorded that second page of the said document is torn from the left side from its bottom.*** He stated that he also filed the photocopy of the original seizure memo along with his affidavit and certified copies of the same running in three pages is **Ex. PW10/B (colly.)**. Original of the Ex. PW10/B (colly.) are seen from the case file of main Uphaar case and returned. He was shown original document Mark D-84 i.e. Annual inspection of Uphaar Cinema dated 28.11.1996 running in two pages from the original record of main Uphaar case and he correctly identified and stated that same was filed along with the charge-sheet. ***Court observation was recorded that first page of the said document is half torn.*** He stated that he had filed the photocopy of the original of the said document with his affidavit and certified copy of the same running in two pages is **Ex. PW10/C (colly.)**. Original of the Ex. PW10/C (colly.) are seen from the case file of main Uphaar case and returned. He was shown original document Mark D-89 i.e. Original Occurrence Book of DFS, Headquarters from the original record of main Uphaar case and he correctly identified and stated that same was filed along with the charge-sheet. The said book was containing 1 to 400 pages at the time of filing of the same with the charge-sheet and later on page nos. 363 to 400 were found missing. ***Court observation was recorded that the register Mark D-89 contains page nos. 1 to 362.*** He stated that on the instructions of Ld. SPP, he filed photocopies of page no. 379 amongst the said pages along with his affidavit and certify copy is **Ex. PW10/D**. The photocopy of the said register running into page nos. 1 to 362 already on record and filed along with third charge-sheet of this case and same are **Ex. PW10/E (colly.)**. Original register containing the said pages Mark D-89 is seen from the original record of main Uphaar case and returned. He was shown original document Mark D-91 i.e. Original Occurrence Book of DFS, Bhikaji Cama Place from the original record of main Uphaar case and he correctly identified and stated that same was filed along with the charge-sheet. The said book was containing 1 to 400 pages at the time of filing of the same with the charge-sheet and later on page nos. 94 to 104 were found missing and on page nos. 109 to 116 were sprinkled with ink. ***Court observation was recorded that the register Mark D-91 contains page nos. 1 to 400 out of them pages nos. 94 to 104 are missing and from page nos. 109 to 116 are found to be sprinkled with ink.*** He stated that on the instructions of Ld. SPP, he had filed photocopies of page nos. 96 to 113 amongst the said pages along with his affidavit and certified copy of the same is running in 11 pages is marked as **Ex. PW10/F (colly.)**. The photocopies of the said register running into page 1 to 400 (page nos. 96 to 104 were missing and on page no. 109 to 116 ink were sprinkled) are already on record and filed along with third charge-sheet of this case and same are Ex. PW10/F (colly.). Photocopies of those documents of the said pages Mark D-91 is seen from the original record of main Uphaar case and returned. He was shown original document Mark D-92 i.e. Original Casual Leave Register of DFS (Headquarters) from the period from 1995 to 1996 from the original record of main Uphaar case and he correctly identified and stated that same was filed alongwith the charge-sheet. The said book was containing 1 to 92 pages at the time of filing of the same with the charge-sheet and later on page no. 45 to 50 were found missing. ***Court observation was recorded that the register Mark D-92 contains page nos. 1 to 70 and out of them page nos. 45 to 50 were found missing and from page nos. 71 to 892 were blank.*** He stated that on the instructions of Ld. SPP, he had filed photocopies of seizure memo dated 05.08.1997 vide which the said register was seized and relevant page no. 50 from amongst the missing pages alongwith his affidavit and certified copy of the seizure memo is **Ex. PW10/G** and photocopy of page no. 50 is **Ex. PW10/H**. Photocopies of those documents of the said are seen from the original record of main Uphaar case and returned. The photocopies of the said register running into 1 to 70 pages (page nos. 71 to 92 are blank in original register and pages nos. 45 to 50 are missing) are already on record and filed alongwith third charge-sheet of this case and same is **Ex. PW10/J (colly.)**. Photocopies of those documents of the said pages Mark D-92 are seen from the original record of main Uphaar case and returned. He further stated that he filed photocopy of documents D-24, certified copy of the same is already Ex. PW3/B i.e. seizure memo dated 27.08.1997 and certified copy of the cheque dated 26.06.1995 issued in favour of Mr. Sushil Ansal drawn on Punjab National Bank for an amount of Rs. 50,00,000/- signed by Sushil Ansal already Ex PW3/A. He stated that later on the said documents were found missing during trial and he had filed the photocopies of the said documents along with affidavit on instruction of Ld Spl. PP. Photocopies of the same are seen from original record of main Uphaar tragedy case and returned. He further stated that he filed photocopy of documents D-25 i.e. seizure memo dated 18.08.1997 and certified copy of the same is **Ex. PW10/K** and certified copies of two cheques dated 30.11.1996 amounting to Rs. 1,50,000/- issued in favour of Music Shop signed by Gopal Ansal as authorized signatory is **Ex.PW10/L** and cheque no. 12297 amounting to Rs. 2,96,550/- in favour of Chancellor Club signed by Gopal Ansal as authorized signatory is **Ex.PW10/M**, both drawn on Punjab National Bank. Photocopies of the same were seen from original record of main Uphaar tragedy case and returned. He further stated that he filed photocopy of documents D-26 i.e. seizure memo dated 27.08.1997 and certified copy of the same is **Ex. PW10/N** and certified copies of cheque dated 23.05.1996 amounting to Rs. 9,711/- issued in favour of Engineer

(Water) is **Ex. PW10/O**. Photocopy of the same are seen from original record of main Uphaar tragedy case and returned. He further stated that he filed photocopy of documents D-28 i.e. minutes of meeting of MDs Conference held on 09.05.1997, 14.04.1997, 02.05.1997, 03.03.1997, 14.03.1994, copy of envelop whereon name of some law firms (Advocate) are printed along with his affidavit on the instructions of Ld Spl. PP and certified copies of the same which are **Ex.PW10/P, Ex.PW10/Q, Ex.PW10/R, Ex. PW10/S, Ex.PW10/T and Ex.PW10/U**. Photocopies of the same are seen from original record of main Uphaar tragedy case and returned.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, the witness stated that the investigation of the main Uphaar case was transferred from Local Police to CBI as per order of Government of India. He further stated that investigation of the case was entrusted to him on 26.07.1997 at the time of registration of RC. He stated that he was the Chief Investigating Officer of the case and he was also assisted by other officers of CBI including DSP N.S. Virk, DSP Kishore Kumar, DSP Prithvi Singh, DSP T.P. Jha and some others as per directions of senior officers. He could not remember the exact pages of the charge-sheet and he had got prepared total 17 sets of charge-sheet and documents and out of them one he had kept with him. He further stated that he had filed the charge-sheet before the Court concerned, however, he could not remember the name of Ahlmad to whom he had handed over the original charge-sheet but he had taken the acknowledgment in this regard. He stated that he was present at the time when the copies of charge-sheet and documents were supplied to the accused persons in the Court. He affirmed that some application was filed on behalf of some accused persons for supplying the deficient copies of the charge-sheet and documents and the same was rectified by him. He could not remember the name of accused who had filed the said application. He stated that he had seen accused Dinesh Chandra Sharma in the Court room. He further stated that judicial file of the case and the documents filed separately were got duly checked by the Ahlmad and he had acknowledged the same. He further stated that he never carried out inspection of the judicial file in the Court. He further stated that he had filed the photocopies of missing documents alongwith affidavit in the Court. He further stated that he had filed the charge-sheet and the documents of the case alongwith their copies for supplying to accused persons in one iron trunk. He further stated that the original set of charge-sheet and documents might be running into two or three thousand pages. He further stated that he had received the said sets of charge-sheet and documents received in the said trunk from Ahlmad. He further stated that probably the name of Ahlmad was Shyam Lal. He further stated that he had provided the lock and probably its two keys to the Ahlmad to keep the documents in his safe custody. He further stated that he used to attend the main Uphaar case on regular basis till he remained in CBI on deputation. He further stated that the file used to be with the Ahlmad of the Court. He further stated that he never inspected the file during the course of said trial. He affirmed that other cases were used to be listed on the day when Uphaar case was to be listed. He could not remember if the Court room was shifted during the trial of main Uphaar case. He stated that trial used to be in open Court and other litigants also used to be present. He stated that after filing of charge-sheet of main Uphaar case he got prepared another copy and supplied to the association AVUT on the directions of Sr. CBI officers on the request of AVUT. He stated that he knows Constable Virender who was in CBI at that time. He denied the suggestion that Ct. Virender attended all the hearing of the case on behalf of CBI or that he used to apprise the CBI regarding filing of any application/ documents and its reply etc. or he is deliberately concealing this fact. He affirmed that Ct. Virender used to assist him in the matter. He could recollect the names of two Ahlmad namely Shyam Lal and accused Dinesh Chandra Sharma who had been posted in the Court concerned. He stated that he had seen Dinesh Chandra Sharma assisting the court as an Ahlmad of the Court during the said trial. He could not remember if Ld. Special PP Sh. Y. K. Saxena appearing in main Uphaar case had sought any instruction from anywhere for further instructing him to file the affidavit. He further stated that on the basis of documents provided by him from the set of the charge-sheet and documents meant for CBI, the secondary evidence was led in that matter in short duration. He further stated that he had mentioned the nature of documents in his affidavit. He could not say anything regarding the question whether the said documents relating to accused Dinesh Chandra Sharma or not. He did not remember if CBI had ever applied certified copy of any documents pertaining to main Uphaar case. He denied the suggestion that he has knowledge of the objection filed on behalf of accused for leading secondary evidence. He further stated that the concerned Ahlmad to whom he had filed the charge-sheet, had checked and verified each and every page in the Court room as per list of documents. He stated that it had taken several days, however, he could not tell the days exactly by the Ahlmad for the said purpose. He also stated that he used to get the said document and charge-sheet checked. He denied the suggestion that the said document and charge-sheet were not checked by Ahlmad and for this reason he is unable to tell the exact number of days or having any acknowledgment of the same. He stated that the facts regarding the missing documents and his affidavit was mentioned in his statement recorded under section 161 Cr.P.C in the present case. He denied the suggestion that he had not filed the charge-sheet in main Uphaar case in proper manner/ procedure or that he obtained the signatures of Ahlmad in routine manner in good faith or that the file and documents were not checked by the concerned Ahlmad at that time. He denied the suggestion that accused Dinesh Chandra Sharma is falsely implicated in this case or that he is deposing falsely.

In his cross-examination conducted on behalf of accused Sushil Ansal, the witness stated that he had not personally handed over the documents which he identified in his examination-in-chief to the IO of the present case. He voluntarily stated that he had specifically referred in his affidavit dated 06.02.2003 alongwith nine missing documents. He denied the suggestion that his statement did not contain the detailed specifics of the documents which are subject matter of dispute in present case. He denied the suggestion that he is not competent to identify the documents that he had exhibited in his examination-in-chief. He affirmed that he is neither the scribe nor the author of the documents that he had identified and exhibited in his examination-in- chief. He stated that he had not filed any complaint as an IO of the Uphaar Fire Tragedy case regarding the missing documents. He stated that he had not participated in any inquiry proceedings conducted by Mr. S.C. Malik, the then Ld. ASJ or Mr. J. P. Singh, the then Ld. ASJ in relation to the missing documents. He affirmed that prosecuting agency maintains separate file which is similar to the charge-sheet filed in the case. He denied the suggestion that it is well within his knowledge that certain documents had been traced later on. He affirmed that he has not mentioned in his statement under section 161 Cr.P.C as to which of the documents was pertaining to or authored by which of the accused. He affirmed that he regularly used to attend Court proceedings during the pendency of Uphaar case. He affirmed that the representatives of AVUT also used to generally attend the proceedings during trial of the said case. He stated that he did not know if the representatives of AVUT also used to inspect the Trial Court record. He affirmed that the representatives of AVUT generally used to meet him. He denied the suggestion that the representatives of the AVUT used to come to him regularly during investigation and during trial (till the time he was in CBI) and discussed the merits of the case against each accused. He denied the suggestion that AVUT used to discuss about the nature of documents seized by CBI during investigation with him. He could not admit or deny if representatives of AVUT were in regular touch with the Ahlmad of the concerned Trial Court or that they used to visit the Ahlmad room also where the Trial Court record used to be kept. He stated that as per his memory there was no permanent Naib Court from CBI deputed in that Court for the said case or not. He denied the suggestion that he tried to introduced a false explanation regarding the non presence of Naib Court during the pendency of Uphaar Fire Trial Case. He affirmed that the charge-sheet in every case is sent to Prosecution Branch for scrutiny. He affirmed that Ex.PW10/B (D-20) contains the description of 10 documents which are mentioned from item no. 1 to 10 therewith. He could not admit or deny whether the 10 documents mentioned in D-20 were filed alongwith the charge-sheet in the Uphaar case or not. He voluntarily stated that he can affirm regarding filing of the documents mentioned in Ex.PW10/B after seeing the charge-sheet. The witness after going through the charge-sheet (3rd supplementary charge-sheet) stated that only four documents out of 10 mentioned therein as mentioned from serial nos. 16 to 19 in the list of documents of main Uphaar case charge-sheet were relied upon in this case. He stated that he had mentioned in his affidavit that the document no. D-24 of the main Uphaar case was missing from the Trial Court record. He further stated that the said document was seizure memo alongwith cheque amounting to Rs. 50 Lakhs signed by Sh. Sushil Ansal. He could not say if the above mentioned document (cheque amounting to Rs. 50 Lakhs) was traced later on in original and was filed before the Court. He affirmed that the case of the prosecution in the main Uphaar case was based on the documents appended to the charge-sheet which were other than the ones that he had mentioned in his affidavit. He could not say whether the said documents had impacted the Uphaar trial or not. He denied the suggestion that his affidavit regarding missing document contains false averment in order to frame the accused. He affirmed that document nos. 16 to 19 in the main Uphaar charge-sheet which were also mentioned in document D-20 (seizure memo which was allegedly torn), were exhibited, proved during trial of the main Uphaar case and their authenticity were never challenged. He could not say whether the documents had been proved independently and their exhibition was not hampered due to tampering of D-20. He denied the suggestion that he is well aware of the fact that the four documents mentioned in D-20, (listed as document nos. 16 to 19 in the charge-sheet of main Uphaar case) were proved and exhibited uninterrupted during the trial of the said case. He affirmed that whenever during investigation he seizes a document, the seizure memo is prepared only regarding the fact that the document had been taken into possession by the investigating agency how and when and from whom during investigation. He affirmed that contents of the document is never mentioned in the seizure memo. He denied the suggestion that the documents mentioned in his affidavit which were relied upon by the prosecution in the main Uphaar case were never affected with regard to their exhibition and proof during trial of the main Uphaar case due to the alleged torn seizure memo D-20. He voluntarily stated that there was one cheque containing the signature of Sushil Ansal. He stated that Mrs. Neelam Krishnamoorthy used to come to attend the court proceedings of main Uphaar trial case and she also used to meet him in the Court. He denied the suggestion that both Mr. R. Krishnamoorthy and Mrs. Neelam Krishnamoorthy representatives of

AVUT were in regular touch with him in person and over the phone during the investigation of the present tampering matter. He stated that the letter was signed by Sh. Vimal Kumar Nagpal on behalf of Ansal Properties and Industries Ltd. and submitted to Delhi Fire Service Department and during trial some lower portion of this letter was found torn. He affirmed that he had seized many documents from the Delhi Fire Service Department during the investigation of the main Uphaar case. He further affirmed that they had seized many other documents which showed ongoing communication between the Delhi Fire Service Department and Ansal Properties and Industries Ltd. He stated that the documents seized pertaining to Delhi Fire Service Department were found tampered with during trial are mentioned in his affidavit. He denied the suggestion that many other documents pertaining to Delhi Fire Service Department and Ansal Properties and Industries Ltd. were proved uninterruptedly during the trial of main Uphaar case. He affirmed that documents mentioned in his affidavit at serial nos. 5,7 & 8 did not relate to accused Sushil Ansal. He further affirmed that in his affidavit, he had not stated that document D-92 was containing page nos. 1 to 92 and out of those pages, page nos. 45 to 50 were found missing. He stated that Mr. H.S. Panwar was an accused and he was associated with Delhi Fire Services. He could not remember whether many inspection reports had come to his notice during investigation pertaining to the period between December, 1996 to June, 1997. He stated that after filing charge-sheet, original documents were filed in the concerned Court and photocopies of the complete set were supplied to all the accused persons and no additional photocopy set was submitted in the Court alongwith charge-sheet for the Court record. He further denied the suggestion that in para 4 of his affidavit he had clearly stated that apart from the original documents, a true photocopy set was also furnished and placed before the Court where the trial was held and same was considered time to time. He further affirmed that report mentioned in para 5 of his affidavit dated 14.06.1997 was related only to the officials of Delhi Vidyut Board in main Uphaar Tragedy case. He stated that the said officials were never called or interrogated in his presence in the present case. He affirmed that in his affidavit, he has not specifically mentioned the pages/ documents pertaining

DR PANKAJ SHARMA Digitally signed by DR PANKAJ SHARMA Date: 2021.10.08 16:31:40 +0530

to D-89 and D-91 allegedly Missing/ Torn/ Inked. He voluntarily stated that he had specified the same in his annexure attached with the affidavit. He further stated that his affidavit was got drafted by Sh. Y. K. Saxena, the then Special Public Prosecutor. He affirmed that in his annexure to the affidavit, there is no mention of page bearing nos. 363-400 or pages 95-104 or 109 to 116. He affirmed that in his affidavit or the annexure appended to the affidavit, there is no mention of page bearing nos. 96-113 pertaining to document D-91. He denied the suggestion that in his deposition (at page nos. 4 and 5) dt. 05.12.2018, he had made a false averment about the filing of the aforesaid photocopies of documents alongwith his affidavit. He denied the suggestion that he has deposed falsely in his examination-in-chief to falsely implicate the accused in the present case at the instance of AVUT.

Accused **Anoop Singh** was afforded opportunity to cross examine this witness but no cross examination was done.

In his cross-examination conducted on behalf of accused Gopal Ansal, he stated that he had not stated in his statement under section 161 Cr.P.C that before filing of the charge-sheet, the photocopies of the charge-sheet and its documents were prepared under his direct supervision for supplying the same to accused persons as well as for keeping the same for the purpose of their record and that he himself had kept one set of charge-sheet and documents annexed therewith him. He could not tell exactly how many court staffs handled the judicial record of the case. He affirmed that in his affidavit that he had not mentioned any fault on any person regarding the concerned documents. He voluntarily stated that document mean document of DESU.

In his cross-examination conducted on behalf of accused P. P. Batra, he affirmed that all the documents including 9 documents which are subject matter of present case, were intact when he filed the charge-sheet of main Uphaar case. He affirmed that he had filed the list of witnesses alongwith charge-sheet. He affirmed that Mr. M.C. Khullar, Mr. M.L. Dhupar and Sh. Ishwar Bhatt and Mr. S.S.Gupta were not initially cited as witnesses in the main Uphaar case charge-sheet. He affirmed that document D-20 pertains to documents seized from Sh. Shyam Sunder

Gupta. He affirmed that D-24 alongwith cheque were seized from Sh. M.C.Khullar. He affirmed that document D-25 i.e. seizure memo pertains to seizure of original cheque related to accused Gopal Ansal were seized from Sh. M.L. Dhupar. He affirmed that document D-26 i.e. seizure memo pertains to seizure of original cheque related to accused Gopal Ansal were seized from Sh. Ishwar Bhatt. He affirmed that document D-89 i.e. seizure memo pertains to original register i.e. Occurrence Book of Delhi Fire Services which was seized from Sh. A. K. Bhatnagar. He did not remember if he had any conversation with the Court staff over telephone. He denied the suggestion that he used to have conversation with the Court staff. He did not remember whether he had made any call to any court staff from his residential land line number. He affirmed that he was working in CBI, the CBI Crime Manual 1991 was in operation. He stated that one relieving officer was appointed after his repatriation from CBI. He had handed over all the documents including photocopies of charge-sheet and supporting documents of Uphaar case and other cases to the Relieving Officer. He further stated that he had not retained any set of photocopies of charge-sheet and documents of Uphaar case with him. He stated that after his repatriation, he used to attend the hearings of the Uphaar case as and when summoned by the Court. He could not remember the dates. He further stated that while drafting the affidavit Ex.PW10/A, he took instructions from Public Prosecutor Sh. Y. K. Saxena. He had seen the photocopy of the application Ex.PW2/A filed by Ld. Special PP before drafting his affidavit Ex.PW10/A. He stated that he had filed those documents on the instructions of Ld. Special PP. He stated that he had assisted Ld. Special PP in main Uphaar case at the time of arguments on the point of charge till the period he remained in CBI. He denied the suggestion that while drafting his affidavit Ex. PW10/A he had purposely left out items 8 & 9 of Ex.PW2/A. He denied the suggestion that he did so as these documents i.e. item 8 & 9 of Ex. PW2/A were documents favourable to the defence. He denied the suggestion that because of this reason he had left out these documents in his affidavit Ex. PW10/A. He further denied the suggestion that it was not possible for him to place any document on record with his affidavit Ex. PW10/A owing to his admission made that day during cross-examination.

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He stated that the hearing of the Uphaar case used to be attended by representative of Association of Victim of Uphaar Tragedy (AVUT). He could not remember having shared any documents/ copies with members of AVUT while he was with the CBI. He affirmed that he was using landline no. 7193021 from his residence while he was serving in CBI. He could not remember whether he was using landline nos. 6887052, 6858508, 4677285, 4677755, 688953 & 6888041 from his office while he was serving in CBI. He could not remember their names. He stated that his statement was recorded in the present case by the IO/ ACP Amit Roy at his office at EOW. He further stated that he had not provided the name of Junior Officers who assisted him during investigation and trial of main Uphaar case while recording his statement in the present case. He denied the suggestion that he is feigning ignorance about the said aspect in order to avoid giving explanation of the same. He denied the suggestion that he had tendered in evidence documents in his examination-in-chief in complete violation of rule of proving documents. He denied the suggestion that he has deposed falsely.

The following exhibits have been marked in the examination of PW-10 :

1	AFFIDAVIT OF R. S. KHATRI w.r.t. LIST OF MISSING DOCUMENTS	**Ex PW 10/A (COLLY)**
2	D-20 SEIZURE MEMO DATED **18.07.1997**	**Ex PW 10/B (COLLY)**
3	D-84, LETTER FROM API TO DFS DATED **28.11.1996**	**Ex PW 10/C (COLLY)**
4	D-89, OCCURRENCE BOOK, DFS **(RELEVANT PAGE -379)**	**Ex PW 10/D**
5	D-89, OCCURRENCE BOOK, DFS TOTAL PAGES 400. PAGES MISSING 363-400 **(Pgs 64-426 IN THE 3RD SUPPLEMENTARY CHARGE-SHEET**)	**Ex PW 10/E (COLLY.)**

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6	D-91, OCCURRENCE BOOK DFS DTD 13.12.1996 TO 18.01.1997, **MISSING PAGES 95-104**	**Ex PW 10/F (COLLY)**
7	D-91, PHOTOCOPY OF THE OCCURRENCE BOOK, DFS. TOTAL PAGES 1-400. **PAGE 109-116** INK WAS FOUND TO BE SPRINKLED ON THEM **(Pgs 427-826 IN THE 3rd SUPPLEMENTARY CHARGE-SHEET**	**Ex PW 10/FF (COLLY)**
8	D-92, SEIZURE MEMO DATED **05.08.1997** OF THE CASUAL LEAVE REGISTER (DFS)	**Ex PW 10/G**
9	D-92, CASUAL LEAVE REGISTER.MISSING PAGES 45-50. **RELEVANT PAGE 50**	**EX PW 10/H**
10	D-92, PHOTOCOPY OF THE CASUAL LEAVE REGISTER FROM PAGE 1-70 (71 -92 ARE BLANK AND 45-50 ARE MISSING **(Pg 1036-1097 IN 3rd SUPPLEMENTARY CHARGE-SHEET)**	**Ex PW 10/J** **(COLLY)**
11	D-25, CERTIFIED PHOTO COPY OF THE SEIZURE MEMO 18.08.1997 w.r.t. 2 CHEQUES DRAWN ON PNB SIGNED BY GOPAL ANSAL	**Ex PW 10/K**
12	D-25 CERTIFIED PHOTO COPY OF THE CHEQUE FOR Rs 1,50,000/- DATED 30.11.1996, IN FAVOUR OF MUSIC SHOP	**Ex PW 10/L**
13	D-25 CERTIFIED PHOTO COPY OF THE CHEQUE FOR Rs 2,96,550/- DATED 12.02.1997, IN FAVOUR OF CHANCELLOR CLUB	**Ex PW 10/M**

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14	D-26 CERTIFIED PHOTO COPY OF THE SEIZURE MEMO DATED 27.08.1997 W.R.T. TO CHEQUE SEIZED FROM SYNDICATE BANK	**Ex PW 10/N**
15	D-26 CERTIFIED PHOTO COPY OF THE CHEQUE FOR Rs. 9,711/- DATED 23.05.1996 IN FAVOR OF ENGINEER (WATER)	**Ex PW 10/O**
16	D-28,CERTIFIED PHOTOCOPY OF THE MINUTES OF THE MD's CONFERENCE HELD ON 09.05.1997	**Ex PW 10/P**
17	D-28,CERTIFIED PHOTOCOPY OF THE MINUTES OF THE MD's CONFERENCE HELD ON 14.04.1997	**Ex PW 10/Q**
18	D-28, CERTIFIED PHOTOCOPY OF THE MINUTES OF THE MD's CONFERENCE HELD ON 02.05.1997	**Ex PW 10/R**
19	D-28, CERTIFIED PHOTOCOPY OF THE MINUTES OF THE MD's CONFERENCE HELD ON 03.03.1997	**Ex PW 10/S**
20	D-28 CERTIFIED PHOTOCOPY OF THE LETTER FROM LAW FIRM ADVOCATE	**Ex PW 10/T**
21	D-28 CERTIFIED PHOTOCOPY OF THE ENVELOPE WHEREIN THE NAME OF SOME LAW FIRM IS PRINTED	**Ex PW 10/U**
22	COPY OF THE CBI MANUAL 1991	**Ex PW 10/DA**

22. **PW-11 Sh. A. K. Bhatnagar** (Retired) from Delhi Fire Services was examined. In his examination-in-chief, he stated that he was working in Delhi Fire Services and retired in January-2009. He stated that he had handed over the Occurrence Book already Ex. PW-10/E containing 1 to 400 pages maintained at Delhi Fire Services Control Room (HQ) to

CBI office in Samrat Hotel. During examination, he stated that he was informed by the Court that some pages from occurrence book were missing and he could not remember how many pages were missing. He testified that he can tell the page number if occurrence book is shown to him. The photocopy of Ex.PW10/E is shown to the witness and he stated that page no. 363 onwards are missing from the occurrence book. He was not shown the missing pages during his testimony in the main Uphaar case. Witness was shown Ex. PW10/D and he stated that he cannot answer on the basis of photocopy and then Ld. Addl. PP seeks permission to cross-examine him on the point of document Ex. PW10/D and same was allowed. He affirmed that each and every page of occurrence book was printed page numbering and has same pattern and design. He affirmed that he was shown Ex. PW10/D during his deposition in main Uphaar case and he stated that it was one of the page amongst the missing pages of the Occurrence book. He affirmed that the occurrence book and seizure memo were seized by Insp. Tribhuvan and one copy each was provided to him against receipt and certified copy of seizure memo is **Ex. PW11/A** bearing signatures at Point A and B.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness could not remember whether his statement was recorded by the CBI officials in main Uphaar case. He stated that he came twice to Patiala House Court in the court of Ms. Mamta Sehgal with his Chief Fire Officer. He could not remember as to whether his statement was recorded before the Court in main Uphaar case and therefore, he stated to defence counsel that any document relating to the said case may be shown to him then only he can recollect the same. He affirmed that without being shown the record, he cannot remember whether his evidence was recorded before the court of Ms. Mamta Sehgal or not as the matter has become 23 years old. He further stated that some pages have been missing from the occurrence book containing pages 1 to 400 which was shown to him. He could not remember any document in particular but he remember only about the occurrence book. He stated that out of 400 pages some last pages were missing, however, he could not remember the page number and the exhibit number. He stated that he was given the occurrence book to be handed over to CBI by Headquarter, Delhi Fire Services. He could not remember the name of the official or his designation who gave it to him. He further stated that no acknowledgment was taken from him while handing him over the occurrence book. He further stated that he gave it in Samrat Hotel, Fourth Floor to some South Indian CBI Officer whose name he could not recall but the same is written in the seizure memo. He further stated that he gave him acknowledgment receipt for having received the occurrence book containing page nos. 1 to 400. He could not produce the same receipt but that day it was shown to him by the Ld. Prosecutor at the time of examination-in-chief by way of cross-examination. He also signed the seizure memo. He further stated that he did not initial/ sign on every page while handing over the occurrence book to CBI, however, on occurrence book on pages, date and timings have been mentioned.

In his cross-examination conducted on behalf of accused Prem Pratap Batra, the witness could not remember whether any officer of Delhi Police ever took his statement. He further stated that he alongwith his team members had been summoned to Police Headquarters but no statement was recorded. He could not remember when he was summoned to the Police Headquarters and the name of any officer of Delhi Police to whom he may have interacted with. He voluntarily stated that he had never in the past made any statement to any agency, there is no question of him having been shown any previous statement. He further stated that he is talking only about statement given to Delhi Police. He further stated that no summons was issued to them for appearing before Delhi Police Headquarters. He further stated that he only went to Delhi Police Headquarter once. He denied the suggestion he had never given any testimony before the court of Ms. Mamta Sehgal in the main Uphaar case. He denied the suggestion that his statement under section 161 Cr.P.C was doctored by the IO of present case. He further denied that this was done in order to fill up a gap the prosecution's case. He affirmed that statement dated 10.06.2006 Mark **Ex.PW11/DA** was given by him to Mr. Amit Roy. He further affirmed that he had told Mr. Amit Roy that *"during the trial of the case I was summoned in the court of ASJ Ms. Mamta Sehgal, where the page no. 379 of occurrence book was missing and I was confronted with a* *photocopy of page no. 379 which I proved to be the same copy of original page no. 379 of occurrence book. The Court exhibited this photocopy as PW-99/A".* He denied the suggestion that the portion Ex. PW11/DA is false and a lie. He further denied the suggestion that he gave this false statement at the instance of the investigating officer.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, he stated that he had joined Delhi Fire Services on 03.06.1966 as a Telephone Operator and he retired as Divisional Officer in January 2009. He further stated that he was on the post of Assistant Divisional Officer in the year 1997. He could not remember in the present case if he had joined the investigation or not. He affirmed that none of the entry made in occurrence book was made by him. He stated that he has no knowledge about the contents of missing page from occurrence book.

In his cross-examination conducted on behalf of accused Sushil Ansal, the witness affirmed that he is neither the scribe nor author of the document Ex.PW10/E (photocopy of occurrence book) that has been identified by him in his examination-in-chief. He denied the suggestion that he is neither the author nor scribe of the document therefore he has no authority to depose before the Court.

Accused **Anoop Singh** was afforded opportunity to cross examine this witness but no cross-examination was done.

The following exhibits have been marked in the examination of PW-11 :

1	D-89 ,SEIZURE MEMO DATED 30.07.1997 OF OCCURRENCE BOOK OF DFS	**Ex PW 11/A**
2	STATEMENT OF PW 11 U/S 161	**Ex PW 11/DA**

23. **PW-12** Sh. Ashok Gupta, was examined. In his examination-in-chief, he stated that he was working as Inspector in CBI in the year 1997 and posted at CBI, SIC, IV Branch. He stated that he was the Assistant Investigating Officer to Sh. R. S. Khattri (PW-10) Chief Investigating Officer. He stated that during investigation, he had taken over the two cheques from a bank officer through seizure memo and certified copy of the photocopy of seizure memo is already exhibited as Ex.PW-10/K. After seeing the seizure memo Ex.PW10/A, he affirmed that two cheques were seized from Sh. M.L. Dhupar, Chief Manager, Punjab National Bank on 18.08.1997 and it bears his signatures at point A. He stated that he had taken another cheque through seizure memo certified copy of photocopy of seizure memo is already Ex. PW-10/N bearing his signatures at point A and the said cheque he stated to be seized from Sh. Ishwar Bhat, Assistant Manager, Syndicate Bank. He stated that during his deposition, the original seizure memos already Ex. PW-10/K and Ex. PW-10/N and three cheques already Ex. PW-10/L, Ex. PW-10/M and Ex. PW-10/O were found missing.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, the witness stated that he had been on deputation in the CBI from the year 1994 to 2001. He further stated that the said cheques had not been issued by accused Dinesh Chandra Sharma. He further stated that he had joined the investigation of the present case only once but he could not remember the exact date and time. He could not remember whether he had also visited the Court on the day when the charge-sheet of main Uphaar case was filed.

Accused **Sushil Ansal, P.P. Batra, Anoop Singh & Gopal Ansal** were afforded opportunity to cross-examine this witness but no cross examination was done.

24. **PW-13 Sh. R.C. Sharma** was examined. He stated in his examination-in-chief that he was posted as Deputy Chief Fire Officer at Delhi Fire Service Headquarter, Cannaught Place, New Delhi in the year 1997. He further stated that he has been associated with the investigation of Uphaar case. He further stated that the first inquiry was conducted by Sh. Naresh Kumar, DC South regarding the incident of fire. He further stated that some Inspector from CBI had seized main file of Uphaar Cinema maintained at Delhi Fire Services about an year after the said incident. He further stated that total files were containing some 30 pages on the note sides and more than 100 pages of the correspondence side. He further stated that he was also examined as a witness in the main Uphaar case. He further stated that he was shown some torn document from the main Uphaar case file alongwith the photocopy of the same which was full page/ complete

document during the course of his deposition in the Court. He further stated that he can identify the torn documents, if shown to him. He identified the certified copy of a torn document i.e. letter written to Delhi Fire Services from Sh. Vimal Kumar Nagpal, Vice President (Services), Ansal Properties and Industries Ltd. dated 28.11.1996 was shown to him and he stated that this is one of the documents which was handed over to the said Inspector. He further stated that a Certified copy of the said document is already on record which is already Ex. PW10/C (colly.). Original of the said document has already been produced for the inspection of the Court during the deposition of PW10 Sh. R. S. Khatri. The witness has also been shown the certified copy of the photocopy of the complete documents already on record and Marked as Ex. PW10/C (colly.). The witness stated that it is the photocopy of original which is complete in all respect. The document Ex. PW10/C bears the signatures of Sh. H. S. Panwar at point A, who was the Divisional Fire Officer, posted at Delhi Fire Services, Bhikaji Cama Place at relevant time.

In his cross-examination conducted on behalf of accused Gopal Ansal, he submitted the documents as required by the DC, South during inquiry and gave the documents i.e. the file of Uphaar Cinema to the investigating agency i.e. CBI after receipt of the same. He stated that he was already examined as a witness in the court of Ms. Mamta Sehgal, the then Ld. ASJ. He denied the suggestion that he is avoiding the questions and is given the answers are not the answers in respect to the questions being asked. He further affirmed that in his examination-in-chief, he has been associated with the investigation of Uphaar case by CBI. He affirmed that Inspector from CBI who came to his office and collected the records relevant to Uphaar case file and he further stated that he thinks it was some Insp. Satpal but he could not remember exactly as the matter is very old. He affirmed that he was asked to compare the provision of Cinematograph Act and Fire safety provisions. He further stated that CBI officer recorded his statement in this regard as far as he could remember. He further affirmed that his statement was recorded by number of officers from number of different investigation agencies. He could not remember to have signed any statements recorded by investigating agencies. He stated that he had handed over one file of Uphaar Cinema. He could not remember, if any other record other than the file was given by him directly to CBI officer Satpal Singh. He further stated that it was about 30 pages of note sides and over about 120 pages on the correspondence sides. He affirmed that he has not been shown the file and only one page has been shown in the Court during his examination-in-chief. He could not specify page wise as to what were those pages on correspondence sides. He denied the suggestion that he is shifting his stand now. He could not remember as to whether he initialed / signed each page of the file when he handed over the same to CBI. He counted the pages because they were to be handed over and receipt were to be taken. He said that probably numbering was there as is therein all files. He could not tell the exact count but it was recorded in the receipt. That receipt has not been shown to him in the Court. He denied the suggestion that he is deposing falsely regarding the one page despite he has not remembered the exact count and the exact text of those pages. He further stated that the noting on Ex. PW10/C signatures of H. S. Panwar point A is put up on file. He could not tell whether the file went to H.S. Panwar in upward movement or downward movement. Witness further identified his initials at point B on the documents Ex. PW10/C (colly). He affirmed that there are initials of other officials also on this page. He could not make out names of those officials. He denied the suggestion that he has deposed falsely on oath while identifying the signatures/initials of H. S. Panwar while he could not identify signatures /initials of any other official. He could not remember what was the pages number written on the page on which he has identified his signatures. He affirmed that from the torn page shown to him signatures of other officials were also there on the portion which have been torn. He could not remember whether his statement was recorded by Sh. Amit Roy, ACP, EOW, Crime Branch. He is shown his purported statement under section 161 Cr.P.C Marked as PW13/D1, it could have been his statement. He could not remember exactly as to whether documents were given by him to officer from CBI or officer from Delhi Police. Since, the inquiries were initiated one after the other i.e. DC, South, Crime Branch, Delhi Police and then CBI, he might be not remembering the name of Department and designations of officers exactly. He denied the

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suggestion that at behest of prosecution and association of Uphaar Victims, he has deposed the details about a page from a file but all other relevant details he could not remember which showed that details of a page had been tutored to him for deposition.

In his cross-examination conducted on behalf of accused Sushil Ansal, the witness stated that he had not handed over any document to the IO of the present case during investigation. He affirmed that he is neither the scribe or the author of the documents that he had identified in his examination-in-chief. He stated that he did not have any personal knowledge regarding the facts of the present case. He further stated that he did not have any knowledge regarding any application which may or may not have been filed as regards the documents mentioned by him in his examination-in-chief. He had stated to the IO of the present case in his statement under section 161 Cr. P.C Mark PW13/D1 that he had been associated with the investigation of the Uphaar case **(confronted with statement mark PW13/D1 where the said fact is not so recorded).** He has stated to the IO of the present case that the first inquiry was conducted by Sh. Naresh Kumar, DC South regarding the incident of fire **(confronted with statement mark PW13/D1 where the said fact is not so recorded).** He had not done any pagination of the documents mentioned by him in his examination-in-chief. He affirmed that there was only one page which he had referred to in his deposition in the main Uphaar case and the same was exhibit. He stated that he had not participated in any inquiry conducted by any judicial officer in relation to the documents pertaining to the main Uphaar case. He denied the suggestion that he had deposed falsely in his examination-in-chief to suit the case of the prosecution. He denied the suggestion that he is not competent to identify or testify regarding the documents mentioned by him in his examination-in- chief. He denied the suggestion that he had become a witness in the present case on the asking of the AVUT representative in order to frame and falsely implicate the accused in the present case. He denied the suggestion that he had deposed falsely in his examination chief.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, the witness stated that his statement was recorded in the present case at the office of Crime Branch, PHQ, ITO, New Delhi. He stated that on the first day he remained seated at the said office and his statement was recorded on next day. He could not remember the date and time. He could not remember if any other police officer other than IO was present when his statement was recorded. He could not remember if statement of any other witness was recorded on that day. He did not have personal knowledge about the contents of the documents containing 30 pages on the notes side and more than 100 pages on the correspondence side. He could not say if the document in question is related to accused Dinesh Chandra Sharma or not. He denied the suggestion that the IO did not explain the relevancy of the documents relied upon by him in his examination-in-chief. He denied the suggestion that accused Dinesh Chandra Sharma has been falsely implicated in this case. He denied the suggestion that he is deposing falsely.

Accused **P.P Batra and Anoop Singh** were afforded opportunity to cross examine this witness but no cross examination was done.

Ld. Addl. PP with the permission of the Court re-examined the witness and the witness stated on oath that copy of his statement recorded in main Uphaar case running into 20 pages is exhibited as Ex.PW13/A (already on record in supplementary charge-sheet).

Accused **Anoop Singh, Dinesh Chandra Sharma and P.P. Batra** were afforded opportunity to cross examine this witness but no cross examination was done.

In his cross-examination conducted on behalf of accused Sushil Ansal, the witness stated that he did not remember what were the facts and details given in the statement in the main Uphaar Fire Tragedy case. He stated that he had responded to the IO of present case only in relation to the questions asked during investigation. He denied the suggestion that his statement exhibited has been done to falsely implicate the accused in the present case. He stated that he had not handed over copy of his statement recorded in the main Uphaar case to the IO of the present case during investigation in the present case. He denied the suggestion that he had exhibited the document in his examination-in-chief at the instance

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of prosecution to frame the accused.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness stated that at the time of his deposition during the main Uphaar case, everything was fresh in his mind, however, he could not recollect the same on that day. He could not remember if investigating officer ever asked him regarding the facts of the main Uphaar case during the investigation of the present case. He denied the suggestion that he had deposed falsely at the instance of prosecution. He did not volunteer to get his statement exhibited which is **Ex.PW13/A** in the present case. He denied the suggestion that he did not volunteer to bring on record his statement during his examination-in-chief or during his cross-examination in the present case.

The following exhibits have been marked in the examination of PW-13 :

1	DEPOSITION OF PW 13 IN THE MAIN UPHAAR CASE	**Ex PW 13/A**
2	STATEMENT OF PW 13 U/S 161	**Mark PW 13/D1**

25. **PW-14 SI Bal Kishore** (now retired) s/o Late Sh. Ram Singh Tyagi R/o Village Kishola, PS-Syana, District– Bulandsher,UP was examined. He stated in his examination-in-chief that in the year 1997 he was posted as ASI, SIT Section, Crime Branch, New Delhi. He has been associated with the investigation of main Uphaar Tragedy on 18.07.1997. He stated that he had joined the investigation of that case alongwith Inspector R.S Jhakar from Crime Branch. He stated that on that day, they both went to Ansal Bhawan, Kasturba Gandhi Marg and Inspector R.S Jhakar had seized ten documents from S.S. Gupta working at the office of Ansal. Inspector Jhakar had seized aforesaid documents through seizure memo in his presence and he also obtained his signatures thereon. He can identify the said memo if shown to him. He affirmed that the original seizure memo dated 18.07.97 is the same seizure memo vide which the aforesaid document was seized by Inspector R.S. Jhakar. Photocopy of the said torn seizure memo is already on record and same is now marked as **Ex.PW14/A** (original torn seizure memo is seen from the record of original

Uphaar case and returned). **Court observation is recorded that left side lower portion of the second page of the seizure memo is torn.** He further stated that certified copy of the photocopy of the complete seizure memo got exhibited during the course of main trial by way of secondary evidence is also on record and the same is already marked as Ex.PW10/B (colly.). It bears the signature of witness at point A. It also bears signature of Shyam Sunder Gupta at point B on the said seizure memo who had signed the same in his presence. He further stated that when the said seizure memo Ex.PW14/A was prepared it was intact and was complete in all respect.

Accused **Anoop Singh, Dinesh Chandra Sharma and P.P. Batra** were afforded opportunity to cross examine this witness but no cross examination was done.

In his cross-examination conducted on behalf of accused Gopal Ansal, he affirmed that there were nine registers and some pages containing minutes of meeting. He could not tell all about those registers and he stated that he had not gone through those registers. He could not provide the individual details of each and every register separately. He affirmed that he was associated in order to assist R.S Jhakar and he had associated R.S Jhakar for many days. He stated that his statement was recorded in this case only once. He stated that he did not give any other statement in the present case.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness has accepted the correctness of the statement Marked as **Ex.PW14/DA** in the open Court. He affirmed that the statement given under section 161 Cr.P.C. by him provides the complete description of documents which Insp. R.S. Jhakhar has seized along with him. He affirmed that he cannot tell the complete description of documents which Insp. R.S. Jhakhar had seized. He affirmed that he had only identified his signature on the seizure memo dt. 18.07.1997 but he did not know the contents of the said seizure memo Ex.PW14/A. He affirmed that he cannot tell the contents of said seizure memo without going through the same. He could not remember as to whether he verified the fact that the documents seized by Insp. R.S. Jhakhar were mentioned in the abovesaid seizure memo. He stated that he signed the said seizure memo as a witness. He stated that he can tell the date of signing the seizure memo which was 18.07.1997.

In his cross-examination conducted on behalf of accused Sushil Ansal, the witness stated that he had not given any written complaint during the pendency of main Uphaar Tragedy case either to Court or to Investigating Officer regarding the tampering of the seizure memo that he had identified in the present case. He stated that he was not summoned and neither did he give any statement before any inquiry committee regarding the subject matter of the present trial (tampering case). He stated that he was never summoned as a witness in main Uphaar trial before the Ld. ASJ to prove his signatures on the seizure memo that he is identifying now. He denied the suggestion that he is lying in the statement recorded before this Court. He denied the suggestion that he has no knowledge with regard to the seizure memo which he has identified in the present case. He denied the suggestion that he was neither the scribe nor the author of seizure memo which he has identified in the present case and it was because of this reason that he was never summoned as a witness in the main Uphaar Tragedy case.

The following exhibits have been marked in the examination of PW-14 :

1	SEIZURE MEMO DATED **18.07.1997** **(In 3rd Supplementary Charge Sheet @ 979-980)**	**Ex PW 14/A**
2	STATEMENT OF PW 14 U/S 161	**Ex PW 14/DA**

26. **PW-15 Inspector Ishwar Singh**, No. D-1/928, Special Cell SR, Sector 7, Pushp Vihar, New Delhi was examined. In his examination-in- chief, he stated that on 17.05.2006, he was posted as SI at CBT Section, EOW Crime Branch, Malviya Nagar, New Delhi. He stated that on that day, Sh. Vijay Malik, ACP, CBT Section, EOW Crime Branch, Malviya Nagar, New Delhi had handed over him rukka **Mark X** with the instruction to take the same to PS Tilak Marg for registration of the FIR. Accordingly, he took the rukka to said PS and got the FIR registered. After registration of FIR, he came back to the said office and handed over the copy of FIR alongwith original rukka to ACP Vijay Malik.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness stated that he is not aware about the contents of rukka and the FIR.

Accused **Dinesh Chandra Sharma, P.P. Batra, Sushil Ansal & Anoop Singh** were afforded opportunity to cross examine this witness but no cross examination was done.

The following exhibit has been marked in the examination of PW-15 :

1	RUKKA **(Part of Ex PW29/A)**	**PW 15 Mark X**

27. **PW-16 Retired DSP Prithvi Singh** S/o. Sh. Nathu Ram, aged about 72 years, R/o. Village Govind Puri, Police Station and District Yamuna Nagar, Haryana was examined. In his examination-in-chief, he stated that in the year 1997, he was serving as a DSP in the CBI, SIC-IV, Chankya Puri, New Delhi. He was on deputation in the CBI at that time. He stated that on 26.07.1997, Insp. Satpal Singh, Inspector SIT, Crime Branch had handed over him certain documents alongwith their common seizure memo. The seizure memo was dt. 18.07.1997. He stated that it was prepared by Insp. R.S. Jhakar. He stated that when he received the aforesaid documents and seizure memo from Insp. Satpal Singh, they were intact in all respect. He stated that later, he had handed over the aforesaid documents and seizure memo to Sh. R.S. Khattri, DSP, CBI, SIC-IV, Chankya Puri, New Delhi, who was the main Chief Investigation Officer and he was assisting him. He could not remember the date when he had handed over the aforesaid documents and seizure memo to Sh. R.S. Khattri. He stated that when he appeared as a witness in main Uphaar case, he was shown the aforesaid seizure memo but at that time, it was in torn condition. He stated that he was also confronted with the photocopy of untorn seizure memo and he approved the same to be photocopy of the original seizure memo dt. 18.07.1997. He further stated that original seizure memo is shown to the witness from the record of main Uphaar case who identified it to be the same seizure memo which was handed over to him by Insp. Satpal Singh

and at that time it was intact. He stated that on the overleaf of the second page of the seizure memo bears the endorsement of the witness regarding receipt of the documents alongwith the seizure memo. **The Court observation is recorded that the lower left side portion of the second page of the said seizure memo is torn off.** Photocopy copy of the torn seizure memo is already on record and marked as Exhibit PW14/A. He was shown the certified copy of the photocopy of untorn seizure memo which is on record and he identified to be photocopy of untorn seizure memo and same is Ex.PW1/B (Colly.). He stated that the same bear signatures and endorsement made by witness regarding receipt of documents and seizure memo from Inspector Satpal Singh at point A and signatures of Inspector Satpal Singh at point B. His deposition recorded in the main Uphaar case, the copy of which is already on record, running into 9 pages is **Ex.PW16/A** bearing his signatures at point A on each page. Original deposition is seen from the record of main Uphaar Trial Case.

Accused **P.P. Batra & Anoop Singh** were afforded opportunity to cross examine this witness but no cross examination was done.

In his cross-examination conducted on behalf of accused Sushil Ansal, the witness stated that his statement was recorded in the present case only once when he was called to join the investigation. He stated that he had not handed over any document to the IO in the present case. He affirmed that the document that he had identified in his examination-in-chief that day were neither seized from him nor was seized in his presence in the present case. He denied the suggestion that he is not competent to testify regarding the documents mentioned by him in his examination-in-chief. He could not remember if he had stated to the police in his statement under section 161 Cr.P.C. of the present case that "*Later, I had handed over the aforesaid documents and seizure memo to Sh. R.S. Khattri, DSP, CBI, SIC-IV, Chankya Puri, New Delhi, who was the main Chief Investigation Officer and I was assisting him. I do not remember the date when I had handed over the aforesaid documents and seizure memo to Sh. R.S. Khattri*". The statement of the witness is recorded under section 161 Cr.P.C is now Marked as **Ex.PW16/DA**. Confronted with statement

Ex.PW16/DA where the said fact is not so recorded. He denied the suggestion that he has deposed falsely regarding the handing over of the documents as mentioned in his examination-in-chief. He affirmed that he has neither prepared nor authored any document or even the seizure memo as referred in his examination-in-chief. He affirmed that he did not have any knowledge regarding relevancy and the nature of documents as mentioned by him in his examination-in-chief. He stated that he had not joined any inquiry nor he was called in relation to any inquiry regarding the missing/ torn documents. He could not remember the facts and events pertaining to main Uphaar trial case. He denied the suggestion that he has given his testimony in the present case at the instance of the IO and the complainant in order to frame and implicate the accused persons. He denied the suggestion that he has mentioned and referred the documents in his examination-in-chief at the instance of the IO. He denied the suggestion that he has deposed falsely in his examination-in-chief.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness affirmed that post handing over the seizure memo to Sh. R.S. Khattri, he saw the said seizure memo Ex.PW14/A for the first time during his deposition in the main Uphaar case. He further affirmed that he cannot say as to what happened to the said seizure memo in between the said period.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, the witness stated that he cannot say whether the documents mentioned in the seizure memo Ex.PW14/A were related to accused Dinesh Chandra Sharma or not. He stated that he was not present nor been associated in the filing of the charge-sheet of the main Uphaar case. He stated that no accused of the present case or the main Uphaar case was present at the time when his statement was recorded in the present case. He denied the suggestion that he is deposing falsely at the behest of the IO. He denied the suggestion that accused Dinesh Chandra Sharma has been falsely implicated in the present case.

The following exhibits have been marked in the examination of PW-16 :

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1	DEPOSITION OF PW 16 IN THE MAIN UPHAAR TRIAL	**Ex PW 16/A**
2	STATEMENT OF PW 16 U/S 161	**Ex PW 16/DA**

28. **PW-17 : Sh. Satyapal Singh (Retired ACP)**, R/o. A-110, Delhi Police Co-operative Group Housing Society, Sector 32/33, Greater Noida, U.P. was examined. He stated in his examination-in-chief that in the year 1997, he was posted as Inspector Crime Branch and member of a Special Investigating Team (SIT) constituted for conducting investigation in the main Uphaar case. He had been associated with the investigation of main Uphaar case being part IO. Chief Investigating Officer was Sh. Rajbir Singh, who was heading the SIT, Crime Branch, Delhi Police. He stated that on 12.07.1997, he had taken into possession the file of Delhi Fire Services pertaining to Uphaar Cinema, Green Park, New Delhi. This file was consisted of 30 pages of notesheets and 128 pages of correspondence file which was numbered as C-1 to C-128. He stated that he had also taken into possession Emergency Occurrence Book of Delhi Fire Services for the period from 30.05.1997 to 15.06.1997. They were 400 pages in that book. Out of them page numbers 1 to 292 were written and the remaining pages were blank. He stated that when he seized the aforesaid documents from Sh. R.C. Sharma, Deputy Fire Chief Officer, Delhi Fire Services, Headquarter, Connaught Place, New Delhi, all the aforesaid documents were intact in all the respect. None of the documents were torn at that time. He stated that he had also put his initial on each pages of aforesaid written documents. He stated that he can identify any of the pages from amongst the said documents if shown to him as he had also put his initial thereon. The witness after seeing the document i.e. original page no. C-123 of the correspondence file i.e. a letter written by Vimal K Nagpal, Vice President (Services), Ansal Properties and Industries Ltd. addressed to the Divisional Officer, Delhi Fire Service, Bhikaji Cama Place, Delhi, stated that the said page is in torn condition while it was seized by him it was intact in all respect and also had his initial. The witness has shown certified copy of the

photocopy of the untorn document Ex.PW10/C (Colly.) and after seeing the same, he stated that it is true copy of its original untorn document and bears his initial and page no. C/123 written by him at point A. Certified copy of the torn page, C-123 is Ex.PW10/C (Colly.) alongwith certified copy of photocopy of untorn document bearing his initials on page no. C/123 at point A. The witness stated that since the case was transferred to the CBI, he had handed over the aforesaid documents to Sh. Prithvi Singh, DSP, CBI on 26.07.1997. He further stated that on the same day, he had also handed over one original seizure memo prepared by Insp. R.S. Jhakar regarding seizure of 10 documents from Sh. S.S. Gupta alongwith the 10 documents which were seized through that seizure memo to Sh. Prithvi Singh, DSP, CBI. He further stated that the said seizure memo and the said documents were intact in all respect when he handed over them to Sh. Prithvi Singh, DSP, CBI on 26.07.1997. He had also obtained the receipt from Sh. Prithvi Singh, DSP, CBI in this regard on the overleaf of aforesaid seizure memo. After seeing the document i.e. original seizure memo dt. 18.07.1997 (D-20) prepared by Insp. R.S. Jhakar running into 2 pages having endorsement regarding the receipt of the 10 documents with their seizure memo, witness stated that it was the same seizure memo which was handed over by him to Sh. Prithvi Singh, DSP, CBI alongwith the documents mentioned therein. The seizure memo was intact at that time in all respect but on the day of examination, the left half lower portion of the second page of the seizure memo is in torn condition. Certified copy of the said torn seizure memo is already on record in the present case and already marked as Ex.PW14/A. He was shown certified copy of photocopy of untorn seizure memo which was got exhibited by way of secondary evidence during the trial of main Uphaar case and after seeing the same, he submitted that it is the true copy of original seizure memo Ex.PW10/B bearing his signatures at point B and signatures of Sh. Prithvi Singh at point A at the overleaf of second page of seizure memo. He was also examined as witness in main Uphaar case.

In his cross-examination conducted on behalf of accused Gopal Ansal, he affirmed that after he handed over the documents to Sh. Prithvi Singh, DSP, he saw those documents only during his deposition in the main Uphaar case. He stated that he cannot say as to who had the

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custody of the said documents or dealt with said documents during the said period.

In his cross-examination conducted on behalf of accused Sushil Ansal, the witness has stated that he had joined the investigation once in the present case. His statement was recorded at that time. He was confronted with his statement under section 161 Cr.P.C. regarding his statement "*When I seized the aforesaid documents from Sh. R.C. Sharma, Deputy Fire Chief Officer, Delhi Fire Services, Headquarter, Connaught Place, New Delhi, all the aforesaid documents were intact in all the respect. None of the documents were torn at that time*" where it was not so recorded and only reference is made to page no. 123 of the file in this regard. He could not remember if in the main Uphaar case, he had identified or seen each and every page of the document mentioned by him in the examination-in-chief that day. He had not joined any inquiry or departmental proceedings in relation to the alleged Torn/ Mutilated documents. The trial judge of the main Uphaar case Hon'ble Ms. Mamta Sehgal, ASJ had never examined him or inquired from him during any inquiry regarding the documents mentioned by him in his examination-in-chief. He denied stating in his statement under section 161 Cr.P.C. in the present case that "*on the same day, I had also handed over one original seizure memo prepared by Insp. R.S. Jhakar regarding seizure of 10 documents from Sh. S.S. Gupta alongwith the 10 documents which were seized through that seizure memo to Sh. Prithvi Singh, DSP and that the said seizure memo and the said documents were intact in all respect when I handed over them to Sh. Prithvi Singh, DSP, CBI on 26.07.1997 and that I had also obtained the receipt from Sh. Prithvi Singh, DSP, CBI in this regard on the overleaf of aforesaid seizure memo and that After seeing the documents, witness stated that it was the same seizure memo which was handed over by him to Sh. Prithvi Singh, DSP, CBI alongwith the documents mentioned therein and that the seizure memo was intact at that time in all respect but today, the left half lower portion of the second page of the seizure memo is in torn condition*". He further stated that he had not seen the seizure memo dt. 18.07.1997 (D-20) during the investigation of the present case. He voluntarily stated that if he had seen it during investigation, he would have mentioned it in his statement under section 161 Cr.P.C. He denied the suggestion that the identification of the aforesaid documents done by him in his examination-in-chief is defective and has been done to suit the case of the prosecution. He denied the suggestion that he has identified the aforesaid documents without having any knowledge about the same or that he is incompetent to identify the same. He further stated that he had not stated in his statement under section 161 Cr.P.C. in the present case anything related to leading of secondary evidence in the main Uphaar case. He affirmed that he did not have any knowledge as to what documents were or were not exhibited through secondary evidence in the main Uphaar case. He further stated that he had not examined or recorded any statement of the author or scribe of the document Ex.PW10/C (colly.) or the correspondence file as mentioned by him in his examination-in-chief. The seizure memo was not prepared by him. He affirmed that generally whenever the seizure memo is prepared, the signature of the author appears or taken on the right hand side at the bottom of the seizure memo and the signatures of the attesting witness appear on the left side of the end of the seizure memo. He affirmed that his signatures identified by him on Ex.PW14/A are not at the end of the seizure memo but are on the overleaf of the page. He voluntarily stated that he was not the witness to the seizure memo but it is only an acknowledgement of the receipt regarding handing over the documents. He denied the suggestion that his signatures were manipulated and were introduced and inserted to suit the case of the prosecution. He denied the suggestion that the overleaf portion of the abovesaid document was fabricated to suit the story of the prosecution. He affirmed that the documents mentioned by him in his examination-in-chief as regards C-123 Ex.PW10/C (colly.) are not related to the management of the Uphaar Cinema. He voluntarily stated that they were of Delhi Fire Service Department and C-123 has been written by one Sh. Vimal Kumar Nagpal, an Official of M/s. Ansals Properties and Industries Ltd. to the Divisional Fire Officers, Bhikaji Cama Place. He had not examined Mr. Vimal Kumar Nagpal during investigation of main Uphaar case. He did not know as to what was the designation, status or role of the said Sh. Vimal Kumar Nagpal in relation to Ansal Properties and Industries Ltd. or Uphaar

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Cinema. He voluntarily stated that may be he was Operational Manager. He further stated that the said Sh. Vimal Kumar Nagpal was neither examined by him in the main Uphaar case nor was he examined by the IO of the present case (tampering matter) in his presence. He denied the suggestion that he has introduced Mr. Vimal Kumar Nagpal's name to create prejudice against the accused persons in order to falsely implicate them in the present case. He further stated that he did not have any knowledge about the total number of documents which are subject matter of present case. He denied the suggestion that he has become a witness in the present case at the instance of complainant and the investigating officer to falsely implicate the accused persons. He denied the suggestion that he has deposed falsely in his examination-in-chief.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, the witness stated that the documents which he seized and handed over to Sh. Prithvi Singh, DSP were of Delhi Fire Services related to Uphaar Cinema. He affirmed that the said documents were not related to accused Dinesh Chandra Sharma. When his statement under section 161 Cr. P.C was recorded in the present case, none else was present.

Accused **P.P. Batra and Anoop Singh** were afforded opportunity to cross examine this witness but no cross examination was done.

The following exhibit has been marked in the examination of PW-17 :

1	STATEMENT OF PW 17 U/S 161 Cr.P.C IN THE PRESENT CASE	**Ex PW 17/DA**

29. **PW-18 Insp. Harish Chander,** No. D-I/111, Rashtriyapati Bhawan, New Delhi was examined. He has stated in his examination-in-chief that on 22.11.2006, he was posted as Inspector at Economic Offence Wings, Crime Branch, Qutub Institutional Area, New Delhi. He had been associated with the investigation of the present case. He further stated that on 22.11.2006, he alongwith Insp. Tika Ram, SI Sushil Yadav, SI Harkesh, HC Satbir, Ct. Harpal and the IO ACP Amit Roy joined the investigation of

this case. He further stated that on that day, accused Dinesh Chandra Sharma was arrested from his house bearing house no. 1/1609, Mansarovar Park, Shahdara, Delhi. The arrest memo and personal search memo were prepared in this regard and also appended his signatures thereon. He further stated that on that day at about 3 pm, they left their office Economic Offence Wings, Crime Branch, Qutub Institutional Area, New Delhi to effect the arrest of said accused. He further stated that apart from police officials, two public persons had also witnessed to the proceedings of the arrest and personal search of accused Dinesh Chandra Sharma. One of them either Jitender Kumar Sharma and Shyam Sunder. He further stated that on 25.11.2006, he again joined investigation of this case alongwith Insp. Tika Ram and the IO. He further stated that on that day, IO had interrogated accused Dinesh Chandra Sharma in his office and also recorded his disclosure statement. He himself and Insp. Tika Ram had appended their signatures on the said disclosure statement. He further stated that accused Dinesh Chandra Sharma had disclosed *inter alia* other things that after being dismissed from service, he had secured job in A Plus Security and Training Centre, A-96, Saidullajab, New Delhi and pursuant thereof the accused Dinesh Chandra Sharma took us the office of A Plus Security and Training Centre, A-96, Saidullajab, New Delhi and the search of the said premises was conducted. He further stated that one Anoop Singh was present at the said office who produced two registers i.e. one Register of Employment and Remuneration of Employees for the period from August,2003 to February, 2005 containing 97 pages and the second register was also of Employment and Remuneration of Employees for the period from March, 2005 to April, 2006 containing 98 pages. He further stated that in the first register, on page nos. 77, 82, 87 and 93 at a particular entry a white fluid was applied and over it the name Ram Karan was written. In the same register, the revenue stamp against the said entry at page nos. 83, 88 and 94 were found missing. He further stated that in the second register, on page nos. 2, 8, 14 and 21 at a particular entry a white fluid was applied and over it the name Ram Karan was written. He further stated that in the same register, the revenue stamp against the said entry at page no. 15 was found missing and on page no. 22 white fluid was applied on the revenue stamp.

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He further stated that both the aforesaid registers were taken into possession by the IO through a seizure memo on which he himself, Insp. Tika Ram and one public witness namely Arvind Kumar had appended their signatures. He further stated that the said Anoop Singh who had produced the registers had also appended his signature on the seizure memo. Witness correctly identified accused Anoop Singh and accused Dinesh Chandra Sharma. He stated that the disclosure statement given by the accused is **Ex.PW18/A** bearing his signature at point A and the portion containing the facts pursuant thereto the aforesaid recovery is effected is at point B to B1. He further stated that the seizure memo regarding seizure of aforesaid two registers is **Ex.PW18/B** bearing his signatures at point A and the signature of Anoop Singh is at point B who had appended his signature in his presence. The witness identified the first Register of Employment and Remuneration of Employees for the period from August, 2003 to February, 2005 containing 97 pages vide seizure memo Ex.PW18/B. The register is marked as **Ex.PW18/C**. The witness also pointed out the entries where the fluid had been applied at page nos. 77, 82, 87 and 93 of the said register where name Ram Karan has been written over the white fluid. Witness also pointed out the places at page nos. 83, 88 and 94 where the revenue stamp was found missing. The witness identified the second Register of Employment and Remuneration of Employees for the period from March, 2005 to April, 2006 containing 98 pages which was seized vide seizure memo Ex.PW18/B. The register is now marked as **Ex.PW18/D**. The witness also pointed out the entries where the fluid had been applied at page nos. 2, 8, 14 and 21 of the said register where name Ram Karan has been written over the white fluid. Witness also pointed out the place at page no. 15 where the revenue stamp was found missing and at the place at page no. 22 white fluid has been applied over the revenue stamp.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, the witness stated that on 22.11.2006, he alongwith other police officials had assembled in the office of IO in the basement of the office of EOW. They left the office at about 3 pm. They had gone to house of the accused Dinesh Chandra Sharma in two vehicles including one official vehicles. He did not remember the make, model and registration number of the said vehicles. They took around one hour to reach at the house of accused Dinesh Chandra Sharma. He could not remember the number of floors of the house of accused Dinesh Chandra Sharma nor he can tell the width of road leading to house of accused. Family members of the accused Dinesh Chandra Sharma including his brother-in-law and father were present at the house. He further stated that arrest memo and personal search memo were prepared by the IO in the house of accused Dinesh Chandra Sharma. The information regarding arrest of the accused was given to his father but he could not remember if his signatures were taken on the memo or not. Public persons had collected outside the house of accused Dinesh Chandra Sharma but he did not remember if any such person joined investigation. He voluntarily stated that accused was arrested inside his house. It took about one and half hours to complete all the necessary proceedings following the arrest of accused Dinesh Chandra Sharma. They left the house of accused at about 5-5:30p.m. No search of the house of accused Dinesh Chandra Sharma was made at the time of arrest regarding any missing documents. He further stated that accused was brought to the office of EOW after his arrest and thereafter his medical examination was got done. They reached office of EOW at about 6-6:30 pm. They stayed at EOW for about an hour. He did not know what further proceedings were conducted by the IO at EOW during that period. They left the office of EOW at about 7:30 pm for medical examination of accused Dinesh Chandra Sharma. He alongwith SI Harkesh Gaba, HC Satbir and Ct. Harpal took the accused for his medical examination. They reached AIIMS within half an hour. He did not remember how long they stayed there nor he can tell the time when they left AIIMS. From AIIMS, they returned to the office of IO and handed over the accused to him. Thereafter, he did not join the investigation on that day. He did not participate in investigation on 23.11.2006 and 24.11.2006. He further stated that on 25.11.2006, IO interrogated the accused Dinesh Chandra Sharma in his presence at about 10 am. Insp. Tikka Ram was also present at that time. Only disclosure statement was recorded by the IO. Disclosure statement was typed. He did not remember the number of pages of disclosure statement without seeing the same. He remained present at the office of EOW for about two or two and half hour. He alongwith IO, Insp. Tiika Ram and other staff proceeded to the office of A Plus Security by official vehicle. He did not remember the make, model and number of vehicle. He did not know if IO had made any departure entry before leaving his office. They reached A Plus Security at about 1 pm. The distance between the office of IO and A Plus Security must be 8-10 kilometers. The office of A Plus Security was in residential premises. He could not tell the dimension of the said office. He did not remember how many persons were present in the said office. They stayed said office for about three hours and left the same after 4 p.m. for EOW. He did not know the period of remand of the accused Dinesh Chandra Sharma obtained by the IO as he was not present at that time. No missing document related to main Uphaar case recovered in his presence from accused Dinesh Chandra Sharma. He further stated that he did not participate in the investigation apart from the investigation conducted on 22.11.2006 and 25.11.2006. IO had recorded the statement of public witness Arvind Kumar as well as his statement on 25.11.2006. Statement of accused Anoop Singh was also recorded as he was not made accused at that time. He denied the suggestion that he did not join investigation the investigation on 22.11.2006 and 25.11.2006 or that accused was not arrested in his presence. He denied the suggestion that accused did not make any disclosure statement rather his signatures were obtained on blank papers. He further denied the suggestion that all the proceedings were done at the office of EOW and his signatures were obtained on blank papers. He further denied the suggestion that accused Dinesh Chandra Sharma has nothing to do with the registers recovered from the office of A Plus Security. He further denied the suggestion that he is deposing falsely in the present case.

Accused **P.P. Batra** was afforded opportunity to cross examine this witness but no cross examination was done.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness stated that the statements of public witnesses who had joined the proceedings regarding arrest of accused Dinesh Chandra Sharma were recorded by the IO/ ACP Amit Roy. As he is not the IO of the case, he cannot tell how the witnesses were asked to join the said proceedings by the IO. He did not know whether the statements of the above said witnesses have been placed on record in the present case. He affirmed that the name of the officials i.e. Sh. Amit Roy, Inspector Tika Ram and himself are typed written on Ex.PW18/A. He further affirmed that signature appearing at point B is not containing any typed written name beneath the signatures. He further affirmed that while preparation of Ex.PW18/A, no independent witnesses were made to join the proceedings. He denied the suggestion that as Ex.PW18/A has been fabricated, therefore, no independent witness was made to join the proceedings. He denied the suggestion that from the document itself, it is clear that signatures at point B were obtained on a blank sheet as same has no typed written name beneath the signatures, though the other three names are typed written. No written requisition was given to him for joining investigation of this case. He voluntarily stated that he was subordinate to the IO, as such no permission was required. He further stated that he was not the part of the investigation except the proceedings conducted on 22.11.2006 and 25.11.2006. He affirmed that the seizure memo Ex.PW18/B did not bear the signature of accused Dinesh Chandra Sharma nor his name has been referred in its body. He could not tell why the name of accused Dinesh Chandra Sharma is not mentioned in the seizure memo Ex.PW18/B, which can only be explained by the IO of the case. He affirmed that the signatures of accused Dinesh Chandra Sharma were not obtained on the documents produced pursuant to document Ex.PW18/B. No search memo was prepared on 25.11.2006. He denied the suggestion that the evidence given by him regarding disclosure and recovery are false.

In his cross-examination conducted on behalf of accused Anoop Singh, the witness stated that he joined the investigation in the present case at the behest of IO. The instructions to join the investigation given to him by the IO verbally as he was his subordinate officer. His statements under section 161 Cr.P.C. was recorded by the IO on 22.11.2006 and 25.11.2006 in the office of the IO. He denied the suggestion that he had gone through the police file before his deposition in the Court. He denied the suggestion that he did not join proceeding of this case or that he has deposed falsely at the behest of IO being his subordinate. He could not remember if any white fluid was applied on any other entries in the registers purportedly handed over by the accused Anoop Singh. He denied the suggestion that accused Anoop Singh was not present at the time when IO and his team visited the office of A Plus Security and Training Centre. He voluntarily stated that he was a member of that team. He denied the suggestion that the IO and his team had rampaged through the office of Sh. Anoop Singh even before his arrival. He affirmed that the registers purportedly handed over by the accused Anoop Singh were not sealed, though seized by the IO. He had not participated in the investigation of the present case except on 22.11.2006 and 25.11.2006, therefore, he cannot comment on the culpability of the accused Anoop Singh in the present case. He voluntarily stated that it is the job of IO. He affirmed that no investigation was carried out in his presence to establish nexus between accused Anoop Singh and P.P. Batra in the instant case apart from the facts disclosed by accused Dinesh Chandra Sharma in his disclosure statement. He denied the suggestion that alleged disclosure statement of accused Dinesh Chandra Sharma was not recorded in his presence. He further stated that despite their best efforts, they could not locate the arrest memo and personal search memo of accused Dinesh Chandra Sharma. However, efforts are continued.

Accused **Sushil Ansal** was afforded opportunity to cross examine this witness but no cross examination was done.

The following exhibits have been marked in the examination of PW-18 :

1	DISCLOSURE STATEMENT OF DINESH CHANDRA SHARMA	**Ex PW 18/A**
2	SEIZURE MEMO Dt 25.11.2006 (Remuneration Register of A Plus Security)	**Ex PW 18/B**
3	REMUNERATION REGISTER OF A PLUS SECURITY **(Aug 2003- Feb 2005)** **Relevant Pgs 77,78,82,83,87,8893 &94**	**Ex PW 18/C**
4	REMUNERATION REGISTER OF A PLUS SECURITY **(March 2005- April 2006)** **Relevant Pgs 2,8,14,15,21&22**	**Ex PW 18/D**

30. **PW-19 Sh. M.S. Phartyal, Deputy Superintendent of Police**, No. 32496, CBI, Special Crimes-III, CBI Headquarters, New Delhi was examined. He stated in his examination-in-chief that in the year 1997, he was posted as Sub-Inspector Police, CBI, SIC-IV, New Delhi. He stated that he has been associated in the investigation of the main Uphaar case. He further stated that he had been assisting the Chief Investigating Officer Sh. R.S. Khatri. He further stated that during the course of investigation, on the instruction of Sh. R.S. Khatri, he had seized attendance register of the Managers of the Uphaar Cinema, probably for the month of May or June 1997. He further stated that he had also seized one file containing minutes of the MDs meeting and other correspondence containing 40 sheets. He further stated that he had seized the aforesaid documents from Sh. Malhotra, who was Deputy Manager, Uphaar Cinema. The said documents were seized in the presence of public witness Sh. Avtar Singh, an Officer working in the Punjab and Sind Bank situated near Uphaar Cinema at Green Park. He further stated that the said witness had appended his signatures on the each pages of the aforesaid documents, seized by him. He further stated that during the course of recording of his deposition in the Uphaar case, the aforesaid documents were shown to him for identification. He further stated that when he saw the file of the minutes of MDs meeting, 6 pages were found missing from the file. The page numbers perhaps were 1, 9, 12, 14, 18 and 19. He was shown the photocopies of abovesaid missing pages and he had approved the same to be the copies of their originals on the basis of signatures of witness namely Avtar Singh on the said pages. Certified copies of the photocopies of the missing pages viz. 1, 9, 12, 14, 18 and 19 (Ld. Addl. PP submits that these pages were got exhibited by way of leading secondary evidence in main Uphaar case) from the chargesheet of the present case. He has identified the certified copies of the said pages to be the same which were shown to him during the deposition in the main Uphaar case stating that these are the photocopies of their originals which were seized by him. Certified copies of the photocopies of the missing pages viz. 1, 9, 12, 14, 18 and 19 are already Marked as Ex.PW10/P, Ex.PW10/Q, Ex.PW10/R, Ex.PW10/S, Ex.PW10/T

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and Ex.PW10/U respectively. The witness has also identified the signatures of Sh. Avtar Singh in whose presence the said documents were taken into possession at point A on each page. He said that he can identify the remaining original 34 pages, if shown to him. The original 34 pages (MDs conference meeting) from the case file of main Uphaar case were produced and shown to witness which are running in 34 pages and witness after seeing them stated that originally there were 40 pages and 6 pages bearing nos. 1,9,12,14,18 & 19 are missing. The photocopies of said 34 pages is on record in 3rd supplementary charge-sheet which is Ex.PW21/1(Colly.). He stated that his deposition was recorded in main Uphaar case which is **Ex.PW19/A.**

Accused **P.P. Batra, Anoop Singh, Dinesh Chandra Sharma and Sushil Ansal** were afforded opportunity to cross examine this witness but no cross examination was done.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness stated that in respect of the seizure of the file which he has deposed that day, a seizure memo was prepared by him on the date of seizure. The seizure memo was exhibited by him in the main Uphaar case at the time of his deposition in the Court as Ex.PW98/A. Vide the said seizure memo, he had seized two documents i.e. attendance register and minutes of the meeting file. The date of the seizure memo was 27.08.1997. He further stated that his signature and signature of Mr. Avtar Singh, witness and Mr. Malhotra were taken on the seizure memo. He stated that the file that he seized had 40 pages. He further stated that the file was of MD meetings of Uphaar Cinema. He further stated that he came to know that file was of MD meetings as it was so told to him by Mr. Malhotra when he produced the said file. He was not the main IO of the Uphaar case. He was the assisting IO. Mr. R.S. Khatri directed him to collect the file from Mr. Malhotra. He had not given any notice under section 91 Cr.P.C. to Mr. Malhotra. He is not aware whether Mr. Khatri had already given any notice under section 91 Cr.P.C. to Mr. Malhotra or not. He stated that Mr. Khatri simply directed him orally to go and collect the documents from Mr. Malhotra against the seizure memo. Mr. Khatri had specified prior to his going the documents which he was required to seize i.e. attendance register

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and MD conference meeting file. The 40 pages of above mentioned meeting file were in a file and not loose. He could not remember as to what was written on the cover of the file and also he could not remember as to whether the contents of the file were specified on the cover. He could not remember as to whether the aforesaid pages in the file were loose, tagged or punched. He handed over the file to Mr. R.S. Khatri. He could not remember he may have seen the file cover alongwith the pages inside to Mr. Khatri till date. He further stated that on the date of seizure, Cinema Hall was not functioning and was under seal. The Cinema Hall was under control of HC Kalyan Singh and his team. The main gate lock was opened by HC Kalyan Singh. When he reached the Cinema, Mr. Malhotra was present but Mr. Avtar Singh was summoned by him to act as a witness. Mr. Malhotra took him to a room, having a board 'Managers Room' and picked aforesaid file and the attendance register and produced. He could not know as to what was the name of the Manager. He did not record the statement of Mr. Avtar Singh and Mr. Malhotra. Signature of Mr. Malhotra were not obtained on the documents seized but were obtained only on the seizure memo. Avtar Singh's signature were obtained on each page. He further stated that he did not think it necessary to take signatures of Mr. Malhotra on each page as the same had been signed by the independent witness. He testified that photocopy of Page no. 1 which was missing was shown to him at the time of his deposition on 09.05.2019 which was already Marked Ex.PW10/P. He saw page no. 1 written on the page when it was shown to him in the Court on 09.05.2019. He voluntarily stated that he also saw signatures of Mr. Avtar Singh on that page. Witness stated upon seeing Ex.PW10/P about page no. 1 written on it to which he replied that there is some confusion but it is the same document which was shown to him and he had exhibited which he had seized from Mr. Malhotra. He denied the suggestion that he is being evasive in order to mask the truth. He further denied the suggestion that he is refusing to answer the questions specifically so that his lie about it being the same page which he seized from Mr. Malhotra has been exposed. He denied the suggestion that as he could not remember the contents of the said page, he could not have deposed that it was the same page which he seized from Mr. Malhotra. He did not remember the specific contents of page 9, 12, 14, 18 & 19. Before putting this question, he had already been shown page number '1'. He further stated that he is aware of the contents of the page '1'. He did not remember as to who is the signatory of this letter. He further stated that this document was circulated to office bearers of Uphaar Cinema. He did not remember whether this letter was addressed to various office bearers of Uphaar Cinema or to a specific office bearer on the top after 'To'. He did not remember the date of the letter. He did not remember as to whether complete date was written on the letter. He affirmed that the copies were marked. He denied the suggestion that as he did not know the contents of the letter which is wrong on his part to say that it was the same document as seized from Mr. Malhotra. He did not remember contents of all other 34 pages in respect of date, subject, signature and other details in the file. He denied the suggestion that it is not humanly possible to remember the contents of the all 40 pages seized in 1997, hence, his deposition that he could identify the pages which were seized or his identification from the photocopies of some of the pages is at the instance of the prosecution. He further stated that when some documents are seized in CBI, then Malkhana record number is put on the seizure memo and subsequent Malkhana record number (MR number) are put on the documents. He denied the suggestion that he is not able to tell about the MR number on Ex.PW10/P page 1 and seal of the Oath Commissioner at point Y on Ex.PW10/P to Ex.PW10/U as his statement regarding their seizure by him is incorrect. He further stated that he has not examined any witness in the present case as he never been IO of this case. The same is his answer with respect to main Uphaar case. He affirmed that he had seen some of the copy of documents and some of their originals, which he had seized, in the main Uphaar case, during his deposition in the Court. He could not tell as to who had handed those documents during the said intervening period. He denied the suggestion that his evidence is hearsay and he has no personal knowledge regarding the contents of the documents seized by him. He denied the suggestion that he is deposing falsely.

The following exhibit has been marked in the examination of PW-19 :

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1	DEPOSITION PW 19 IN THE MAIN UPHAAR TRIAL	**Ex PW 19/A**

31. **PW-20 Sh. N.S. Virk**, DSP, CBI, SIC-IV, now retired, R/o. F-30C, First Floor, South Extension, Part-I, New Delhi was examined. He testified that on 27.08.1997, he had taken into possession a original cheque bearing no. 955725 dt. 26.06.1995 issued by Sh. Sushil Ansal, authorized signatory of M/s. Green Park Theaters Associated Pvt. Ltd. in the favour of Sushil Ansal for an amount of Rs. 50 Lakhs from Sh. M.C. Khullar, Assistant Manager, Punjab National Bank, Shankar Road, Rajender Nagar, Delhi. He further stated that he seized the said cheque through a seizure memo. He further stated that he was also examined as a witness in the main Uphaar case. He further stated that during that course, he came to know that the original of the said seizure memo and the cheque were either misplaced or either lost. He was shown the photocopies of the seizure memo and the cheques and he approved the same to be the copies of their originals. He identified the certified copies of seizure memo and the cheque to be the true copies of their originals seized by him and the said certified copy of the seizure memo is already Marked as Ex.PW3/B bears the signature of witness and signature of Sh. M.C. Khullar at point B who had appended his signature in his presence.

In his cross-examination conducted on behalf of accused Sushil Ansal, the witness stated that he was associated with the investigation of main Uphaar case for a couple of initial months of investigation. Again said, he is not sure about the period. Mr. R.S. Khatri had taken over the investigation from him at that point of time. He was not associated with the investigating team at the time of filing of the charge-sheet in main Uphaar case. He was examined as a witness in that case. Many other witnesses may have seen the documents referred to by him in his examination-in-chief that day, prior to his deposition before the Court in the main Uphaar trial case. He affirmed that the original cheque related to Mr. Sushil Ansal was found and shown to the Court during the course of his deposition. Again, he affirmed that he was not shown the original of the said cheque. He denied the suggestion that the original cheque bearing no. 955725 dt. 26.06.1995 for amount of Rs. 50 Lakhs was found later on and produced before the Court during the main Uphaar case. He denied the suggestion that he is deliberately making an incorrect and false statement knowingfully well that the original cheque as mentioned here-in-above was found and produced before the Ld. Trial Court in the main Uphaar case. He denied the suggestion that he has become a witness in the present case to suit the case of the prosecution and also to falsely implicate the accused persons. His statement was recorded during the course of investigation of the present case. He had not handed over any document to the police nor was any seizure of document made in his presence in the present case during the investigation. He denied the suggestion that he has been in contact with the representatives of the AVUT during investigation and even prior to recording of his deposition in the present case to falsely implicate the accused. He further denied the suggestion that he has been tutored to give a statement to support a false story propped up by the prosecution. He further stated that he had not joined any inquiry proceedings conducted by any Judicial Officers in relation to the missing documents. He was not summoned or inquired by the court of Ms. Mamta Sehgal, Ld. ASJ in relation to the missing documents of the main Uphaar case. He stated that his job is to liaison with the Court with regard to the case file etc. and to co-ordinate with the IO, pairvi officers, witnesses etc. besides the Court. He could not say if the Naib Court remains in contact with the Record Keeper of the Court. He denied the suggestion that the misplacement of documents can happen occasionally in cases where the records is voluminous.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness stated that he himself had not inspected the Court file of main Uphaar case. He denied the suggestion that he has deposed that day on the basis of hearsay evidence.

Accused **P.P. Batra and Anoop Singh** were afforded opportunity to cross examine this witness but no cross examination was done.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, the witness affirmed that the cheque in question, seized by him was not concerned with the accused Dinesh Chandra Sharma. No other witness was present when IO recorded his statement in the present case. He stated that he did not know that the cheque in question was later on found or not.

The following exhibit has been marked in the examination of PW-20 :

1	STATEMENT OF PW 20 U/S 161	**Ex PW 20/DA**

32. **PW-21 Sh. Avtar Singh**, S/o. Lt. Sh. Prem Singh, aged about 67 years, R/o. R-182, Greater Kailash, Part-I, New Delhi was examined. He stated in his examination-in-chief that in the year 1997, he was serving as Officer in the Punjab & Sind Bank, Green Park, New Delhi. He could not remember the date but it happened in the year 1997 when he on the request of Police Officer from CBI joined the investigation in the main Uphaar case. He further stated that he accompanied him to an office situated in the Uphaar Cinema Complex from his bank. He further stated that in the said office, two documents were taken into possession by the said CBI officer through a seizure memo whereon he also appended his signature. The said documents were official paper. He further stated that he had appended his initial on each paper which were seized by the said officer. He further stated that he was examined as a witness in main Uphaar case and during his deposition in the Court, the said documents were shown to him but out of those documents 5-7 documents were photocopies of their originals and he proved the same to be the true copy of their originals. He was shown original documents (MDs conference minutes) the same are running into 34 pages bearing his signatures and he after seeing it, stated that page nos. 1, 9, 12, 14, 18 and 19 are missing. The copies of the said 34 pages are already on record in the third supplementary charge-sheet in the present case and same are now Marked as **Ex.PW21/A (colly.)** bearing his initial at point A on each page. The certified copies of the photocopies of missing pages bearing nos. 1, 9, 12, 14, 18 & 19 from amongst the 40 pages of the documents have been shown to the witness, who identified it to be their originals. These six pages are already Marked as Ex.PW10/P Ex.PW10/Q, Ex.PW10/R, Ex.PW10/S, Ex.PW10/T and Ex.PW10/U

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bearing his initials at point A.

In his cross-examination conducted on behalf of accused Sushil Ansal, the witness stated that he is not aware about the contents of the documents in question that he had identified that day. He stated that he has only initialed on the said documents and have no knowledge of the contents of the said documents. He denied the suggestion that his statement in examination-in-chief cannot be relied upon as he is not the scribe nor the author of the said documents. He denied the suggestion that he is deposing falsely in his examination-in-chief.

Accused **P.P. Batra and Anoop Singh** were afforded opportunity to cross-examine this witness but no cross-examination was done.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, the witness stated that he did not know to whom the said documents in question were related to. He did not know if the statement of any other witness was recorded in his presence by the IO.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness stated that the documents in question were seized from the office of Uphaar Cinema Complex in his presence. He could not remember the name of officer, who had seized the documents. He could not remember how many times he gave his statement before the police. He has given his statement more than once. He stated that he might have stated in his statement before the police that the documents in question or subject documents were seized from the office of Uphaar Cinema Complex in his presence. He stated that these documents were not seized in his presence. He remembered that in any of the statements given by him before the police concerned the documents were seized in his presence. The witness testified upon being shown his statement under section 161 Cr.P.C. regarding the production of document by Sh. K.L. Malhotra and his statement that he accompanied him to an office situated in Uphaar Cinema, and clarified that it was in his presence the documents were seized. He did not know which documents were seized and he only made his initials on those seized documents and he did not even paginate or page mark those documents. He voluntarily stated that they have paginated itself. He affirmed that he has initialed all the pages in the documents/ register reflected here-in-above. He denied the suggestion that he has been shown that register in the Court. He further stated that he has put his initials on all the documents which were seized. He affirmed that Yes, *"mere initial hue the" on the* documents which were produced in his presence.

The following exhibits have been marked in the examination of PW-21 :

1	MD's CONFERENCE – MINUTES OF THE MEETING **(Pgs 996-1008 IN THE 3RD SUPPLEMENTARY CHARGESHEET**	**Ex PW 21/A (Colly)**
2	STATEMENT OF PW 21 U/S 161	**Ex PW 21 /DA**

33. **PW-22 Sh. M.L. Dhuper**, S/o. Sh. Hari Ram Dhuper, aged about 65 years, R/o. B-4/4A, Model Town – I, Delhi 110009 was examined. He stated in his examination-in-chief that in the year 1997, he was serving as Officiating Chief Manager, Punjab National Bank, Tolstoy Road, New Delhi. He had been associated with the investigation of the main Uphaar case. He could not remember the exact date but probably it was 18.08.1997 when he had handed over two cheques to an officer from CBI. He could not remember his name. A seizure memo was prepared in this regard and he appended his signature thereon. He was also examined as a witness in main Uphaar case in the court of Ms. Mamta Sehgal, the then Ld. ASJ. He further stated that during the course of recording of his deposition in that Court, he was not shown the originals of the said seizure memo and both the said cheques, however, he was shown their photocopies and he had approved the same to be the photocopies of their originals. He was carrying the cheque numbers in question with him which he had noted down from his bank record. He affirmed that certified copy of the photocopy of the seizure memo is also true copy of the original seizure memo and the same is already marked as Ex.PW10/K bearing his signature at point B. As per seizure memo, one of the said cheque was having no. 805578 dt. 30.11.1996 issued by Gopal Ansal, Authorized Signatory for Ansal Theater & Clubhotels Pvt. Ltd. in the favour of M/s. Music Shop for an amount of

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Rs. 1,50,000/-. He further stated that the second cheque was having no. 805590 dt. 12.02.1997 issued by Gopal Ansal, Authorized Signatory for Ansal Theater & Clubhotels Pvt. Ltd. in the favour of M/s. Chancellor Club for an amount of Rs. 2,96,550/-. He further stated that both the said cheques were issued from the account of Ansal Theater & Clubhotels Pvt. Ltd. A/c. no. 4442. Certified copies of the photocopies of both the said cheques are already marked as Ex.PW10/L and Ex.PW10/M. The copy of his deposition recorded in the main Uphaar case running into two pages is **Ex.PW22/A** (original deposition is seen from main Uphaar case file)

Accused **P.P. Batra, Sushil Ansal, Anoop Singh** were afforded opportunity to cross-examine this witness but no cross examination was done.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, the witness stated that the said cheques were not related to accused Dinesh Chandra Sharma.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness stated that he cannot tell as to what happened to those cheques, or who handled those cheques after being handed over to the officer of CBI. He had not written down the seizure memo but he merely signed the seizure memo after verifying the cheque numbers with original cheques. The handing over or the taking over of those cheques was not done in presence of any independent witness. He further stated that the CBI officers came, they searched the vouchers of certain dates over a period of time and ultimately asked them to hand over the aforesaid two cheques to them. After that, they prepared the seizure memo and he had appended his signature thereon.

The following exhibit has been marked in the examination of PW-22 :

1	COPY OF DEPOSITION PW 22 IN THE MAIN UPHAAR CASE.	**Ex PW 22/A**

34. **PW-23 Sh. C.H. Gandhi**, Government Examiner (now retired), R/o. Flat no. 101, Shree Edifice, Street no. 6, Haebsiguda, Hyderabad 500007 was examined. He stated in his examination-in-chief

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that in the year 2007, he was working as Deputy Government Examiner, Questioned Documents, Directorate of Forensic Science, MHA, Government of India, CFI Complex, Ramanthapur, Hyderabad. He is post graduate in Chemistry from Andhra University. He received specialized training in the field of Forensic Document Examination and allied subject as in service training. He worked at different levels in the organization of Government Examiner of Questioned Documents under Government of India. During 33 years of his service, he has examined a multi number of documents and expressed opinions thereon. He has given evidence in various courts of law throughout the country as well as in the departmental inquiry and also in court martial and in the Hon'ble High Court of Singapore. He has been on the guest faculty at National Judicial Academy Bhopal, National Police Academy Hyderabad, Andhra Pradesh Police Academy and Karnataka Police Academy. On a requisition from the Additional DCP, EOW Crime Branch of Delhi Police to his office vide letter no. 1/R/ACP/SIT/EOW dt. 02.01.2007 in the present case, he has examined certain questioned documents and standard documents and expressed his opinion thereon. This opinion was numbered CH-3/2007 dt. 19.04.2007 in three sheets duly signed by him alongwith Sh. S.C. Gupta, the then Government Examiner who has also independently examined these documents and arrived at the same opinion. The opinion alongwith all the documents were duly returned to Delhi Police vide forwarding letter dt. 30.04.2007. The said opinion running into three pages is now Marked as **Ex.PW23/A** bearing his signature at point A as well as signature of Sh. S.C. Gupta at point B on each page. The forwarding letter dt. 30.04.2007 vide which the said opinion and documents were sent to Addl. DCP, EOW Crime Branch, Delhi is **Ex.PW23/B** bearing the signature of Sh. S.C. Gupta at point A. He identified the signature of Sh. S.C. Gupta on the aforesaid documents as he signed the same in his presence. The colored printouts of Video Spectral Comparator, (VSC) 5000 i.e. Q1 to Q8, QA to QH running into 16 pages is now **Ex.PW23/C (colly)**. The questioned documents mark Q1 to Q5, QA to QH, Q1A, Q2B, Q3C, Q4D, Q5E, Q6F, Q7G, Q8H, QAI, QBII, QCIII, QDIV, QEV, QFVI, QFVI, QGVII, GHVIII from the two registers already Ex.PW18/C and Ex.PW18/D were shown him and he identified them to the same marked questioned documents which were examined by him as well as Sh. S.C. Gupta, Government Examiner where their office stamp and case number were put. The stamp and the case number on page nos. 77, 78, 82, 87, 93, 83, 88 and 94 in the register already Ex.PW18/C and page nos. 2, 8, 14, 21 and 22 in the register already Ex.PW18/D are appearing at point A respectively. He stated that the observations made in his opinion in the report Ex.PW23/A are self explanatory and do not need any further separate reasons. He further stated that on taking up further examination of questioned documents in this case, it was observed that a number of writing in the form of entries on the documents mark Q1 to Q8 and QA to QH in the two registers provided to them for examination and were to be examined vis a vis the specimen writing provided to them as marked as E1 to E12, they were found insufficient for an effective comparison. Accordingly, he sent a letter dt. 28-29.06.2007 **Ex.PW23/D** bearing his signature at point A to the Addl. DCP, EOW Crime Branch, Delhi requesting him for procuring specimen writing of entire contents of the question documents repeatedly on several sheets and send the same to their office for effective examination. All the documents were returned to the investigation agency alongwith the said letter for necessary action. He further stated that again vide letter dt. 30.07.2007 the material were supplied to their office for further examination. He further stated that he further examined the questioned documents vis a vis the specimen writing Marked as E1 to E12, S1 to S6 and S16 to S47 on 50 sheets, **Ex.PW23/E(colly)** and gave his supplementary opinion dt. 13.08.2007 in this regard. The supplementary opinion is **Ex.PW23/F** bearing his signature at point A. Mr. P. Vijaya Shankar, Assistant Government Examiner had also conducted said examination of said documents and concurred with his opinion. He also appended his signature at point B on report Ex.PW23/F. The said report alongwith all the original questioned documents and specimen writing were sent to the investigating agency through forwarding letter dt. 16.08.2007, **Ex.PW23/G** bearing his signature at point A. He stated that he has not mentioned the said reasons in his said report Ex.PW23/F. However, he has brought the reasons for supplementary opinion and intend to place it on

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record. The reasons for opinion in two sheets are taken on record subject to the said objection and marked as **Ex.PW23/H** bearing signature of witness at point A on both the pages. He volunteered that the reasons for opinion are intended to be submitted on record during recording of his deposition as this is the prevailed practice in the office of GEQD to submit the reasons at the time of giving evidence.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness stated that the instrument VSC 5000 is not connected to a computer as the instrument itself has monitor screen to study the observations. The instrument has a device to provide a printouts without using a separate printer. The 16 printouts enclosed with the report were obtained from the device itself. He further stated that the said printouts were taken in his presence by technician/ photographer. He further stated that the images which he has examined are not stored either in the VSC 5000 or any other device. He further stated that in this case, no negative will arise and they are the direct printouts of the observations made on device from the relevant documents. He further stated that once the printouts were taken from the VSC 5000, there is no need of storing elsewhere or in the device and hence, the cross-checking did not arise. He denied the suggestion that he is aware that these images could be retrieved from the system / computer to cross-check his work, hence, they were not saved. He further stated that as an expert, he is not concerned with the legal modalities for supplying the printouts except that he has submitted with his report qua 65B Indian Evidence Act. He denied the suggestion that his report is inadmissible in the eyes of law as it is not accompanied by a certificate under section 65-B of Indian Evidence Act despite it being generated from a computer / system. He further stated that when it is a practice or convention then no office order is required or issued for giving reasons at the time of giving evidence. He denied the suggestion that there is no such practice and his reasons Ex.PW23/H are an after thought produced at the instance of prosecution. He affirmed that the reasons Ex.PW23/H are undated. He denied the suggestion that his main opinion and supplementary opinion as well as the reasons submitted by him are false and given only to suit the prosecution.

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In his cross-examination conducted on behalf of accused Sushil Ansal, the witness stated that it is neither mandatory nor the rule to refer the reports to the Director, Forensic Science, Delhi as the Directorate of Forensic Science is the Administrative body of the Forensic Institutes including GEQD. He stated that the reasons Ex.PW23/H placed by him before this Hon'ble Court was never provided the prosecution agency at any point of time at the time of investigation of this case. He affirmed that Ex.PW23/H is undated. He denied the suggestion that the reports Ex.PW23/A and Ex.PW23/F have been prepared at the instance of prosecution agency to suit its case. He denied the suggestion that he is an incompetent witness to prove the opinions exhibited on that day. He further denied the suggestion that the opinions exhibited by him is defective in nature. He further denied that the reasons Ex.PW23/H placed by him that day are fabricated and unreliable document. He further denied the suggestion that the reasons Ex.PW23/H have been drafted and produced by him that day at the instance of the prosecution agency and the Ld. Addl. PP in the present matter.

Accused **P.P. Batra and Dinesh Chandra Sharma** were afforded opportunity to cross examine this witness but no cross examination was done.

In his cross-examination conducted on behalf of accused Anoop Singh, the witness affirmed that he has not received any formal education in forensic examination. He joined as Assistant Central Intelligence Officer in the office of Government Examiner of Questioned Documents in the year 1971. He affirmed that the requisition dt. 02.01.2007 received from Addl. DCP is not on record of this case. He voluntarily stated that the same is with them in their official record and he has brought that day and the same is with him. He could not recall without perusing his official record as to what all documents accompanied the aforesaid requisition letter dt. 02.01.2007. He denied the suggestion that both the registers Ex.PW18/C and Ex.PW18/D were received by his office in unsealed condition. He did not remember the impression of seal borne on them. He affirmed that the aforesaid registers shown to him in Court that day were in an unsealed condition. He further affirmed that if anything

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(requisition, questioned documents etc.) is received by their office in a sealed condition, same is supposed to be returned in a sealed cover bearing the seal of their office. He voluntarily stated that not just supposedly but invariably. He further denied the suggestion that aforesaid practice was not observed in the instant case. He could not precisely remember the dates on which the aforesaid registers were examined. He affirmed that he has not mentioned the date of examination of aforesaid registers even in his opinions. He voluntarily stated that there was no need to mention such particulars in the opinions. He affirmed that he was never instructed as a part of his training to mention the date of examination in the opinion. He did not recall the date on which the requisition dt. 02.01.2007 was received in his office. He voluntarily stated that he can precisely say day on which the requisition was received in his office after looking his office file. The witness after re-freshing his memory by adverting to the forwarding letter dt. 30.04.2007 Ex.PW23/B and stated that the requisition dt. 02.01.2007 was received in their office on 12.02.2007. He further stated that Mr. S.C. Gupta was his senior in the year 2007. He could not tell the dates on which Sh. S.C. Gupta or he had examined the aforesaid registers. He affirmed that they did not examine the aforesaid registers at the same time and on same day. He further affirmed that both Mr. S.C. Gupta and he rendered separate independent opinions and both of them are not on judicial record. He voluntarily stated that the report filed on the record is a common and concurrent report and that in case, if two examiners concurrent any opinion, they prepare common report and submit to the investigating agency. He could not tell the date on which they returned the concurrent opinion Ex.PW23/A. He affirmed that he has not examined the aforesaid registers using any tool other than the VSC-5000. He volunteered that no other tool was required for examination of questioned documents. He stated that the error rate of VSC – 5000 is zero to his knowledge based on his experience. He did not remember the date on which VSC 5000 was inducted and was installed in their office. He affirmed that the instrument is manufactured by Foster and Freeman Company. He stated that VSC–5000 was not discontinued by its manufacturer and the company has brought out the improvised model. He denied the suggestion that error rate in VSC – 5000

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was higher while examining inks of black, blue and yellow colors. He denied the suggestion that he ought to have used Raman Spectroscopy Technology instead of VSC 5000 to examine the questioned documents or that owing to his negligence or lack of awareness, the results vis a vis the questioned documents were skewed. He did not personally calibrate the VSC 5000 as it was already calibrated. He denied the suggestion that due to failure / omission to calibrate, the results vis a vis the questioned documents are skewed. He affirmed that VSC--5000 could not ascertain the age of ink under examination. He further affirmed that he cannot say the time when obliterations / interpolations was made on the questioned documents. He could not tell without looking at the registers if any other entries in the said two registers bear obliterations / interpolations other than the one's examined by him. He could not tell the number of layers of interpolations in the questioned documents as he has not examined the documents for interpolation rather examined them for ascertaining obliteration. He affirmed that he has unequivocally opined at para no. 22 of his report Ex.PW23/A that no opinion can be expressed regarding the authorship of writings stamped and marked on Q1 to Q8 and QA to QH on the basis of material supplied for comparison. He stated that he did not know who paginated the registers. He affirmed that it is not the responsibility of his office to do the follow up thereby requisitioning the deficient documents. He stated that they carry out the examination of questioned documents unless and until a request is received in this regard from the agency. He denied the suggestion that he was not solely authorized to exchange correspondence pertaining to the present case. He had not observed any change in the material which was previously supplied to him except the supply additional material alongwith previous material. He affirmed that during the intervening period between 30.04.2007 (first opinion Ex.PW23/A) and supplementary opinion dt. 13.08.2007 Ex.PW23/F, he was promoted from Deputy GEQD to GEQD. He had used magnifying lenses and microscope to examine the documents and rendering his opinion. He denied the suggestion that it was not a scientific examination and he had neglected his duty to scrutinized the additional document scientifically while rendering his supplementary opinion. He could not tell the dates on which Sh. P. Vijaya Shankar or he had examined the aforesaid registers. He affirmed that they did not examine the aforesaid registers at the same time and on same day. He further affirmed that both P. Vijaya Shankar and he rendered separate independent opinions and both of them are not on judicial record. He voluntarily stated that the report filed on the record is a common and concurrent report and that in case, if two examiners concurrent any opinion, they prepare common report and submit to the investigating agency. He could not tell the date on which they returned the concurrent opinion Ex.PW23/F. He further stated that Mr. P. Vijaya Shankar examined the questioned documents by using same methodology. He further stated that he had received the specimen handwriting of only one person. He denied the suggestion that his supplementary opinion is vitiated in as much as only one person's handwriting was sent to him for examination / comparison as opposed to sending handwriting of multiple persons. He further denied the suggestion that he has neglected and / or intentionally omitted to apply his mind at the time of examination, including requisitioning specimen handwritings of other persons as well, only to curry favor with the higher officials involved with the investigation of the present case. He further denied the suggestion that he is neither qualified nor deposing accurately.

The following exhibits have been marked in the examination of PW-23 :

1	OPINION OF GEQD DT. 19.04.2007	**Ex PW 23 /A**
2	FORWARDING LETTER TO Addl . DCP DT 30.04.2007 FROM GEQD	**Ex PW 23/B**
3	COLOUR PRINT OUTS OF VIDEO SPECTRAL COMPARATOR (VSC) 5000 Q-1 TO Q8 QA TO QH	**Ex PW 23/C** **(Colly)**
4	LETTER DT 28/29 JUNE 2007 TO Addl. DCP ,EOW FROM GEQD	**Ex PW 23/D**

	REQUEST FOR PROCURING SPECIMEN WRITING OF ENTIRE CONTENTS OF QUESTIONED DOCUMENTS	
5	QUESTIONED DOCUMENTS FROM E1 TO E12 , S1 TO S6 AND S16 - S47	**EX PW 23/E (Colly)**
6	SUPPLEMENTARY OPINION OF GEQD DT 13TH AUGUST 2007	**Ex PW 23/F**
7	FORWARDING LETTER DT 16.08.2007 FROM GEQD TO ACP EOW.	**Ex PW 23/G**
8	SUPPLEMENTARY OPINION FOR REASONING	**Ex PW 23/H**

35. **PW-24 Sh Vivek Gandhi** S/o. Sh. T.C. Gandhi, aged about 48 years, R/o. 105, Mahalakshmi Apartment, Sector – 43, Gurgaon, Haryana was examined. He stated in the examination-in-chief that he was working as Vice President, HR and Administration, Ansal Properties and Infrastructure Ltd in the year 2007. He further stated that one P.P. Batra was an employee in the company at the said time and he correctly identified him in Court. He further stated that he might have issued some certificate regarding employment of P.P. Batra, employee of Ansal Properties and Infrastructure Ltd. He after seeing letter dated 17.09.2007 addressed to Mr. Amit Roy, ACP (EOW) Crime Branch denied having signed or issued the same. He further stated that the certificate **Ex.PW24/A** has been issued by him regarding employment of P.P. Batra with Ansal Properties and Infrastructure Ltd. The certificate bears his signature at point A. He further stated that he had not handed over the copy of the Appointment letter dt. 14.11.1995 Mark X to the Police officer associated with the present case. Upon being cross-examined by Ld. Addl. PP, he stated that he might have handed over the copy of appointment letter dt. 14.11.1995 **Mark X** to the IO, Amit Roy, ACP. After going through the letter **Mark Y**, he stated that he might have signed the said letter at point A.

In his cross-examination conducted on behalf of accused P.P. Batra, the witness stated that he had worked at Ansal Properties and Infrastructure Ltd from July 2006 till February 2017. He further stated that during those days, he had also been looking after the administration of said company. He affirmed that annually Ansal Properties and Infrastructure Ltd used to publish a diary that contained the details of various addresses of the company as also the senior officers and their contact details. A diary **Mark DA** was shown to him and he was asked to explain whether on the same pattern during his tenure also used to be published by Ansal Properties and Infrastructure Ltd. and witness after going the details of the diary at point A to A stated that diary not used to be published with the said details. He affirmed that the diary contained names, designation and phone numbers of the senior officers of the company Ansal Properties and Infrastructure Ltd. He stated that as far as he recollects, only name and designation of the senior officer bearers used to be published in the diary. He denied the suggestion knowledge about ownership or user of mobile number 9811313863. He denied the suggestion that he has given evasive reply about the contents / details of diary Mark DA. He further denied the suggestion that diary mark DA is an accurate representation of how details were engrafted before he had joined and even after he had left the services from the company. He further denied the suggestion that he has intentionally feigned ignorance about the telephone numbers detailed in diary mark DA. He further denied the suggestion that the certificate issued by him Ex.PW24/A and letter mark Y were prepared by him at the instance of the investigating officer. He further denied the suggestion that contents of these two documents are false.

Accused **Gopal Ansal and Anoop Singh** were afforded opportunity to cross-examine this witness but no cross-examination was done.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, the witness stated that since P.P. Batra had joined the company many years ago before he joined the company, therefore, he could not tell as he had joined Stenographer in the legal

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division. He stated that he did not know who was the directors of Ansal Properties and Infrastructure Ltd in the year 2007. He could not tell if P.P. Batra was appointed in the said company by any Director of Ansal Properties and Infrastructure Ltd. All the employees were having the same office time so was the case with P.P. Batra. He did not remember if company had provided any landline number/ mobile number to P.P. Batra. He further stated that since P.P. Batra had joined the company many years ago before he joined the company, therefore, he could not tell if P.P. Batra was appointed pursuant to some advertisement. He could not tell what specific duty was assigned to P.P. Batra apart from being Stenographer in Legal Division. No log book used to be maintained in the company. He could not say if there used to some reimbursement with regard to expenses incurred by the employee in visiting different places as it pertains to account division. He could not tell if P.P. Batra was working in the company when he left it. He denied the suggestion that he is deposing falsely just in order to save Ansal brothers.

In his cross-examination conducted on behalf of accused Sushil Ansal, the witness stated that he has come for the first time in the Court in connection with the present case. Police had never recorded any statement of him at any given point of time in present case. He did not have any personal knowledge about the present case. He voluntarily stated that he has no idea what this case is all about. No employee or any official of M/s. Ansal Properties was ever examined by the police in his presence. He did not remember anything about the contents of letter Mark Y.

The following exhibits have been marked in the examination of PW-24 :

1	CERTIFICATE REGARDING EMPLOYMENT OF PP BATRA DATED 15.09.2007, IN RESPONSE TO NOTICE U/S 91 Cr.PC OF IO.	**Ex PW 24 /A**
2	APPOINTMENT LETTER OF PP BATRA DATED 14.11.1995, IN RESPONSE TO NOTICE U/S 91 Cr.PC OF IO.	**Mark X**
3	LETTER DT.17.09.2007 FROM API TO ACP,	**Mark Y**

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	EOW IN RESPONSE TO NOTICE U/S 91 Cr.PC OF IO.	
4	DIARY OF API	**Mark DA**

36. **PW-25 Ms. Kanak Gaur**, Junior Technical Assistant, Government of India, Ministry of Corporate Affairs, Office of Registrar of Companies, NCT of Delhi & Haryana, 4th Floor, IFCI Tower, 61, Nehru Place, New Delhi 110091 was examined. He stated in his examination-in-chief that pursuant to the summon received from this Hon'ble Court, he has been authorized by Sh. A.K. Singh, Assistant Registrar of Companies, NCT Delhi & Haryana to produce the relevant record duly certified by him pertaining to company, namely Star Estate Management Limited. Authority letter of witness is taken on record and same is now **Ex.PW25/A**. He further stated that he has brought the certified copy of the certificate of Incorporation, Details of Director, Annual Return of the period 2004-2005 with Annexure-1, Annexure-2, Form 32 regarding appointment of Rajeev Chopra as Additional Director and Cessation of Aditya Wadhera as Director, consent of Mr. Rajeev Chopra and resignation of Mr. Aditya Wadhera. The said certified copy of documents are running into 26 pages are taken on record and now Marked as **Ex.PW25/B (colly)**. He has also brought the certificate under section 65-B of Indian Evidence Act issued by Sh. A.K. Singh, Assistant Registrar of Companies, NCT Delhi & Haryana qua the said documents which is now Marked as Ex.PW26/C.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness stated that all the documents which he has exhibited are computer output except his authorization letter and 65-B certificate. He deposed that he and Mr. A. K. Singh are posted in the same office. The documents submitted in the Court have been downloaded by him from his official key DSC (Digital Signature Certificate) provided by Office. The DSC is operated by Unique User ID and Password. The ID and password was <u>his</u> and not of Mr. A.K. Singh. Mr. A.K. Singh has his own Unique ID and Password. Again said, he did not have as he has just been

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transferred to this office. As Mr. A.K. Singh is old employee he would be having his Unique ID but he will not be having the DSC, as the staff who is transferred to this office has to go through the process of creation of DSC which has not been done so far of Sh. A.K. Singh. As his DSC has not been created, hence, he cannot log in and access/ print any data. The certificate under section 65-B has been given to him by Sh. A.K. Singh and he has simply brought it to the Court. He affirmed that the certificate did not bear any date. He further stated that authenticity of the information contained in this certificate can be deposed only by Sh. A.K. Singh and not by him as he has only signed and prepared the certificate. The Court ordered de-exhibiting the document Ex.PW26/C.

Accused **P.P. Batra, Anoop Singh, Dinesh Chandra Sharma** were afforded opportunity to cross-examine this witness but no cross examination was done.

In his cross-examination conducted on behalf of accused Sushil Ansal, the witness stated that he was never examined during the course of investigation in the present case nor did he submit any document during investigation. He affirmed that neither he has scribed or authored the documents that he has mentioned in his examination-in-chief nor did he feed any information regarding the same in his office. He denied the suggestion that he is not competent to testify regarding the documents mentioned by him in his examination-in-chief.

The following exhibits have been marked in the examination of PW-25 :

1	AUTHORITY LETTER FROM AK SINGH ASSISTANT ROC TO PRODUCE RELEVANT RECORDS	**Ex PW 25/A**
2	CERTIFIED COPIES OF: 1. CERTIFICATE OF INCORPORATION 2. DETAILS OF DIRECTORS 3. ANNUAL RETURNS OF PERIOD 2004-2005 (WITH Annexures 1 & 2)	**Ex PW 25/B**

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	1 FORM 32 REGARDING APPOINTMENT OF DIRECTORS. 1. CERTIFICATE U/S 65B	

37. **PW-26 Inspector Sh. Tribhuvan, (now Additional ACP),** CBI, ACB, Madurai, Tamilnadu was examined. He stated in his examination-in-chief that on 30.07.1997, he was posted as Inspector CBI SCI IV, New Delhi. He further stated that on that day, he had seized one original register titled as OB (occurrence book) of the Control Room, Delhi Fire Services, Headquarter containing 1 to 400 pages from Sh. A.K. Bhatnagar through seizure memo, certified copy of the same is already Ex.PW11/A bearing his signature at point B. The copy of the seizure memo was also handed over to Sh. A.K. Bhatnagar vide endorsement at point C on the said seizure memo. The first page and last page was also signed by Sh. A.K. Bhatnagar. He further stated that during his deposition in the main Uphaar case, some of the pages of the occurrence book were found missing. He had approved the photocopy of page no. 379 from amongst the missing pages to be the true copy of its original. The original occurrence book D-89 was shown from the record where page no. 363 to 400 were missing and the first page of the occurrence book was signed by Sh. A.K. Bhatnagar. He stated that first page of Ex.PW10/E (colly.) bears the signature of Sh. A.K. Bhatnagar at point A. Certified copy of the photocopy of page no. 379 already Ex.PW10/D was identified by him to be the true copy of its original. He further stated that on 05.08.1997, he had also taken into possession one casual leave register maintained at the Headquarter of Delhi Fire Services for the period 1995 to 1996 pertaining to availed casual leaves by the officer with a rank of Station Officer to Deputy Chief Fire Officer. The said register was containing page nos. 1 to 92. He seized the said register from Sh. Surender Kumar, Deputy Chief Fire Officer through seizure memo, certified copy of the same is already Ex.PW10/G bearing his signature at point A. He stated that during his deposition in the main Uphaar case, some of the pages of the casual leave register were found missing. He was shown the photocopy of page no. 50 from amongst the

missing pages which he had approved to be the true copy of its original. The original casual leave register D-92 was shown from the record of main Uphaar case. Page no. 1 and 77 to 92 were blank. Page nos. 45 to 50 were missing from the said casual leave register. He stated that the first and last page was also signed by Sh. Surender Kumar, the officer who had handed over the said register to him. Certified copy of the photocopy of page no. 50 Ex.PW10/H was identified by him to be the true copy of its original. Copy of his deposition running into 7 pages recorded in the main Uphaar case filed with third supplementary charge-sheet which is **Ex.PW26/A** bearing his signature at point A on each page.

Accused **P.P. Batra and Anoop Singh** were afforded opportunity to cross-examine this witness but no cross-examination was done.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, the witness stated that he had been associated with Chief Investigating Officer Sh. R.S. Khatri. He was present with him at the time when he filed the charge-sheet in the Court. He affirmed that the said documents do not pertain to accused Dinesh Chandra Sharma. He did not remember if any other witness was also present when his statement under section 161 Cr.P.C. was recorded in the present case.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness stated that his statement was recorded by the IO in the present case and he had given all the information. He affirmed that he had not stated that fact deposed by him in main Uphaar case in his aforesaid statement. He was told by the Ld. Prosecutor of the main Uphaar case that documents in question are missing from the main Uphaar case file. He did not himself verify from the record of the main Uphaar case regarding the documents allegedly missing. He affirmed that he could not tell the contents without going through the same. He denied the suggestion that facts deposed by him regarding missing documents are hearsay. He denied the suggestion that he is deposing falsely.

In his cross-examination conducted on behalf of accused Sushil Ansal, the witness stated that he had not filed any complaint during the pendency of main Uphaar trial in connection with the documents referred by him in his examination-in-chief. He was not called by any Court or Judicial Officer regarding any inquiry whatsoever in relation to the documents referred by him. He was associated with the investigation of the Uphaar case throughout. He had himself not filed any application or affidavit in the Court regarding the missing documents. The persons / officials from whom the documents as referred by him in his examination-in-chief were seized during the main Uphaar case were never examined in his presence in the present case. The documents as referred by him in his examination-in-chief were not pertaining to accused Sushil Ansal. During the trial of the Uphaar case, the photocopies of the documents were in fact exhibited. He further affirmed that an additional set of the above-mentioned documents is always kept separately prepared for the convenience of the Court. Again said, an additional set is prepared for office record as well as for convenience of the Court. This also contains the steps undertaken during investigation i.e. seizure of documents, recording of statements of witnesses etc. and the accused can neither access those case diaries nor can he inspect them. He further stated that the documents mentioned by him in his examination-in-chief were neither seized at his instance nor were they seized in his presence during investigation of present case. His statement was recorded during the investigation of present case. He had stated to the IO that page nos. 45 to 50 was missing from the casual leave register i.e. D-92. (confronted with statement recorded under section 161 Cr. P.C. **Ex.PW26/DA** where it is not so recorded). The deposition recorded in the main Uphaar case was never shown or discussed with him during investigation of the present case. He denied the suggestion that he has exhibited his deposition in the main Uphaar case in his examination-in-chief wrongly. He further denied the suggestion that he has done so at the instance of prosecution to falsely implicate the accused persons in the present case. He further stated that he was neither in touch nor in communication with the complainant AVUT or its officials in the main Uphaar case. He denied the suggestion that he is deposing falsely regarding the above facts. He further denied the suggestion that he was in constant touch with complainant AVUT through its officials in the main Uphaar case as well as in the present case to frame the accused persons. He did not attend the proceedings in the main Uphaar case on each and every date. Again said, he used to attend proceedings once in a while in case of clarifications sought by the Court. He affirmed that he had not stated in his statement to the police in the present case regarding any clarifications having been sought from him regarding the documents mentioned by him in his examination-in-chief. He further denied the suggestion that he has become a witness in the present case at the instance of IO and the complainant AVUT to falsely implicate the accused persons. He further denied the suggestion that he has deposed falsely in his examination-in-chief.

The following exhibits have been marked in the examination of PW-26 :

1	COPY OF DEPOSITION OF PW 26 IN THE MAIN UPHAAR CASE	**Ex PW 26/A**
2	STATEMENT U/S 161	**Ex PW 26/DA**

38. **PW-27 Sh. Ajay Kumar**, Nodal Officer, Bharti Airtel Ltd., 224, Okhla Phase-III, New Delhi was examined. He stated in his examination in chief that he is working as Nodal Officer in the Bharti Airtel Ltd. since the year 2007. He further stated that when he joined the company as Nodal Officer, Sh. R.K Singh, the then Nodal Officer was already working in the company. He has worked with him till 2015. He further stated that Sh. R.K. Singh had left the company in year 2015 and his present whereabout is not available in the record of the company. He stated that he has seen the seizure memo dt. 12.07.2006 as well as the letter written by Sh. R.K. Singh and addressed to Sh. Amit Roy. Both the said documents bear the signature of Sh. R.K. Singh. The said seizure memo is now marked as **Ex.PW27/A** and letter **Ex.PW27/B** bearing the signature of Sh. R.K. Singh at point A respectively.

In his cross-examination conducted on behalf of accused P.P. Batra, the witness affirmed that no information has ever been sought by any agency from him pertaining to the present case. No document has ever been seized from him pertaining to the present case. He affirmed that whenever a SIM card whether pre-paid or post-paid is issued by Airtel, details/ proof of his identity, residence etc. are obtained from the concerned person with his signature on the photocopy of the said documents. He also affirmed that a Customer Application Form is also filled up by the applicant.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, the witness affirmed that the aforesaid documents Ex.PW27/A and Ex.PW27/B were not prepared in his presence. He did not have any personal knowledge about the present case. He affirmed that he has not joined the investigation of this case at any point of time.

Accused **Anoop Singh** was afforded opportunity to cross examine this witness but no cross examination was done.

Ld. counsel for accused **Gopal Ansal** has adopted the cross-examination done on behalf of accused Dinesh Chandra Sharma.

In his cross-examination conducted on behalf of accused Sushil Ansal, the witness stated that he had never joined the investigation of the present case. He never handed over any document to the Investigating Officer nor was any document was seized in his presence. IO never asked him to come and testify as witness in the present case. He has not brought on record any document to show as to when and where he was posted with the Airtel Bharti Ltd. He denied the suggestion that he has deliberately identified the signature of Sh. R.K. Singh in his examination-in-chief on the asking of the Investigating Officer and the complainant to suit the case of the prosecution. He affirmed that the documents which are shown to him in his examination-in-chief neither prepared in his presence nor he had any personal knowledge about the same. He further denied the suggestion that he is deposing falsely.

The following exhibits have been marked in the examination of PW-27 :

1	SEIZURE MEMO Dt. 12.07.2006 OF MOBILE NUMBERS OF L N SONI, VIJAY KATYAL & P P BATRA	**Ex PW 27/A**

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2	LETTER FROM BHARTI AIRTEL TO ACP Dt 10.07.2006 GIVING THE DETAILS OF THE SUBSCRIBERS, IN RESPONSE TO NOTICE U/S 91 CrPC OF IO.	**Ex PW 27/B**

39. **PW-28 Sh. Deepak Gaur, DSP, CBI,** Port Blair, Andman and Nicobar Island was examined. He stated in his examination-in-chief that in the year 1997, he was posted as Sub-Inspector, CBI, SIC-IV, New Delhi. He remained associated with the investigation of main Uphaar case conducted by Chief Investigating Officer Sh. R.S. Khatri. He further stated that on 02.08.1997 on the instruction of Chief Investigating Officer Sh. R.S. Khatri, he had taken into possession the documents described in the seizure memo, certified copy of the same is already Ex.PW1/A, from Sh. Sanjay Kumar Tomar, SO, Delhi Fire Services, Headquarters. It bears his signature at point B and the signature of Sh. Sanjay Kumar Tomar at point A. He had also appeared as witness in the trial of the main Uphaar case. During recording of his deposition on 29.03.2003 in the court of Ms. Mamta Sehgal, the then Ld. ASJ, he was shown the OB register of Bhikaji Cama Place, Fire Station, New Delhi pertaining to the period from 13.12.1996 to 18.01.1997 as described at serial no. 3 in the seizure memo Ex.PW1/A. Originally the said register contained 400 pages when he seized the same, however, when he was shown the said register during his deposition, from page nos. 95 to 104 of the register were found missing and on page numbers from page nos. 109 to 116, blue ink were sprinkled making them illegible, however, when he seized the said register containing the said pages, they were intact in all respect. The original register (marked as D-91) was shown him and he submitted that page no. 95 to 104 were missing and the remnant of the pages still in the register showed that they have been removed by tearing the same. He further stated that on page no. 109 to 116, blue ink has been smeared thereby making the contents of the pages illegible. Witness has also been shown the certified copies of the photocopies of the page number from page nos. 96 to 113 (running into 11 sheets) already Ex.PW10/F(colly). After going through the said pages, he stated that these are photocopies of the intact / proper pages of the abovesaid register. Certified copies of the photocopies of the page number from page nos. 109 to 116 (eight sheets) on which blue ink was smeared are already on record are now marked as **Ex.PW28/A(colly)**. The photocopy of OB register is Ex.PW10/FF (colly.). He stated that the photocopy of his deposition recorded in the main Uphaar case on 29.03.2003 running into three pages is **Ex.PW28/B(OSR from main Uphaar case file)** bearing his signature at point A on each page.

Accused **P.P. Batra and Anoop Singh** were afforded opportunity to cross examine this witness but no cross examination was done.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, the witness stated that he joined the investigation in the present case only once at the office of ACP/EOW, however, he did not remember the place where he was called to join the investigation in the present case. He remained present in the said office for 3-4 hours. Statements of other witnesses were not recorded in his presence related to the present case. The said register had contained the record of Delhi Fire Services, Bhikaji Cama Place, Delhi pertaining to aforesaid period. He could not tell the contents of all the pages without going through the same. He denied the suggestion that he did not have any personal knowledge about the said register nor he had seized the same. He further denied the suggestion that he had never joined the investigation of the present case or that he is deposing falsely.

In his cross-examination conducted on behalf of accused Sushil Ansal, the witness stated that he did not know as to which of the accused the documents seized by him during the investigation of main Uphaar case, were related to. He voluntarily stated that he had seized the documents on the direction of Chief Investigating Officer. He did not remember as to how long he was associated with the investigation of the said case. Upon confronted with his statement **Ex.PW28/DA**, he stated that he had not made in his statement under section 161 Cr.P.C. that "the remnant of the pages still in the register shows that these pages have been removed by tearing the same". He had stated in his statement under section 161 Cr.P.C. that "blue ink has been smeared thereby making the contents of the pages illegible". He further stated that he had not attended any inquiry proceedings conducted by any judicial officer pertaining to the present case. He had not filed any complaint in relation to the missing or the smeared documents. He was not aware if the prosecution branch or the prosecution had a parallel set of the charge-sheet/ documents pertaining to the main Uphaar trial at the time of recording of his deposition in the main Uphaar case. He further denied the suggestion that he has deposed falsely in his examination-in-chief.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness stated that he was shown the documents for the first time after their seizure, in the Court during his deposition in the main Uphaar case. He could not say as to what happened to the documents seized by him in between the said period. He was told during his deposition in main Uphaar case that the documents were tampered with. He saw the said documents during his deposition recorded in the main Uphaar case and satisfied himself that the documents were tampered with. He denied the suggestion that he had not seen the documents nor satisfied himself that the documents were tampered with. He voluntarily stated that he deposed before the Court only after personally seeing the documents and satisfying himself that they were tampered with. He further denied the suggestion that he is deposing so for the first time. He denied the suggestion that he has deposed falsely.

The following exhibits have been marked in the examination of PW-28 :

1	CERTIFIED COPIES OF PHOTOCOPY OF Pg. Nos. 109-116 ON WHICH INK WAS SMEARED **(D-81)**	**Ex PW 28 A** **(Colly)**
2	COPY OF DEPOSITION OF PW 28 IN THE MAIN UPHAAR CASE	**Ex PW 28/B**
3	STATEMENT U/S 161	**Ex PW 28 /DA**

40. **PW- 29 Sh. Vijay Malik, Retired as ACP** from EOW, R/o.

529/3, Forest Lane, Neb Sarai Extension, New Delhi 110068 was examined. He stated in his examination-in-chief that on 17.05.2006, he was posted as ACP, CBT Section, EOW Crime Branch, New Delhi. He further stated that the complaint forming basis of the present FIR, Marked as **Ex.PW29/A**, was marked to him for necessary action. Accordingly, he made endorsement thereon at point A to A bearing his signature at point B and gave the rukka to SI Ishwar Singh for getting the FIR registered. Accordingly, SI Ishwar Singh took the rukka to PS Tilak Marg and got the present FIR registered. After registration of FIR, SI Ishwar Singh handed over carbon copy of FIR and original Rukka to him for investigation. However, on the same day, pursuant to an order of the then DCP, EOW the investigation of the present case was transferred to Sh. Amit Roy, the then ACP.

In his cross-examination conducted on behalf of accused Sushil Ansal, he stated that he did not conduct even any preliminary investigation in the present case. He was never associated with the investigation of the case.

Accused **P.P. Batra, Anoop Singh, Dinesh Chandra Sharma and Gopal Ansal** were afforded opportunity to cross-examine this witness but no cross examination was done.

The following exhibit has been marked in the examination of PW-29 :

1	COMPLAINT BY R. KRISHNAMOORTHY TO COMMISSIONER, DELHI POLICE Dt 13. 05. 2006	**Ex PW 29/A**

41. **PW-30 Sh. R. Krishanmoorthy** S/o. Lt. Sh. V. Ramachandran, aged about 63 years, R/o. E-335, East of Kailash, New Delhi 110065 was examined. He stated in his examination-in-chief that he is the General Secretary of the Association of the Victims of the Uphaar Tragedy (AVUT). This Association was formed after devastating fire occurred in Uphaar Cinema Hall situated at Green Park Extension, New Delhi in which 59 persons had lost their lives. He had also lost his two teenage children. Following the said incident, a case was registered by the CBI who after investigation filed the charge-sheet in the matter. The trial of that case was conducted in the court of Ms. Mamta Sehgal, the then Ld. ASJ, PHC, New Delhi. Being victim of the crime and General Secretary of the Association of the Victims of the Uphaar Tragedy (AVUT), he had been regularly attending the Court hearing and had been keenly watching the progress of the trial. He further stated that during the course of the trial, he came to know that certain crucial documents were either mutilated, defaced by smearing ink on them or some of the documents were torn. Being victim and General Secretary of the said Association, they filed a petition before the Ld. ASJ seeking cancellation of the bail of accused Gopal Ansal, Sushil Ansal and H.S. Panwar, accused persons in the main Uphaar case. However, their said petition was dismissed by the Ld. Trial Court. Thereafter, they approached to the Hon'ble Delhi High Court and filed another petition seeking the cancellation of bail of above said accused persons. During the course of hearing of said petition, the fact finding report and inquiry report was summoned by the Hon'ble Delhi High Court. It was thereafter they came to know that Dinesh Chandra Sharma, the then Ahlmad and accused herein was dismissed from the service. Thereafter, they filed another petition seeking directions from Hon'ble Delhi High Court for registration of the criminal case qua the incident of tampering of documents. The petition was allowed and the direction was issued for registration of the FIR. Thereafter, he filed the complaint dt. 13.05.2006 already Ex.PW29/A bearing his signature at point C with the Commissioner of Police for registration of the FIR. He had reproduced all the relevant paragraphs of the order forming basis of the directions for the registration of FIR, in his said complaint. It was thereafter present FIR was registered.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, the witness stated that he was called by IO once or twice to make inquiry related to his complainant. He did not remember the dates. No other witness was summoned in his presence nor he was confronted with any of the accused persons or witness. He affirmed that they had been keenly watching the progress of the trial of the main Uphaar case. He came to know about the tampering of documents in question from the Ld. Prosecutor and that he had also moved an application in the Court in this regard. The said documents were crucial and relevant to establish the involvement of accused Gopal Ansal, H.S. Panwar and Sushil Ansal for the trial of main Uphaar case. The description of those documents are already mentioned in the order of Hon'ble Delhi High Court and the same has been reproduced in his complaint. He denied the suggestion that he was not aware about the contents of tampered documents. He affirmed that the said documents were not related to accused Dinesh Chandra Sharma as he was not an accused in main Uphaar case. He affirmed that he is aware that two departmental inquiries were conducted against the accused Dinesh Chandra Sharma and pursuant thereof he was dismissed from the services. He was not aware about the observations made by the Inquiry Officers in their reports in both departmental inquiries. He further affirmed that during the course of trial of main Uphaar case, sometimes the concerned Court rooms were shifted. He further affirmed that during the course of trial of main Uphaar case, many litigants used to come to the Court to attend the hearing. He did not know if the counsel engaged by them in the main Uphaar trial case had inspected the judicial file of that case. He never inspected the said file. He has no knowledge if any official of the Court other than accused Dinesh Chandra Sharma used to share the Ahlmad Room of the Court. He did not know if accused Dinesh Chandra Sharma had located any of the documents which had gone missing. However, he is aware that Ms. Mamta Sehgal, the then Ld. ASJ had directed the accused Dinesh Chandra Sharma to locate those documents. He was not present in the Court when the charge-sheet in the main Uphaar case was filed. He denied the suggestion that he had made a false complaint or that accused Dinesh Chandra Sharma has been falsely implicated in the present case or that accused Dinesh Chandra Sharma did not tamper with any documents.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness stated that he was called by the IO to join investigation of this case once or twice. His statement was not recorded by the IO in this case. The document dt. 18.07.1997, as mentioned in para 4(i) of his complaint Ex.PW29/A was not seized in his presence in the main Uphaar case. Similarly, the other documents mentioned from para no. 4(ii) to (ix) were not seized in his presence in the main Uphaar case. He further stated that he does not know the date, month or year when the chargesheet in the main Uphaar case was filed by the Investigating Officer. He came to know that the charge-sheet was filed when the trial started in the Court of Ld. MM. He could not tell even by his approximation when he came to know about the same by telling the date, month or year. He also could not remember the name of the Ld. Judicial Officer. He never inspected the Court file when the matter was pending before the Ld. MM. He further stated that he has no idea whether the copy of the charge-sheet or the documents filed alongwith with the same, was ever supplied to him. Again said, the copy of charge-sheet and documents was given to them during the course of trial pending in the Court of Ld. ASJ, PHC, New Delhi. The same was provided to them by the Court. He did not remember the process by which he received the said charge-sheet and the documents. He could not remember if he had obtained certified copy of the said charge-sheet and documents. He could not remember the name of the official of the Court of Ld. ASJ who provided him the copy of charge-sheet and the documents. He also could not remember whether the charge-sheet and documents bore any official stamp of the Court. The Investigating Agency of the main Uphaar case never discussed as to what final report they shall be filing before the Court. The Investigating Agency of the main Uphaar case never provided the draft charge-sheet or the final charge-sheet of the matter to him. He further stated that he was not involved in the process of handing over of documents from one Court to another. He voluntarily stated that he is the victim of the case who lost both the children and he had never been involved in such process. He further stated that when he used to attend the Court proceedings of the main Uphaar case, some members of Association of the Victims of Uphaar Tragedy (AVUT) also used to attend the hearings with him. None of the member of the said association ever inspected the Court record. He could not remember whether all the hearings were attended by the members of AVUT as there were various families and he could not remember if somebody attended the Court hearing without his knowledge. He used to be present in all the Court hearings. He further stated that neither him nor any of the members of AVUT ever spoke over telephone with any of the Court staff members and Naib Courts in the main Uphaar case. However, he could not remember whether he or any of the members of AVUT used to speak over telephone with the Ld. Special P.P in the main Uphaar case. He further stated that he came to know from the Ld. Spl. P.P that certain documents were either mutilated or defaced etc. He could not remember whether in the order dt. 05.05.2006 passed by the Hon'ble Delhi High Court in Crl. M. (M) 2380 of 2003 titled as *Association of the Victims of Uphaar Tragedy (AVUT) Vs. Sushil Ansal & Ors.*, Hon'ble Delhi High Court recorded the submissions of the counsel that the mutilation etc. could be the handiwork of anyone or even AVUT. The copy of the said order is taken on record and marked as **Mark PW30/DA**. He affirmed that Hon'ble Delhi High Court has observed in para no. 17 that it could be anybody who mutilated etc. the documents. He denied that as per his knowledge, during the investigation of present case IO investigated the role of AVUT members in the alleged mutilation etc. of the documents. He further stated that his call records were not asked by the IO during the investigation of the present case. Similarly, the call records of other members of AVUT were not asked by the IO in the present case. He further stated that he could not tell whether the certified copy of the main Uphaar case and its documents were obtained by any other person or not. The day to day trial of main Uphaar case was started in the year 2007 on the directions of Hon'ble Delhi High Court in the Court of Ld. ASJ. However, prior to this it used to be listed twice or thrice a week. He further stated that he has never seen the original of any of the documents mentioned in his complaint Ex.PW29/A in para no. 4. He voluntarily stated that the proceedings were conducted by Ld. Special PP, specially appointed for the main Uphaar case. He further stated that he never assisted any Court official in locating the documents stated to be missing. He denied the suggestion that the members of the AVUT had the intention to create circumstances for cancellation of bail of accused persons. He further denied the suggestion that the members of AVUT were inspecting the Court record, including during the hearing of the matter. He further denied the suggestion that under pressure of AVUT, the role of AVUT members were not investigated by the IO despite observations by the Hon'ble Delhi High Court. He further denied the suggestion that a false case was filed by him.

In his cross-examination conducted on behalf of accused

P.P. Batra, the witness affirmed that he had been regularly attending the hearings of the main Uphaar case with his wife. He stated that they had no access to the records of main Uphaar case. He never inspected the Trial Court record of main Uphaar case. He affirmed that Sh. Y. K. Saxena was the Special Public Prosecutor in the main Uphaar case. He could not remember the name of the officer of CBI who used to assist the Ld. Spl. P.P during the trial. Mr. R.S. Khatri, IO was assisting the Ld. Special P.P. He knew the fact that the Ld. Spl. PP had moved application on 20.01.2003 already Ex.PW2/A highlighting the detailing certain documents which were stated to be either mutilated, torn or not readily available. He never applied for certified copies of the documents filed alongwith the charge-sheet in the main Uphaar case. He affirmed that they too had engaged lawyers to represent the AVUT during the trial of main Uphaar case. He could not recollect if any of those lawyers had ever applied for certified copies of the said documents. He affirmed that total nine documents have been referred in the application Ex.PW2/A moved by Ld. Spl. PP. He could not remember if any separate list was also filed alongwith the said application. He affirmed that in para no. 13 and 14 of his application **Ex.PW30/DC**, he had given the details of missing documents. He further stated that he came to know the details of missing documents from the application of Ld. Spl. P.P Ex.PW2/A. He affirmed that application Ex.PW2/A was the basis of preparation of draft of Ex.PW30/DC. He has seen para no. 13 & 14 of his petition Ex.PW30/DC and application Ex.PW2/A and he said that there is no disparity between the two qua the details of documents. He affirmed that the documents referred at serial nos. 8 & 9 of application Ex.PW2/A have not been included in Ex.PW30/DC. He voluntarily stated that when the said application was filed by the Ld. Spl. P.P, the Ld. ASJ directed Ahlmad to take assistance of other Court staff to locate the missing documents and that it might be possible that aforesaid two documents mentioned at serial no. 8 & 9 may have been located. He denied the suggestion that he is deposing falsely on this point. He denied the suggestion that he had purposely and deliberately not included documents mentioned at serial no. 8 & 9 in his petition Ex.PW30/DC because these two documents were favorable to establishing the defence of accused persons in main Uphaar case. He had filed the petition Ex.PW30/DC before the Hon'ble High Court of Delhi in the month of May, 2003. He could not recollect that before the said petition in the High Court, if the documents referred at serial nos. 8 & 9 were located. He voluntarily stated that the IO of the case had filed an Affidavit for leading secondary evidence wherein the documents mentioned in his petition was highlighted. He further stated that he had gone through the order of Ld. Trial Court whereby their application for cancellation of bail of said three accused persons was dismissed and that they had also annexed that order dt. 29.04.2003 with their said petition before Hon'ble High Court of Delhi. He could not remember that in the said order the issue of documents favorable to the defence of the accused having gone missing was raised on behalf of accused Sushil Ansal. He denied the suggestion that he is giving a false answer on this point. He affirmed that he had a landline connection number 6451474 which was installed at his residence. He further stated that he had not participated in the preparation of affidavit filed by the IO Mr. R.S. Khatri in the main Uphaar case related to leading secondary evidence of certain documents. He could not know if on one occasion dt. 24.09.2002 when PW-29 Sh. B.S. Randhawa was being examined, the presence of his wife has been taken note of on the deposition of the witness. He denied the suggestion that the said conduct shows that prosecution of the said case was not being conducted in a fair and impartial manner and members of AVUT were trying to influence leading of evidence on material. He denied the suggestion that in the list Ex.PW30/DB also document D-28 has been shown as missing. He denied the suggestion that he had full knowledge of the contents of this list i.e. Ex.PW30/DB while preparing draft Ex.PW30/DC. He denied the suggestion that he has deposed falsely.

Ld. counsel for accused **Sushil Ansal** has adopted the cross-examination done on behalf of accused P.P. Batra.

Accused **Anoop Singh** was afforded opportunity to cross examine this witness but no cross examination was done.

The following exhibits have been marked in the examination of PW-30 :

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1	DELHI HIGH COURT ORDER Dt 5.05.2006 IN CRL M (M) 2380 /2003 AVUT Vs SUSHIL ANSAL & Ors	**Mark PW 30/DA**
2	LIST OF MISSING DOCUMENTS	**Ex PW 30/DB**
3	COPY OF THE PETITION FILED BY AVUT BEFORE DELHI HIGH COURT FOR CANCELLATION OF BAIL OF SUSHIL ANSAL, GOPAL ANSAL & HS PANWAR	**Ex PW 30/DC**

42. **PW-31 Sh. A.K.** Singh, Assistant **Registrar of Company,** NCT Delhi and Haryana, New Delhi was examined. He stated in his examination-in-chief that pursuant to the summon received from this Hon'ble Court, he has been authorized by Sh. A.K. Shahu, Deputy Registrar of Companies, NCT Delhi & Haryana to produce the relevant record duly certified by him pertaining to company, namely Star Estate Management Limited. Office order in this regard dt. 17.07.2019 pertaining to witness is taken on record and same is **Ex.PW31/A** bearing the signature of Sh. A.K. Shahu, Deputy Registrar of Companies at point A. He has brought the certified copies of relevant record consisting page no. 1 to 26. He has brought the certified copy of master data of the company M/s Star Estate Management Limited containing date of incorporation, CIN number of the company, registered office address of the company and the documents filed by the company with the Registrar of the companies. Same is **Ex.PW31/B** bearing seal of office of Registrar of Companies and his signature at point A on each page. He has also brought the certified copies of the details of the Director appointed by the company as well as details of their resignation. The same is running into two pages and is **Ex.PW31/C** bearing seal of office of Registrar of Companies and his signature at point A on each page. He has also brought the certified copies of Annual Return for the date of AGM 24.09.2005 filed by the company Star Estate Management

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Limited on 02.11.2005 in the office of Registrar of Companies with Annexures running into 12 pages (internal page no. 4 to 15). The same is **Ex.PW31/D(colly)** bearing seal of office of Registrar of Companies and his signature at point A on each page. He has also brought the certified copies of Form 32 of Star Estate Management Ltd. with its two Annexures i.e. written consent of Rajeev Chopra dt. 31.01.2006 whereby he consented to act as a Director of the company and resignation letter dt. 13.01.2006 of Sh. Aditya Wadhera as a Director of said company. The same are running into 11 pages (internal page nos. 16 to 26. The same is **Ex.PW31/E(colly.)** bearing seal of office of Registrar of Companies and his signature at point A. He further stated that he has also brought the certified copy of certificate of Incorporation of Star Estate Management Pvt. Ltd. dt. 09.05.1980. Initially the company was incorporated in the name of "Star Estate Management Pvt. Ltd." Later vide intimation dt. 11.02.1995, the name of the company was changed to "Star Estate Management Ltd." and the word "Private" was removed. He further stated that the certified copy of the Certificate of Incorporation of Star Estate Management Pvt. Ltd. dt. 09.05.1980 is taken on record and marked as **Ex.PW31/F** bearing seal of the Registrar of Company and his signature at point A. He further stated that the documents produced by him have been downloaded by him from the System / Computer maintained at the office of Registrar of the Company using by Unique User ID and Password. All the records pertaining to companies registered with the Registrar of Company are maintained on the official website of Ministry of Corporate Affairs, www.mca.gov.in, for official purposes. The system / computer from which he had taken printouts of the said documents remained functional throughout the relevant period. He further stated that he has also brought the certificate under section 65B of Indian Evidence Act dt. 23.07.2019 qua the aforesaid documents. The same is taken on record and marked as **Ex.PW31/G** bearing his signature at point A. He affirmed that he has certified the aforesaid documents to be the true copies under the Provision of 399(3) of Companies Act 2013.

Accused **P.P. Batra, Dinesh Chandra Sharma, Anoop Singh** were afforded opportunity to cross-examine this witness but no cross-examination was done.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness stated that the documents which he had brought to the Court and got them exhibited were downloaded by him personally during his official work. The printer is installed in his office in his cabin. He joined on 14.05.2019 in the office of Registrar of Companies under working of Ministry of Corporate Affairs as an Assistant Registrar of Companies Delhi & Haryana. For taking printout from the database, Unique ID and Password is required. This Unique ID and Password has been issued to him in June, 2019. However, he could not remember the exact date. He was aware that Ms. Kanak Gaur had appeared for giving a deposition. He was aware that she also brought the same documents to the Court. When she brought the documents to the Court, he had taken the printouts personally during the course of his official duty and had certified the same and had given to her. He took the printouts and gave the documents to her before she came to depose in the Court. After she returned having deposed in the Court, she reported to him that he is supposed to go to the Court as he had certified the documents. The witness explained that when summons were issued to the Registrar of Companies, he is empowered to issue necessary directions / office order for taking of the computer prints by authorized persons and produce the same in the Court. As such pursuant to the said directions, Ms. Kanak Guar was authorized to produce the documents in the Court. He denied the suggestion that he is avoiding to give direct answer to simple question and he denied the suggestion that he is being evasive as his lies about having taken the printouts personally has been exposed. He denied the suggestion that he is being evasive to save himself from prosecution of deposing falsely in Court on oath. He further denied the suggestion that in view of the above his certificate under section 65B is incorrect. He further stated that he is M. Com, LLB, P.G. Diploma in Labour Law and Industrial Relation. He is aware of the provision of section 65B of Indian Evidence Act. The format in which he has given the certificate is being used in the office and he has used the same. He compared the format with the provision of 65B of Indian Evidence Act before the signing the same. The server is installed at office in adjoining cabin to his cabin. Maintenance of the same is looked after by TCS. He affirmed that the particulars of the devices from which the output regarding which he has deposed was generated including the server, the computer, the printer have not been specified in his certificate under section 65B. He voluntarily stated that it is so because as per the provisions of section 399(3) of the Companies Act, 2013 "*a copy of, or extract from, any document kept and registered at any of the offices for the registration of companies under this Act, certified to be a true copy by the Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document.*" As per said provision, there is no requirement of certificate under section 65B but since it was mentioned in the summon he has brought the same. He denied the suggestion that he is trying to fill the lacuna in the certificate under section 65B tendered by him in the Court. The documents brought by him are from the record of ROC and he could not depose regarding the authenticity. Again said, they are 100% authentic documents. He denied the suggestion that he is deposing falsely.

In his cross-examination conducted on behalf of accused Sushil Ansal, the witness stated that the details of the Directors of the company was provided at the time of Incorporation of the company 09.05.1980. He has not brought the record pertaining to Directors at the time of incorporation of the companies as the same has not been summoned. However, as per the file pertaining to Star Estate Management Ltd. that he is carrying in the Court, the name of the Directors of the company appointed from 2004 to till date. He further stated that he did not have the knowledge as to who were the directors of Star Estate Management Ltd. at the time of incorporation and thereafter but he could not tell their names. He has not brought any document containing the details of the Directors from the date of its incorporation till date. As per his knowledge, the IO of the case did not record the statement of any official from the ROC who was maintaining the record regarding State Estate Management Ltd. prior to June, 2019 and May, 2019. He voluntarily stated that he has joined the office of ROC on 14.05.2019. He did not know whether any official maintaining the records of Star Estate Management

Ltd. prior to May,2019 is a signatory to certificate under section 65B. He affirmed that he has never personally maintained the electronic data pertaining to Star Estate Management Ltd. from the date of its incorporation till the date of his joining. He voluntarily stated that the documents produced by him are not electronic record and more so it is officially maintained by Registrar of Companies Delhi & Haryana and all information related to company already available on the MCA Portal as WWW.MCA.GOV.IN. He affirmed that the data referred by him in his examination-in-chief is all electronic data. He volunteered that part of it which pertains to the period at the time of incorporation of the company has been subsequently converted into electronic data. He affirmed that he is not the scribe or author of any of the documents which have been referred to by him in his examination-in-chief. He denied the suggestion that the certificate issued by him under section 65B of the Indian Evidence Act is defective as it does not fulfill the requirements under the law. He denied the suggestion that he is incompetent to testify regarding the documents mentioned in his examination-in-chief. No electronic instrument containing the electronic data referred by him in his examination-in-chief was seized during the course of investigation of the present case. He had verified the documents from the document file of the company uploaded on the website. He has not verified or examined any official who would have uploaded or maintained the information pertaining to the company. He denied the suggestion that his deposition regarding the documents mentioned in examination-in-chief is defective. He denied the suggestion that he has not personally verified any information regarding the incorporation, directorship or any other issue pertaining to the company Star Estate Management Ltd. He denied the suggestion that he has deposed falsely in his examination-in-chief.

PW-31 was again permitted to be examined on the application of prosecution.

He was recalled for further examination on 12.03.2021 and he stated that he has brought the summoned record described in the index of the documents accompanying the said record pertaining to A Plus Security Service and Training Institute Pvt. Ltd. having registered office at Lado

Sarai, New Delhi. The said company was registered on 19.11.1998 vide registration no. 55-97147. After the functioning of Ministry of Corporate Affairs converted into electronic mode, the CIN of the company was changed vide CIN number from registration no. 55-97147 to U74899DL1998 PTC097147. The said documents have been certified by him in the capacity of Assistant Registrar of Companies, Office of ROC, NCT of Delhi & Haryana as per provisions of 399 (3) of the Companies Act, 2013. He further stated that the documents produced by him have been downloaded by him from the systems/ computer maintained at his office, by using his unique ID and password. The said documents are also available on MCA portal, www.mca.gov.in and are in public domain. He further stated that some of the said documents namely Annual Return, Date of AGMs held on 30.09.2004 and 30.09.2005 and Balance Sheet with Directors and Auditors reports for the financial year ending on 31.03.2004 and 31.03.2005. The certificate of incorporation of company was also physically handed over to the Director/ Officers of the company. He further stated that the documents namely Form 32 was e-filed on 03.11.2010 under the digital signatures of Shivraj Singh Karayat, Director of the company and Chartered Accountant, Sh. Alok Kumar Bansal. The said form 32 was filed for resignation of Mr. Anokhey Lal Pal, one of the Directors of the A Plus Security Service and Training Institute Pvt. Ltd with resignation letter of Mr. Anokhey Lal Pal dated 14.10.2010. He further stated that he has also brought master data of said company, the details of Directors. He has also brought the certificate under section 65B of Indian Evidence Act qua the said record. The documents which were filed off-line were scanned and uploaded on the www.mca.gov.in. The system from which he has got print out and downloaded the electronic documents remained functional through out the period the said documents were stored in system. He further stated that it is also remained under his control and was only accessible through his unique ID and password. The documents having total number of pages 44.

The documents are taken on record and marked as exhibit as under :

(1) Certified true copy of company master data of M/s A Plus Security Service and Training Institute Pvt. Ltd is Ex.PW31/H;

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(2) Certified true copy of certificate of incorporation is **Ex.PW31/I;**

(3) Certified true copy of details of Directors of the company is **Ex.PW31/J;**

(4) Certified true copy of Form 32 having e-filed date 03.11.2010 is **Ex.PW31/K** with the resignation letter dated 14.10.2010 of Sh. Anokhey Lal Pal, one of the Director of said company is **Ex.PW31/L;**

(5) Certified true copies of Annual Return for the F.Y. ending on 31st March, 2005 for AGM held on 30.09.2005 is **Ex.PW31/M** and the Balance Sheet for the financial year ending on 31.03.2005 alongwith notice to shareholder and Director and Auditor's report (running into 10 pages having internal page no. from 17 to 26) are exhibited as **Ex.PW31/N(Colly.);**

(6) Certified true copies of Annual Return for the F.Y. ending on 31st March, 2004 for AGM held on 30.09.2004 is **Ex.PW31/O** and the Balance Sheet for the financial year ending on 31.03.2004 alongwith notice to shareholder and Director and Auditor's report (running into 10 pages having internal page nos. from 35 to 44) are exhibited as **Ex.PW31/P(Colly.);**

All the pages of the said documents bear his signatures and seal of his office at point A. Certificate U/s 65B of the Evidence Act, 1872 qua the said documents is **Ex.PW31/Q** bearing his signatures and seal of his office at point A.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, the witness affirmed that certified true copies of Annual Return for the financial year ending on 31st March, 2005 for AGM held on 30.09.2005 is Ex.PW31/M and the Balance Sheet for the financial year ending on 31.03.2005 alongwith notice to shareholder and Director and Auditor's report (running into 10 pages having internal page no. from 17 to 26) **Ex.PW31/N**(Colly.) do not bear the name of Dinesh Chandra Sharma. He further affirmed that no transaction has been shown in the said documents with regard to accused Dinesh Chandra Sharma.

Accused **P.P. Batra, Anoop Singh, Gopal Ansal and Sushil Ansal** were afforded opportunity to cross-examine this witness but no cross examination was done.

The following exhibit has been marked in the examination of PW-31 :

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1	OFFICE ORDER Dt 17.07.2019 FROM ROC	**Ex PW 31/A**
2	MASTER DATA OF SEML CONTAINING DATA OF INCORPORATION, CIN NUMBER OF AND REGISTERED OFFICE ADDRESS OF THE COMPANY.	**Ex PW31/B**
3	CERTIFIED COPIES OF DETAILS OF DIRECTORS APPOINMENT & THEIR RESIGNATION	**Ex PW 31/C**
4	CERTIFIED COPIES OF ANNUAL RETURNS FOR THE DATE AGM 24.09.2005 OF SEML ON 02.11.2005	**Ex PW 31/D** **(Colly)**
5	CERTIFIED COPIES OF FORM 32 OF SEML WITH 2 Annexures Dt. 31.01.2006	**Ex PW 31/E** **(Colly)**
6	CERTIFIED COPY OF THE CERTIFICATE OF INCORPORATION OF SEML Dt 09.05.1980	**Ex PW 31/F**
7	CERTIFICATE U/S 65B OF INDIAN EVIDENCE ACT Dt 23.07.2019	**Ex PW 31/G**
8	TRUE COPY OF COMPANY MASTER DATA OF M/S A PLUS SECURITY SERVICE & TRAINING INSTITUTE (P) Ltd.,	**Ex PW 31/H**
9	CERTIFICATE OF INCORPORATION OF A PLUS SECURITY	**Ex PW 31/I**
10	DETAILS OF DIRECTORS OF THE COMPANY	**Ex PW 31/J**
11	FORM 32 Dt 03.11.2010	**Ex PW 31/K**

12	RESIGNATION LETTER OF ANOKHE LAL PAL Dt 14.10.2010	**Ex PW 31/L**
13	ANNUAL RETURN Dt 31.03.2005	**Ex PW 31/M**
14	BALANCE SHEET FOR THE YEAR ENDING 31.03.2005	**Ex PW 31/N**
15	ANNUAL RETURN Dt 31.03.2004	**Ex PW 31/O**
16	BALANCE SHEET FOR THE YEAR ENDING 31.03.2004	**Ex PW 31/P**
17	CERTIFICATE U/S 65 B	**Ex PW 31/Q**

43. **PW-32 : Sh. Satish Chand Verma**, SDE (FRS), KBN, Janpath, New Delhi was examined. He stated in his examination-in-chief that he has brought the summoned record i.e. original history register containing relevant entries pertaining to landline telephone no. 23352269, 23352270 and 23352518. All the said telephone numbers had been allotted in the name of Ansal Properties and Industries Ltd. He stated that telephone no. 23352269 was opened on 15.12.1994 in the name of Ansal Properties and Industries Ltd., 118, UF, Prakash Deep Building, 7 Tolstoy Marg, New Delhi. On 12.08.1995 this number was shifted to the premises bearing no.1110, Ansal Bhawan, 16 K.G. Marg, New Delhi. Later on 15.04.2005 the name of the subscriber was got changed vide 'F' OB no. 4022331003614 dated 21.03.2005 from Ansal Properties and Industries Ltd. to M/s Ansal Properties and Infrastructure Ltd. This number was disconnected w.e.f. 23.04.2007 for non-payment of telephone bill. The copy of the history register pertaining to this number is taken on record and marked as **Ex. PW 32/A (OSR)**. He further stated that telephone no. 23352270 was opened on 15.12.1994 in the name of Ansal Properties and Industries Ltd., 118, UF, Prakash Deep Building, 7 Tolstoy Marg, New Delhi. On 12.08.1995 this number was shifted to the premises bearing no.

1110, Ansal Bhawan, 16 K.G. Marg, New Delhi. Later on 07.04.2005 the name of the subscriber was got changed vide 'FOB no. 4022331003606 dated 21.03.2005 from Ansal Properties and Industries Ltd. to M/s Ansal Properties and Infrastructure Ltd. The copy of the history register pertaining to this number is taken on record and marked as **Ex. PW 32/B (OSR).** He further stated that telephone no. 23352518 was opened on 01.12.1994 in the name of Ansal Properties and Industries Ltd., 118, UF, Prakash Deep Building, 7 Tolstoy Marg, New Delhi. On 18.11.1995 this number was shifted to the premises bearing no.1110, Ansal Bhawan, 16 K.G. Marg, New Delhi. Later on 07.04.2005 the name of the subscriber was got changed vide 'F'OB no. 4022331003604 dated 21.03.2005 from Ansal Properties and Industries Ltd. to M/s Ansal Properties and Infrastructure Ltd. This number was disconnected w.e.f. 26.06.2014. The copy of the history register pertaining to this number is taken on record and marked as **Ex. PW 32/C (OSR).** He further stated that the stamped number at the top of the Ex.PW32/A, Ex.PW32/B and Ex.PW 32/C are the landline telephone numbers. Later, the digit '2' was prefixed in all the landline numbers in Delhi and for that reason digit '2' is not shown in the said stamped numbers.

In his cross-examination conducted on behalf **of accused Gopal Ansal,** the witness stated that he has joined the MTNL in the year 1983. However, he is posted in the present unit for the last one month. He affirmed that there are authorized persons in his unit to access the record of the Record Room. He affirmed that record is only provided by the authorized person. He is authorized to produce the record. He has not brought any authorization to show that he can access the Record Room. He voluntarily stated that he is not required to take any authorization to produce such record. He denied the suggestion that he is not authorized to produce such record, hence, he has not produced the same. He further stated that he did not have any authorization authorizing him to depose before this Court. He voluntarily stated that he has produced the record pursuant to the summons issued by this Court. He further stated that landline numbers are issued on the basis of registration form followed by an order issued by Commercial Officer of MTNL. He could not say as to whether KYC documents were taken before allotting the landline numbers. He could not

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say if the registration form and orders issued thereof qua these numbers are available. Only the official from Commercial Department can tell about the same. Before coming to the Court, he did not contact the Commercial Officer. He voluntarily stated that he was only summoned to produce the history register pertaining to the said numbers and that he cannot have accessed of any file belonging to Commercial Department. He has never seen KYC form pertaining to these numbers. He denied the suggestion that he has deliberately not produced the KYC form and the registration forms. He affirmed that the entries in Ex.PW 32/A, Ex.PW 32/B and Ex.PW 32/C were made by different persons at different dates. He voluntarily stated that the said entries have been made on different dates on receipt of the said orders received for particular purpose. He affirmed that the said entries do not bear the signature of the person who have made the entries. He affirmed that none of the entries in the aforesaid exhibits were made by him. He affirmed that he is not competent to depose regarding Ex. PW 32/A to Ex. PW 32/C. He has not brought any call detail records pertaining to the said numbers maintained in the office of the account officer. He affirmed that neither the word 'History register' is mentioned on the cover of the register nor it bears the logo of MTNL. The register does not bear any indication so as to indicate that the stamped number on the top of the register is the telephone number. He voluntarily stated that no such indication is required and that the said register is maintained by them as a contemporaneous record in the course of official duty. He denied the suggestion that the register produced by him does not pertain to the history of the telephone numbers. He affirmed that at entry at point X in the aforesaid exhibits are mentioned in pencil for maintenance purposes. He voluntarily stated that being the number of Distribution point which is changed time to time and primary pair to match the same and for that reason it is mentioned with pencil. He denied the suggestion that he has not produced the relevant documents before the Court. He denied the suggestion that he is deposing falsely.

In his cross-examination conducted on behalf of accused P.P. Batra, the witness stated that telephone nos. 6887052, 4677285, 6451474, 6888953, 7193021, 6888041, 46777..., 3738104, 3715119, 3353316 and 3311451 may be belonging to MTNL. He did not know whether any requisition was received in the MTNL office regarding the investigation of this case. Before coming to depose before this Court, he did not try to verify the said facts from his office. He did not know if there was any exchange of information between EOW and MTNL, during investigation of this case. He denied the suggestion that he has tendered in evidence irrelevant documents during his examination-in-chief. He denied the suggestion that he has done so at the instance of the investigating officer.

Ld. counsel for accused Sushil Ansal & Dinesh Chandra Sharma have adopted the cross examination done on behalf of accused P.P. Batra.

Accused Anoop Singh was afforded opportunity to cross examine this witness but no cross examination was done.

The following exhibit has been marked in the examination of PW-32 :

1	COPY OF HISTORY REGISTER OF TELEPHONE NUMBER 23352269 IN THE NAME OF API	Ex **PW 32/ A**
2	COPY OF THE HISTORY REGISTER PERTAINING TO TELEPHONE No 233 52270 IN THE NAME OF API	Ex **PW 32/B**
3	COPY OF THE HISTORY REGISTER PERTAINING TO TELEPHONE No 23352518 IN THE NAME OF API	Ex **PW 32/C**

44. **PW-33** : Sh. G.S. Bakshi, Chief Section **Supervisor,** Representative of AGM (C), KBN/JP, Eastern Court, Janpath, New Delhi was examined. He stated in his examination in chief that he has brought the summoned record pertaining to telephone number 23352269, 23352270 and 23352518. Initially these numbers were alloted to Ansal Properties and Industries Ltd. at 115, Ansal Bhawan, 16 K.G. Marg, New Delhi 110001. Later, the name of the said company was got changed to Ansal Properties and Infrastructure Ltd having same address. The application for transfer of the said telephone number 23352269 and 23352270 filed through Authorized Signatory Sh. Amitav Gangoli, the then VP and Company Secretary. Same is taken on record and marked as Ex.PW33/A **(OSR)** and **Ex.PW33/B (OSR)**. Certified true copy of fresh certificate of Incorporation was also filed alongwith the said application. Photocopy of the same is taken on record and marked as Mark 33/C. Alongwith the aforesaid application for transfer of the concerned telephone numbers, an Affidavit with regard to the change of the name of company as well as an Affidavit of Indemnity having all the landline numbers were also filed. Copy of the same are taken on record. The affidavit regarding change of name of company is marked as Ex.PW33/D(OSR). The Affidavit of indemnity is marked as **Ex.PW33/E**(OSR). At the time of filing of aforesaid application, the copies of last month paid bills of landline numbers 23352269 and 23352270 were also filed as bonafide address proof. The copy of the bill pertaining to number 23352269 is taken on record and marked as **Mark 33/F**. The copy of the bill pertaining to number 23352270 is taken on record and marked as Mark 33/G.

Accused P.P. Batra, Anoop Singh, Dinesh **Chandra Sharma** were afforded opportunity to cross examine this witness but no cross examination was done.

In his cross-examination conducted on behalf **of accused Gopal Ansal,** the witness stated that the applications which he exhibited in the Court were filed in commercial section only. He did not receive the document when they got filed in MTNL Office. He retrieved the record from record section for the purpose of bringing the same to the court on the instructions of AGM-C. He was given instructions in writing to attend the court. The same is mentioned on the summons at point A (OSR) exhibited as **Ex.PW33/D1(OSR)**. He denied the suggestion that he is unauthorized to bring any record to the court and he has brought the same at the behest of the prosecution. He affirmed that he has brought the records as he found in his office and he could not depose about authenticity / genuinity of the signatures or any content of these documents. His statement was not recorded during investigation and he never joined investigation in this case. He has not seen personally and cannot depose as to where the aforesaid numbers were installed from his personal knowledge. However, whatever he has stated in the court is borne out from the record which he has brought from his office.

In his cross-examination conducted on behalf of accused **Sushil Ansal**, the witness stated that the records mentioned by him in his examination-in-chief pertain to the company only and not to an individual. He was never examined as a witness by the IO during investigation of the present case. The records that he has referred to in his examination-in-chief are being maintained by some other officials of some other section. No such official was ever examined in his presence in the present case during his tenure with MTNL in this section. The document mentioned by him in his examination-in-chief is only pertaining to indemnity bond. He did not have any knowledge regarding the details of the calls made from the numbers that he has referred to in his examination-in-chief since it is being looked after by some other section of MTNL. He did not have any knowledge as to which of the official was maintaining the record referred by him in his testimony prior to his posting in this section of MTNL. He did not have any knowledge as to who was in-charge of the affairs in the companies which have been referred in respect of the documents mentioned in his examination-in-chief. He denied the suggestion that he is not competent to testify the documents mentioned in his examination-in-chief. He denied the suggestion that his statement is defective and incomplete and he has produced the records and identified them under pressure from the IO to suit the case of the prosecution.

The following exhibit has been marked in the examination of PW-33 :

1	APPLICATION FOR TRANSFER OF TELEPHONE NUMBERS 23352269	Ex **PW 33/A**
2	APPLICATION FOR TRANSFER OF TELEPHONE NUMBERS 23352270	Ex **PW 33/B**
3	PHOTO COPY COPY OF THE CERTIFIED TRUE COPY OF FRESH CERTIFICATE OF INCORPORATION FOR CHANGE OF NAME OF API	Mark **33/C**

4	AFFIDAVIT OF A K GANGULY w.r.t. CHANGE OF NAME OF COMPANY	**Ex PW 33/D**
5	AFFIDAVIT OF INDEMNITY FILED HAVING ALL THE LAND LINE NUMBERS	**Ex PW 33/E**
6	COPY OF SUMMONS	**Ex PW 33/D1**
7	COPY OF THE LAST TELEPHONE BILL OF 23352270	**Mark 33/G**
8	COPY OF THE LAST TELEPHONE BILL OF 23352269	**Mark 33/F**

45. **PW-34** : Sh. Ishwar Bhat S. S/o. Sh. S. Shama Bhat, aged about 64 years, R/o. 29, 4th Main Road, Syndicate Bank Layout, Herolalli, Bangalore 560091 was examined. He stated in his examination in chief that in the year 1997, he was posted as Assistant Manager, Syndicate Bank, Green Park Extension, New Delhi. He further stated that on 27.08.1997 while he was posted as above, he handed over a cheque bearing cheque no. 183618 dated 23.05.1996 drawn on Syndicate Bank, Green Park Extension, New Delhi in the favour of Chief Engineer (Water) for an amount of Rs. 9,711/- duly signed by Gopal Ansal, Authorized Signatory, M/s. Green Park Theaters and Associated Pvt. Ltd. He had handed over the said cheque in the office of Sh. A.K. Gupta, Inspector CBI on the instructions of their Chief Manager. A seizure memo with regard to the seizure of said cheque was prepared by Sh. A.K. Gupta who had signed the same in his presence and that he had also appended his signature thereon. He was also provided the copy of the seizure memo. He further stated that during the trial of main Uphaar Tragedy case, he also appeared as an witness with regard to the said fact. During recording of his deposition in the main Uphaar case, he was shown only the photocopy of the seizure memo as well as the photocopy of said cheque and he had approved them to be the photocopies of their originals. The certified copies of the photocopy of the cheque and the seizure memo already on record and marked as Ex.PW10/O and

Ex.PW10/N respectively, were shown to the witness and he identified it to be the photocopies of their originals bearing his signatures at point B & C. The copy of his deposition recorded in main Uphaar case is **Ex.PW34/A** (OSR from main Uphaar case file) bearing his signature at point A.

Accused Sushil Ansal, P.P. Batra, **Dinesh Chandra Sharma, Gopal** Ansal and Anoop Singh were afforded opportunity to cross examine this witness but no cross examination was done.

The following exhibit has been marked in the examination of PW-34 :

1	COPY OF THE DEPOSITION RECORDED IN THE MAIN UPHAAR CASE (3rd Supplementary charge sheet Pg 1145-1147)	Ex /PW 34/A

46. **PW-35** : Sh. R.K. Singh, the then Nodal Officer, Bharti Airtel Ltd., R/o. 224, Okhla Industrial Area, Phase-III, New Delhi was examined. He stated in his examination-in-chief that on 10.07.2006, he was working as a Nodal Officer at Bharti Airtel Ltd. 224, Okhla Industrial Area, Phase-III, New Delhi. In pursuance to the request made by the IO, he wrote a letter giving the requisite information vide his letter already Ex.PW27/B bearing his signature at point A. He had provided the requisite information vide his said letter after verifying the same from their computer system. The said letter was taken into possession by the IO vide seizure memo already Ex.PW27/A bearing his signature at point A.

In his cross-examination conducted on behalf of **accused P.P. Batra**, the witness stated that he could not tell the number of the customers of Bharti Airtel Ltd in the year 2006. He voluntarily stated that this information was maintained by Customer Care Department of company. He did not remember if any record was also taken into possession from him by the IO in the present case nor he knew if any such record was taken into possession from the Customer Care Department. His computer system containing the relevant data was not taken into possession by the IO. He affirmed that he could not remember the details of customers/ subscribers. He voluntarily stated that in year 2006, there were more than

10 lakhs subscribers in Delhi and that such information can only be provided after verifying from the computer system containing said data. He affirmed that in letter Ex.PW27/B, there is reference of letter no. 158/ACP/SIT/EOW, Crime Branch, Delhi dt. 07.07.2006 written by the IO seeking the said information. He affirmed that he had not provided the copy of said letter while providing the said information vide letter Ex.PW27/B. He denied the suggestion that he had written letter Ex.PW27/B at the instance of IO. He denied the suggestion that there is no evidential basis for contents of letter Ex.PW27/B. He denied the suggestion that he has deposed falsely about having verified details from his computer system. He denied the suggestion that no such details qua Customers / Subscribers were available with him. He denied the suggestion that for this reason he had not provided any detail in aid to support the contents of Ex.PW27/B. He denied the suggestion that no such letter dt. 07.07.2006 was received by him and for this reason, he did not provide its copy to IO alongwith his letter Ex.PW27/B. He denied the suggestion that he has deposed falsely.

In his cross-examination conducted on behalf of **accused Gopal Ansal**, the witness affirmed that the authorized person can have access to such information. He was authorized to have access to that information. He had not produced any authorization letter to the IO. He has not been given any authority letter by the Bharti Airtel Ltd to appear in the court as a witness. He voluntarily stated that he has come to court pursuant to the summons issued by the court in his name. He stated that he is not aware regarding the KYC of mobile numbers mentioned in his letter Ex.PW27/B. He denied the suggestion that he had written letter Ex.PW27/B without verifying the record including KYC. He denied the suggestion that he is deposing falsely.

Accused Sushil Ansal, P.P. Batra and Anoop Singh were afforded opportunity to cross examine this witness but no cross examination was done.

Ld. counsel for accused Dinesh Chandra Sharma has adopted the cross examination done on behalf of accused Gopal Ansal.

47. **PW-36** : Sh. Anu Anand, Assistant Manager, Bharti Airtel Ltd., presently posted at Bharti Airtel Ltd. Bhushidu Towers, Avinashi

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Road, Coimbatore, Tamilnadu was examined. He stated in his examination in chief that in the month of September 2006, he was working as Executive – Legal & Regulatory, erstwhile Hutchinson Essar Mobile Services Ltd., C-45, Okhla Phase-II, New Delhi. While he was posted as above pursuant to written request vide letter dt. 11.08.2006 received from Sh. Amit Roy, ACP, Crime Branch, New Delhi, he had provided a certified copy of CDR of mobile numbers 9811675434, 9811027522, 9811026904 and 9811313863 for the period May 2002, June 2002, August 2002, September 2002 and November 2002 vide his forwarding letter Ex.PW36/A bearing his signature at point A. The certified copy of CDR of the mobile number 9811675434 for the month of August, September, November of year 2002 are on record and now marked as **Ex.PW36/B** (page no. **187 to 189 August), Ex.PW**36/C (page no. 180 to 181 September) and **Ex.PW36/D (page no. 177 to** 179 November) respectively bearing his signatures and seal of the company at point A on each page. The certified copy of CDR of the mobile number 9811026904 for the month of May and November of year 2002 are on record and now marked as **Ex.PW36/E** (page **no. 191 to 194 May) and** Ex.PW36/F (page no. 168 to 172 November) respectively bearing his signatures and seal of the company at point A on each page. The certified copy of CDR of the mobile number 9811313863 for the month of May 2002 are on record and now marked as Ex.P**W36/G** (page **no. 199)** bearing his signatures and seal of the company at point A on each page. The certified copy of CDR of the mobile number 9811027522 for the month of May, June, August, September and November of year 2002 are on record and now marked as Ex.PW36/H (page no. 195 to **198** May), **Ex.PW36/I (page no. 190** June), Ex.PW36/J (page no. **184** to 186 **August), Ex.PW36/K (pa**ge no. 182 to 183 September) and **Ex.P**W36/L **(page no. 173 to 176 Nove**mber) respectively bearing his signatures and seal of the company at point A on each page. He further stated that on 04.10.2006 pursuant to a written request vide letter No. 226/ACP/SIT/EOW received from Sh. Amit Roy, ACP, Crime Branch, New Delhi, he had also provided the certified copy of CDR of mobile number 9811027522 for the period May 2002, August 2002, September 2002, October 2002 and November 2002 vide his forwarding letter Ex.PW36/M bearing his signature at point

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A. The certified copy of said CDR of mobile number 9811027522 for the said period running into three sheets (from page no. 164 to 166) are already on record and now marked as Ex.PW36/N bearing his signatures and seal of the company at point A on each sheet. He further stated that he has brought the certificate under section 65-B of Indian Evidence Act qua the aforesaid output of printouts of the aforesaid CDRs. The said certificate is taken on record and marked as Ex.PW36/O bearing his signature at point A. The address mentioned in his certificate is the address of the Head Office of his company. The printout of the aforesaid records / CDRs of the aforesaid mobile numbers were taken by him from the computer device being protected by Unique ID and Password used by him. The computer device remained functional during the period pertaining to the aforesaid records / CDRs. He did not remember the description of the computer device in question as he has left the company in year 2008. The information contained in the CDRs were regularly filled in the system in the ordinary course of activities and same has been droved from there.

Accused Sushil Ansal, Dinesh Chandra Sharma and **Anoop Singh** were afforded opportunity to cross examine this witness but no cross examination was done.

In his cross-examination conducted on behalf of **accused P.P. Batra,** the witness stated that he had left company Hutchinson Mobile Services Ltd in the year 2008. He have had no contact with the said company and its officials after that. He has prepared certificate under section 65-B Ex.PW36/O partly in his office and partly at his house one week ago. He has had no details regarding this case after leaving Hutchinson Mobile Services Ltd. While he was employed in Hutchinson Mobile Services Ltd as Nodal Officer, he was employed in Delhi. He further stated that the master server pertaining to CDRs of mobile numbers was located in Delhi with IT Department. Maintenance of the server was being taken care of by IT Department. He affirmed that CDRs are maintained in the master server in chronological order in time and date. IT Department comprises of people who are technically qualified i.e. Software Engineers and Technicians and these officers with such qualifications possess the requisite knowledge to maintain the master server. The

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reference which came through letter no. 226/ACP/SIT/EOW Crime Branch as mentioned in Ex.PW36/M which had come to their company was responded to by supplying the requisite information and data. He voluntarily stated that if he had provided the CDR of all the months mentioned in letter Ex.PW36/M. He did not remember if post his sending letter Ex.PW36/M, any further query came from the office of EOW Crime Branch Delhi. He affirmed that there is no call record of first 25 days of August 2002 on Ex.PW36/N (page no. 164). So is his answer with regard to first 12 days of May 2002 (page no. 164). He affirmed that in Ex.PW36/N there are gaps of several days in the month of September, October and November 2002 (page no. 164 to 166). He affirmed that page no. 178 of Ex.PW36/D, page no. 168 of Ex.PW36/F and page no. 173 and 174 of Ex.PW36/L wherein the calls are not in chronological orders. The witness voluntarily stated that the present CDR pertain to year 2002 and he had extracted these details in the year 2006. When the memory of online server get filled, they randomly transfer some datas to DAT file and when there is request to provide the datas/ records, they retrieved it from DAT and during that process of decoding as per required format sought by the investigating agency, they extracted the data from DAT file. **Court observation is recorded that the witness has earlier stated that the data was copied and pasted but later he further explained the same as above.** He affirmed that the format in which the data was stored in main server remains but its format undergoes changes to suit the requirement of the investigation agency and that requires manual intervention. The requirement of investigating agency must be reflected in their letters through which the information was sought i.e. letter no. 226/ACP/SIT/EOW Crime Branch reflected in Ex.PW36/M and letter dt. 11.08.2006 reflected in Ex.PW36/A. He did not remember if he had explained the aforesaid procedure of extracting the data to the IO of this case. He did not remember if the IO had sought the said information in a particular format through his aforesaid two letters. He denied the suggestion that explanation given by him regarding lack of chronological order and gaps of several dates in calls is false and developed on the day to cover up the manipulation carried out by EOW with his assistance. He denied the

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suggestion that he tendered in evidence false and manipulated documents to bolster the case of prosecution. He denied the suggestion that data of several months is missing from the alleged CDRs tendered by him in evidence. He denied the suggestion that this has been done to present an incomplete and manipulated picture of the case and to distort the facts. He denied the suggestion that his explanation on the chronological order is false in view of his answers in the preceding portion of the cross examination. He denied the suggestion that he has deposed falsely and he has tendered the false explanation to cover up the issues raise in the cross-examination and for this reason the same is not reflected in any documents tendered by him in his examination-in-chief. He denied the suggestion that certificate Ex.PW36/O tendered by him has been prepared by the EOW and got signed by him on that day.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness stated that he is an M.B.A. in Marketing & Finance. He qualified in 2001. He joined Hutchinson Mobile Services Ltd in the year 2005. The call details provided by him are for the year 2002 and he affirmed that at that time he was not working in Hutchinson Mobile Services Ltd and he was working at TATA Tele Services Ltd for work of Tower Maintenance. He joined in 2005 on rolls of Hutchinson Mobile Services Ltd and he was issued an appointment letter. His duties and responsibilities were assigned to him later. His designation was Executive-Legal & Regulatory. The duty was also assigned to him to give the details to securities agencies like EOW, Crime Branch, CBI etc. as required by them in respect of Call Details, Addresses, CAF. The witness stated that there was a separate Information Technology (I.T.) Department in Hutchinson Mobile Services Ltd where he was working. He affirmed that DATA is stored in the servers. He affirmed that the maintenance of these servers is looked after by the persons working in the I.T. Department. He affirmed that if there is any issue or problem with his PC (desktop) he would contact the I.T. Department for fixing the same. He did not remember the storage capacity of his desktop. He affirmed that the whole data of the company is not stored in his desktop. He affirmed that his desktop was connected with the main server. He affirmed that data stored in the main server was not in his control. He voluntarily stated that he can extract the data stored in the main server through his desktop by using his User name and Password. By control, he means to say that the maintenance of the server was to be done by the I.T. Department. He denied the suggestion that his certificate Ex.PW36/O is false as he did not know the provisions of Information Technology Act 2002 and Indian Evidence Act 1872. He affirmed that after he gave letters Ex.PW36/A and Ex.PW36/M, he was contacted by Police Officer of EOW after receiving summons regarding his appearance in the court and when he asked him about nature of his evidence, he informed him about the mobile numbers and details as mentioned in his letter. He has not told him anything about certificate under section 65-B Indian Evidence Act. He denied the suggestion that he has given the certificate Ex.PW36/O at the instance of the Investigation Agency as he was not aware of the provisions of the Indian Evidence Act. He affirmed that the data stored in the server in DAT format. He did not remember if the printouts of the CDRs is from the DAT file. When the data get filled in the main server it is transferred to back end server. He could not remember as to whether the printouts of the CDRs were taken from DAT file. He affirmed that the printouts of the CDR can be taken in any other file format like Word or Excel Format. He denied the suggestion that he had not taken printout direction in the DAT file and he has changed the format of CDRs. He denied the suggestion that the CDRs in question are copies of the data in the main server which is printed in a different format. He could not tell as to whether the data in the server which is stored in DAT file was in chronological order. He denied the suggestion that being evasive regarding the data in DAT format as the CDRs submitted by him are not in chronological order. He further stated that every customer who is issued a SIM card from Hutchinson mobile services Ltd he is supposed to submit a KYC form. He voluntarily stated that he did not remember if the said requirement was there in the year 2002. He affirmed that a KYC Form or A Customer Application Form (CAF) are almost same. He did not remember if he had seen a KYC or the Customer Application form regarding the numbers mentioned in his letters in Ex.PW36/A and Ex.PW36/M. He denied the suggestion that he is giving evasive reply regarding his

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knowledge of the KYC or CAF. He stated that no such Authority Letter for accessing the DATA in the main server was required. He denied the suggestion that an Authority Letter is required as he was not working in the I.T. Department. He denied the suggestion that he has deposed falsely at the instance of EOW.

The following exhibits have been marked in the examination of PW-36 :

1	LETTER DATED 29.09.2006 FROM HUTCH TO MR AMIT ROY ACP EOW, IN RESPONSE TO NOTICE U/S 91 Cr.PC OF IO.	**Ex PW 36/A**
2	COPY OF CDR (9811675434) FOR THE PERIOD AUGUST 2002 (Pg 187-189) IN RESPONSE TO NOTICE U/S 91 Cr.PC OF IO.	**Ex PW 36/B**
3	COPY OF CDR(9811675434) FOR THE PERIOD SEPTEMBER 2002 (Pg 180-181) IN RESPONSE TO NOTICE U/S 91 Cr.PC OF IO.	**Ex PW 36/C**
4	COPY OF CDR (9811675434) FOR THE PERIOD NOVEMBER 2002 (Pg 177-179) IN RESPONSE TO NOTICE U/S 91 Cr.PC OF IO.	**Ex PW 36/D**
5	COPY OF CDR (9811026904) FOR THE PERIOD MAY 2002 (Pg 191-194) IN RESPONSE TO NOTICE U/S 91 Cr.PC OF IO.	**Ex PW 36/E**
6	COPY OF CDR (9811026904) FOR THE PERIOD NOVEMBER 2002 (Pg 168-172) IN RESPONSE TO NOTICE U/S 91 Cr.PC OF IO.	**Ex PW 36/F**
7	COPY OF CDR (9811313863) FOR THE PERIOD MAY 2002 (Pg 199)	**Ex PW 36/G**
8	COPY OF CDR (9811027522) FOR THE PERIOD MAY 2002 (Pg 195-198) IN RESPONSE TO NOTICE U/S 91 Cr.PC OF	**Ex PW 36/H**

	IO.	
9	COPY OF CDR (9811027522) FOR THE PERIOD JUNE 2002 (Pg 190) IN RESPONSE TO NOTICE U/S 91 Cr.PC OF IO.	**Ex PW 36/I**
10	COPY OF CDR (9811027522) FOR THE PERIOD AUGUST 2002 (Pg 184-186) IN RESPONSE TO NOTICE U/S 91 Cr.PC OF IO.	**Ex PW 36/J**
11	COPY OF CDR (9811027522) FOR THE PERIOD SEPTEMBER 2002 (Pg 182-183) IN RESPONSE TO NOTICE U/S 91 . OF IO.	**Ex PW 36/K**
12	COPY OF CDR (9811027522) FOR THE PERIOD NOVEMBER 2002 (Pg 173-176) IN RESPONSE TO NOTICE U/S 91 CrPC OF IO.	**Ex PW 36/L**
13	LETTER Dt 04.10.2006 FROM HUTCH TO ACP , E O W GIVING DETAILS OF ATTESTED CDR w.r.t MOBILE No 9811027522 FOR THE PERIOD MAY, AUGUST ,SEPTEMBER ,OCTOBER & NOVEMBER 2002. IN RESPONSE TO NOTICE U/S 91 Cr.PC OF IO.	**Ex PW 36/M**
14	COPY OF CDR (9811027522) FOR THE PERIOD MAY, AUGUST, SEPTEMBER, OCTOBER, & NOVEMBER 2002 (Pg 164-166) IN RESPONSE TO NOTICE U/S 91 Cr.PC OF IO.	**Ex PW 36/N**
15	CERTIFICATE U/S 65B OF INDIAN EVIDENCE ACT	**Ex PW 36/O**

48. **PW-37** : **Insp. Rajesh Sah,** No. D-I/212, Anti Corruption Branch, New Delhi was examined. He stated in his examination in chief that in the month of January 2014, he was posted as SI at EOW Mandir Marg, New Delhi. Sometime in the month of January, he was asked by the

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DCP EOW that some more documents from the trial court record of main Uphaar case are required to be filed. A rough list of the documents was also provided to him by the DCP EOW. At that time, the arguments on the charge was going on in that matter. He further stated that since, the original record of main Uphaar case was summoned by the Hon'ble Supreme Court in an appeal filed against the conviction of accused persons in that case, he approached the Central Agency Section in the Hon'ble Supreme Court and met the Section Officer and apprised him about the said aspect of the matter. The said Section Officer had got applied for certified copies of the said documents through Advocate Sh. D.S. Mehra, the then AOR of Central Government in the Hon'ble Supreme Court. He further stated that the Central Agency had also provided him the copy of the application through which the certified copies of the said documents were applied for in the Hon'ble Supreme court. He further stated that on 03.02.2014, he collected the aforesaid documents from the Copying Agency of the Hon'ble Supreme Court and total pages of said documents were 1776 pages. When he received the documents from the Copying Agency of the Hon'ble Supreme Court, he inquired from the In-Charge of the Copying Agency that the documents provided pursuant to the said application were not the certified copies. He informed him that as per the practice in the Hon'ble Supreme Court, only the photocopy of the original record is provided. The said In-Charge of the Copying Agency had also made an endorsement to the said effect on the copy of the application through which the certified copies of the documents were applied for. The copy of the said application having original endorsement of the In-Charge of Copying Agency of Hon'ble Supreme Court is **Ex.PW37/A** bearing the endorsement and signature the said In-charge of Copying Agency of Hon'ble Supreme Court at point A. He made the said endorsement and appended his signature in his presence. He further stated that after collecting the aforesaid documents consisting of 1776 pages, he prepared the supplementary charge-sheet on the directions of Senior Officers and filed the aforesaid documents alongwith the charge-sheet in the court. The copy of the charge-sheet of the main Uphaar case running into 63 pages (from page no. 1 to 63 of this chargesheet) is now marked as **Ex.PW37/B** (Original seen from the original record of the main

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Uphaar case produced by Ms. Veena, In-Charge, Record Room Session, PHC, N. Delhi). The copy of one register i.e. Occurrence Book of Control Room HQ (from page no. 64-426) is already marked as Ex.PW10/F (Original seen from the original record of the main Uphaar case produced by Ms. Veena, In-Charge, Record Room Session, PHC, N. Delhi). The copy of the D.O.B. Register of B.C.P., Fire Station, New Delhi dt. 13.12.1996 to 18.01.1997 containing paged 1-400. Page no. 95 to 104 are missing and on page no. 109-116 ink has been spread (from page no. 427-816) running into 390 pages is already marked as Ex.PW10/FF (Original seen from the original record of the main Uphaar case produced by Ms. Veena, In-Charge, Record Room Session, PHC, N. Delhi). The copy of the framing of charge dt. 27.02.2001 of the Ld. ASJ Smt. Mamta Sehgal (from page no. 817-927) running into 111 pages is now marked as **Ex.PW37/C** (Original seen from the original record of the main Uphaar case produced by Ms. Veena, In-Charge, Record Room Session, PHC, N. Delhi). The copy of the order on sentence of Ld. ASJ Smt. Mamta Sehgal dt. 23.11.2007 passed in the main Uphaar case running into 51 pages (from page no. 928-978) is now marked as **Ex.PW37/D** (Original seen from the original record of the main Uphaar case produced by Ms. Veena, In-Charge, Record Room Session, PHC, N. Delhi). The copy of the seizure memo dt. 18.07.1997 for seizure of documents mentioned therein in which second page of the memo is half torn running in 2 pages (from page no. 979-980) is already marked as Ex.PW14/A (Original seen from the original record of the main Uphaar case produced by Ms. Veena, In-Charge, Record Room Session, PHC, N. Delhi). The copy of the file containing Minutes of M.D.'s Meeting and correspondence (total 40 pages). It's page no. 1,9,12,14,18,&19 are missing alongwith seizure memo running into 13 pages (from page no. 996-1008) is already marked as Ex.PW21/A (colly) (Original seen from the original record of the main Uphaar case produced by Ms. Veena, In-Charge, Record Room Session, PHC, N. Delhi). The copy of the ordersheet dt. 31.01.2003 of Ld. ASJ Smt. Mamta Sehgal running in 2 pages (from page no. 1009-1010) is now marked as **Ex.PW37/E** (Original seen from the original record of the main Uphaar case produced by Ms. Veena, In-Charge, Record Room Session, PHC, N. Delhi). The copy of the order dt. 31.03.2003 of Ld.

ASJ Smt. Mamta Sehgal running into 2 pages (from page no. 1011-1012) is now marked as **Ex.PW37/F**. (Original seen from the original record of the main Uphaar case produced by Ms. Veena, In-Charge, Record Room Session, PHC, N. Delhi). The copy of the order dt. 23.12.2004 of the Ld. ASJ Smt. Mamta Sehgal allowing the earlier marked documents to be exhibited running into 16 pages (from page no. 1020-1035) is now marked as **Ex.PW37/G** (Original seen from the original record of the main Uphaar case produced by Ms. Veena, In-Charge, Record Room Session, PHC, N. Delhi). The copy of the Casual Leave Register maintained in HQ Delhi Fire Service for the period 1995-1996 pertaining to Casual Leave of the officers to the rank of Station Officers upto Dy. Chief Fire Officers along with seizure memo. The page no. 45 to 50 are missing, running into 63 pages (from page no. 1036-1097) is already marked as Ex.PW10/J(colly) (Original seen from the original record of the main Uphaar case produced by Ms. Veena, In-Charge, Record Room Session, PHC, N. Delhi). The copy of the Trial Court Judgment of Ld. ASJ Smt. Mamta Sehgal dt. 20.11.2007 running into 576 pages (from page no. 1201-1776) is now marked as **Ex.PW37/H** (Original seen from the original record of the main Uphaar case produced by Ms. Veena, In-Charge, Record Room Session, PHC, N. Delhi).

Accused **Anoop Singh, Dinesh Chandra Sharma, Sushil Ansal and Gopal Ansal** were afforded opportunity to cross examine this witness but no cross examination was done.

In his cross-examination conducted on behalf of accused P.P. Batra, the witness stated that he had not retained the rough list of the documents provided by the DCP (EOW). He did not remember the name of the DCP (EOW). He had simply applied for certified copies of the documents as pointed by his senior officers. He denied the suggestion that only copies of selected documents were applied for by him at the instance of senior officers. He had no role in deciding which copies of the documents to be applied for.

The following exhibit has been marked in the examination of PW-37 :

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1	COPY OF THE APPLICATION HAVING ORIGINAL ENDORSEMENT OF THE INCHARGE OF COPYING AGENCY OF SUPREME COURT **COPY OF THE 3rd SUPPLIMENTARY CHARGE SHEET**	**Ex PW 37/A**
2	COPY OF THE CHARGE SHEET OF THE MAIN UPHAAR CASE **Pg Nos 1 TO 63 IN THE 3rd SUPPLEMENTARY CHARGE SHEET .**	**Ex PW 37/B**
3	COPY OF THE FRAMING OF CHARGE Dt 27.02.2001 IN THE MAIN UPHAAR CASE **(Pgs 917-927 IN THE 3rd SUPPLIMENTARY CHARGESHEET**	**Ex PW 37/C**
4	COPY OF THE ORDER ON SENTENCE Dt 23.11.2007 IN THE MAIN UPHAAR CASE **(Pgs 928-978 IN THE 3rd SUPPLEMENTARY CHARGE-SHEET**	**Ex PW 37/D**
5	COPY OF ORDER SHEET Dt 31.01.2003 ALLOWING SECONDARY EVIDENCE **(Pgs 1009-1010Ex IN THE 3rd SUPPLEMENTARY CHARGE-SHEET**	**Ex PW 37/E**
6	COPY OF ORDER SHEET Dt 31.03.2003 **(Pgs 1011-1012 IN THE 3rd SUPPLIMENTARY CHARGESHEET**	**Ex PW 37/F**
7	COPY OF ORDER SHEET Dt 23.12.2004 EXHIBITING MARKED DOCUMENTS **(Pgs 1020-1035 IN THE 3rd SUPPLEMENTARY CHARGE-SHEET)**	**Ex PW 37/G**
8	TRIAL COURT JUDGMENT IN THE	**Ex PW 37/H**

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	MAIN UPHAAR CASE Dt 20.11.2007 **(Pgs 1201- 1776 IN THE 3rd SUPPLEMENTARY CHARGE-SHEET)**	

49. **PW-38** : **Sh. Amit Roy, DCP**, Anti Corruption, Delhi was examined. He stated in his examination in chief that on 02.06.2006, he was posted as ACP, EOW, New Delhi and he further stated that on that day, the investigation of the case was entrusted to him. He further stated that on 05.06.2006, he alongwith SI Abhinender Jain went to the court of Ms. Mamta Sehgal , the then Ld. ASJ, Tis Hazari Courts, New Delhi and after taken due permission, inspected the judicial file of the main Uphaar Trial case so as to find out the relevant documents which was found missing, torn, obliterated and defaced. He further stated that he with the help of said SI prepared the list of said documents for applying their certified copies. The copy of the said list is **Mark 38/A**. He further stated that he had also prepared another list of document including dismissal order and preliminary enquiry conducted against the accused Dinesh Chandra Sharma by different Hon'ble Judges. Copy of the said list is **Mark 38/B**. He further stated that on 06.06.2006, he had applied for certified copy of the said documents through requisite forms. Copies of the said requisite form are **Mark 38/C and 38/D**. He further stated that he had attached the original of the said list with the said requisite form for applying the certified copies of the said documents. He further stated that on 08.06.2006, the certified copy of the said documents are provided to them. He placed the relevant certified copies of the documents on record out of the documents obtained by him through the said applications. The documents placed on record by him are already Ex. PW5/A, Ex. PW5/B, Ex. PW5/C, Ex. PW8/A, Ex. PW10/B, Ex. PW3/A, Ex. PW10/C, Ex. PW10/K, Ex. PW10/L, Ex. PW10/M, Ex. PW10/N, Ex. PW10/O, Ex. PW10/P to Ex. PW10/U, Ex. PW10/C, Ex. PW11/A, Ex. PW10/D, Ex. PW1/A, Ex. PW10/F, Ex. PW28/A, Ex. PW10/G, Ex. PW10/H. The description of the said documents are mentioned in his aforesaid true list. He further stated that he had also obtained the certified copy of application filed by Sh. Saxena, Ld. Spl. PP

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in the main Uphaar Trial case wherein he described the relevant documents. He had also obtained the certified copies of affidavit with its Annexures filed by Insp. R.S. Khatri with regard to the aforesaid documents in the main Uphaar Trial case. The affidavit is already Ex.PW10/A and list of documents annexed with said affidavit is already annexure is Ex.PW30/DB. He further stated that on 03.07.2006, he had seized the photocopy of appointment letter of accused Dinesh Chandra Sharma already Ex.PW7/A. Photocopy of his joining letter already Ex.PW7/B, photocopy of charge report already Ex.PW7/C, photocopy of joining report already Ex.PW7/D, photocopy of handing over charge/ relinquished report already Ex.PW7/D and photocopy of his handing over/ relinquished report already Ex.PW7/F. He further stated that he had taken possession of the aforesaid documents from Sh. Sudhir Kumar, LDC Vigilance Branch, Tis Hazari Courts, vide seizure memo already Ex.PW9/A bearing his signature at point B. He further stated that on 07.07.2006, he served a notice under section 91 Cr.P.C to MTNL to produce the details history of MTNL numbers from the office of accused persons. Probably after a month or so, the said details were provided to him vide forwarding letter **Ex.PW38/A** (objected to). The history of the three telephone numbers 23352269, 23352270 and 23352518 is **Ex.PW38/B** (Colly.) (objected to) with another forwarding letter addressed to AVO Central, written by Dharampal Singh, Div. Engineer **Ex.PW38/C** (objected to). He further stated that he had also served a notice under section 91 Cr.P.C to Hutch company to provide the CDR of relevant mobile numbers and pursuant thereof the CDR of relevant mobile number for relevant period were provided to him vide forwarding letter Ex.PW36/M and Ex.PW36/A. The certified copies of CDR are already Ex.PW36/B, already Ex.PW36/C, already Ex.PW36/D, already Ex.PW36/F, already Ex.PW36/G, already Ex.PW36/H, already Ex.PW36/I,already Ex.PW36/J, already Ex.PW36/K and already Ex.PW36/L. He further stated that on 25.11.2006, he alongwith Insp. Harish Chander reached at the office of A Plus Security, Saidulajab, M.B. Road, New Delhi and from there he had taken into possession two registers of employment and remuneration. He further stated that on 22.11.2006, he alongwith Inspector Harish Chand and Inspector Tika Ram and other police officials went to Mansarovar Park,

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Shahdra, Delhi to arrest the accused Dinesh Chandra Sharma. After reaching Mansarovar Park, they found the address of the accused Dinesh Chandra Sharma from a public person, however, he could not remember the name of that public person. He further stated that at the house of the accused Dinesh Chandra Sharma, besides him, his father, his brother in law and other family members were present in the house. Accused Dinesh Chandra Sharma was pointed out by the said public person. They introduced themselves to the accused Dinesh Chandra Sharma and his family members and arrested him from his house. He prepared arrest memo qua the arrest of accused Dinesh Chandra Sharma and also conducted his personal search and prepared personal search memo in this regard. He further stated that both the arrest memo and personal search memo had gone misplaced and the same are not on record. He further stated that on 23.11.2006, he produced the accused Dinesh Chandra Sharma before the court of Ld. ACMM and obtained 5 days police custody remand. He further stated that during the course of police custody remand, on 25.11.2006, he extensively interrogated the accused Dinesh Chandra Sharma and recorded his disclosure statement already Ex.PW18/A bearing his signature at point C. He further stated that inter alia other thing, accused Dinesh Chandra Sharma had disclosed that he had secured job at A Plus Security, Saidulajab, Mehrauli Road, New Delhi. He further stated that on 25.11.2006, pursuant to his disclosure statement, accused Dinesh Chandra Sharma led the police party comprising himself, Insp. Tika Ram and Inspector Harish Chand and other police officials to the office of A Plus Security. When they reached there, accused Anoop Singh was present and they conducted the search of the office and recovered two registers of employment and remuneration pertaining to the different period. The said registers were taken into possession vide seizure memo already Ex.PW18/B bearing his signatures at point C. Accused Anoop Singh had also appended his signature on the said seizure memo at point B. Both registers on record were shown to him and he identified them as the same registers which were seized by him. The registers already marked as Ex.PW18/C and Ex.PW18/D (objected to). After perusal of the register, it was found that white fluid was applied on some entries on different pages and the name

Ram Karan Singh was written over the fluid. Revenue stamps qua receipt of salary were also found missing against some entries and some white fluid was also applied on one revenue stamp and 7000 was written thereon. He further stated that he produces the accused Dinesh Chandra Sharma on 28.11.2006 after expiry of 5 days police custody remand and obtained three more days police custody remand. He further stated that he produces the accused Dinesh Chandra Sharma before the concerned Court on 01.12.2006 after expiry of 3 days police custody remand and got him sent to JC. He further stated that probably in the first week of December, accused Dinesh Chandra Sharma was granted bail by Ld. CMM. The State moved an application for cancellation of bail of accused Dinesh Chandra Sharma and it was canceled vide order dated 23.12.2006. Certified copy of the said order is now **Ex.PW38/D** (objected to). Accused Dinesh Chandra Sharma had challenged that order before Hon'ble High Court of Delhi but the order of Ld. ASJ was confirmed vide order dated 04.01.2007. The certified copy of the said order is now **Ex.PW-38/E** (objected to). He further stated that judicial remand of accused Dinesh Chandra Sharma was also extended on 19.02.2007 vide his application cum order **Ex.PW38/F**. He further stated that during the course of investigation, after the seizure of the aforesaid two registers, he obtained the specimen signatures of Anoop Singh (at that time he was not made an accused) Chairman, Shiv Raj Singh and Anokhe Lal Pal (both the Directors of A Plus Security). He further stated that on 02.01.2007, he had got sent the said two employment and remuneration registers and the specimen signatures of the aforesaid persons to GEQD, Hyderabad for their examination. He further stated that he got collected GEQD report qua the said examination through one of his staff, whose name he could not remember from GEQD, Hyderabad. The GEQD report dated 19.04.2007 is already Ex.PW23/A and its Annexures are already Ex.PW23/C and the forwarding letter in this regard is already Ex.PW23/B. He further stated that since the said report was not conclusive with regard to the authorship of writing, stamp and marked Q1 to Q8 and QA and some more material was sought to be provided to ascertain the same. Accordingly, he got sent more specimens of the aforesaid persons. He further stated that during the pendency of the said supplementary report,

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pursuant to his letter dated 23.05.2007, he received a letter dated 28.06.2007 from GEQD, Hyderabad already Ex.PW23/D whereby further specimen writings by dictating the entire contents of the questioned documents repeatedly on several sheets were sought to be provided. He further stated that it had surfaced during the course of investigation through examination of different witnesses that it was Anoop Singh, Chairman of A Plus Security who had applied the white fluid on the entries and written the name Ram Karan Sing and 7000 over the white fluid. Accordingly, he obtained the specimen writings of Anoop Singh as desired by GEQD, Hyderabad and got them sent to GEQD, Hyderabad. The said specimen writings of Anoop Singh is Ex.PW23/E (colly) and the supplementary report dated 13.08.2007 in this regard is already Ex.PW23/F. The forwarding letter sent to them by GEQD, Hyderabad alongwith the said report is already Ex.PW23/G. He further stated that pursuant to his notice under section 91 Cr.P.C served upon Airtel to provide subscriber ship details of the mobile numbers Mr. Soni and Mr. Katiyal and accused P.P. Batra, the letter already Ex.PW27/B providing the said details was received on 12.07.2006. He took into possession the said letter vide seizure memo already Ex.PW27/A (objected to). He had also obtained the relevant CDRs pertaining to the mobile number 9811027522 of accused Dinesh Chandra Sharma from Hutch Company and the same was provided by Sh. Anu Anand of Hutch Company. He further stated that he served a notice under section 91 Cr.P.C dated 15.09.2007 **Ex.PW38/G** bearing his signature at point A, upon API for providing documents related to employment of P.P. Batra. The reply Mark Y to his said notice alongwith certificate regarding employment of accused P.P. Batra, already Ex.PW24/A and copy of his appointment letter Mark X was received on 17.09.2007. He further stated that on 15.09.2007, he wrote a letter **Ex.PW38/H** bearing his signature at point A to the Director Star Estates Management Ltd., seeking information regarding administrative control of company, list of board of Directors, date of appointment of accused D.V. Malhotra (since died) with his appointment letter and status of accused D.V. Malhotra in the said company with proof of payment of salary for the period from 2004 to 2005. He further stated that pursuant to the said letter, he received reply dated 17.09.2007

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Ex.PW38/I from authorized signatory of Star Estates Management Ltd., with relevant Annexures. The Annexures i.e. copies of appointment letter of accused D.V. Malhotra and a letter with regard to the extension of his employment dated 02.04.2004 are Mark Z and Z-1 respectively. He further stated that during the course of investigation, the documents regarding contracts executed between A-Plus Securities at different locations of the said company were also collected. The photocopies of the same running into 25 pages (bearing internal page no. 53 to 99 of the charge-sheet) is Mark Z-2 (Colly.). He further stated that during the course of investigation, relevant documents from the ROC pertaining to Star Estates Management Ltd., were also collected by his successor IO, Inspector R.S.Chauhan. He further stated that during the course of investigation, he also recorded the statement of the witnesses who had been associated with him in the investigation. He further stated that the investigation conducted by him transpired that there were number of calls exchanged between accused Dinesh Chandra Sharma and accused P.P. Batra through their mobile phones. Calls were also exchanged between accused Dinesh Chandra Sharma through his mobile number and MTNL land line numbers belonging to API. He further stated that it also surfaced in the investigation that subsequent to dismissal of accused Dinesh Chandra Sharma, he was provided a job at A-Plus Securities on the recommendation of accused D.V. Malhotra, General Manager in Star Estates Management Ltd. Accused Dinesh Chandra Sharma was employed by accused Anoop Singh. A-Plus Securities used to provide security personals to SEML at their different locations pursuant to their contracts executed between them, already Marked Z2 (Colly.). He further stated that the API was having about 98% shares in Star Estates Management Ltd. Where accused D.V. Malhotra was working as General Manager and it was he who had recommended accused Dinesh Chandra Sharma to A-Plus Securities for job. Accused Anoop Singh was the Chairman of said A-Plus Securities. He further stated that he prepared the charge-sheet against the accused Dinesh Chandra Sharma and filed the same in the Court. He identified the accused Dinesh Chandra Sharma in the Court.

In his cross-examination conducted on behalf of accused

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P.P. Batra, the witness affirmed that the application dated 13.01.2003 referred to by him in his charge-sheet dated 12.02.2007 at internal page 2 is not on record. He had seized the said application during the investigation. He affirmed that application 13.01.2003 was the basis on which the whole thing started. As far as he remember it should have been there on record. He has been shown page 16 of his charge-sheet dated 12.02.2007 wherein it is mentioned that he had obtained call data record for a period of 2002 to 2005 it must be there on the record. He denied the suggestion that the said call data record is not on record. He has been shown page no. 9 of his charge-sheet dated 12.02.2007 wherein he had reproduced the contents of application dated 20.01.2003 moved by Sh. Y.K.Saxena, Ld. Prosecutor in the main Uphaar case. He had correctly depicted and reproduced the contents of the said application. He affirmed that in application Ex. PW2/A, item 8 and 9 have not been mentioned by him at page 9 and 10 of his charge-sheet dated 12.02.2007. There is no particular reason for him not having included item 8 and 9 of Ex.PW2/A while setting out the same at page no. 9 of the charge-sheet dated 12.02.2007. He had examined the documents mentioned in applications moved by Ld. Prosecutor in the main Uphaar case with respect to their relevancy in that case. With respect to item 8 in Ex.PW2/A he could not say the relevancy in the main Uphaar case but as far as item 9 is concerned in the said application, that was a file relating to DCP, licensing office. He affirmed that in the main Uphaar case, association of victim of Uphaar tragedy (AVUT) through its representatives used to pursue that case. He further stated that during his investigation, he did not come across any documents which showed access to trial court record by representative of AVUT. He affirmed that AVUT had filed an application for cancellation of bail of certain accused persons in the Uphaar case. He affirmed that Sh. R.S. Khatri was one of the investigating officer of the main Uphaar case. He did not investigate or interrogate Sh. R.S. Khatri with regard to omission in his affidavit Ex.PW10/A of item 8 and 9 in Ex.PW2/A. He denied the suggestion that he did not do so as item 8 and 9 favoured the defence of accused in main Uphaar case. He did not come across any evidence showing item 8 and 9 of Ex.PW2/A having been found between 20.01.2003 and 06.02.2003. He denied the suggestion that he has deliberately suppressed the missing of item 8 and 9 having disappeared from the main Uphaar case as the same favoured the defence of the accused in that main Uphaar case. He has been shown a list of documents annexed in his charge-sheet which is placed next to application Ex.PW2/A. He stated that he did not know who had authored this list. He further stated that he did not seize the complete ordersheets of the main Uphaar case. He did not try to discover the source of AVUT having come into possession the documents which were part of the trial court record. He denied the suggestion that he has deliberately ignored this crucial aspect of this case. He denied the suggestion that he has not conducted the investigation in a fair and unbiased manner. He has been shown document marked as D20 (in the main Uphaar case) already exhibited as Ex.PW10/B and he stated that he has no knowledge of the author of this document. He voluntarily stated that it has been prepared by an officer of SIT, Crime Branch, Delhi Police. He did not remember having examined the author of this document during his investigation. He affirmed that Sh. R.S. Jakhar is one of the members of SIT, Crime Branch that had investigated the main Uphaar case. He did not remember if he had examined him in the present case. He has been shown the evidence tendered by Sh. R.S. Jakhar as a witness in the main Uphaar case where he testified as PW78 which is at page 1124 volume 7 of the additional document filed in the present case by way of third supplementary charge-sheet which was not filed by him. He could not admit or deny whether Sh. R.S. Jakhar found the document i.e. seizure memo dated 18.07.1997 to be in perfect condition, when he testified as PW78 before the Ld. ASJ in the main Uphaar case. He was investigating this case till the year 2007-2008 also but he is not sure. He affirmed that SI Abhinendra Jain was attached with him in the investigation of the present case. He affirmed that whatever SI Abhinendra Jain seized during investigation of this case was shared with him. He has been shown an application for certified copies dated 06.06.2006 filed by SI Abhinendra Jain running into 7 pages the same is now exhibited as **Ex.PW38/DA**. He affirmed that the said application, copies of deposition of various witnesses including PW78 R.S. Jakhar have been sought.

In his cross-examination conducted on behalf of accused

P.P. Batra, the witness stated that he has been shown the document (D20 of the main Uphaar case) already exhibited as Ex.PW10/B (Colly.) He denied the suggestion that the documents mentioned in this seizure memo were in perfect condition. He denied the suggestion that he is deposing falsely on this score. He denied the suggestion that he did not make Mr. R. S. Jakhar as witness as same would have adversely impacted the prosecution case. He can not say whether he had summoned Mr. P.P. Batra, accused while he was investigating the present case. He further stated that he has been shown notices dated 23.06.2006, 28.06.2006, 29.11.2006, 22.09.2007, and 02.02.2007 through which he had summoned Mr. P.P.Batra during his investigation. The same are now exhibited as **Ex.PW38/DB, Ex.PW38/DC, Ex.PW38/DD, Ex.PW38/DE, and Ex.PW38/DF** respectively. It is a matter of record that he had filed the first two charge-sheet in this case on 22.02.2007 and 23.05.2007. He affirmed that Mr. P. P. Batra was not made an accused in the said two charge-sheets. He affirmed that in the two charge-sheets filed by him dated 22.02.2007 and 23.05.2007, there was no prosecutable evidence against Mr. P. P. Batra. He further stated that according to his investigation, the conspiracy period in this case was somewhere in 2001 and 2002. He affirmed that he only obtained call data records (CDRs) of the period of 2001 and 2002. He voluntarily stated that he cannot say with certainty though. He did not remember if during his investigation he had investigated whether and when and by whom or if at all certified copies had been applied for by various parties during the time when the main Uphaar case trial was underway. He did not know anything about this aspect. He denied the suggestion that he did not do so because that would have adversely impacted the case that he has pleaded in the two charge-sheets filed by him. He cannot say whether he had obtained the entire ordersheet of the main Uphaar case. He did not remember if he had seized the order framing charges in the main Uphaar case. He has been shown order framing charges dated 27.02.2001 in the main Uphaar case at page 60 already exhibited as Ex.PW37/C and asked that accused Sushil Ansal never disputed the signing of cheque dated 26.06.1995 and as such had no motivation to mutilate / destroy/ cause to disappear to which he testified that he cannot say about that. He affirmed that he has stated in his charge-sheet that a cheque dated 26.06.1995 had gone missing during the main Uphaar case trial. He affirmed that the said cheque had been found / located during the main Uphaar case trial. The said cheque was recovered after the application dated 20.01.2003 was moved by Sh. Y. K.Saxena, Special Public Prosecutor in that case. He affirmed that FIR in the present case had been registered on the basis of a complaint of AVUT through Sh. R. Krishnamurthy. He voluntarily stated that it was registered pursuant to the direction of Hon'ble High Court of Delhi. He denied the suggestion that the direction passed by the Hon'ble High Court was simply to investigate the issue of tampering of documents and not on whose complaint FIR was registered. He affirmed that the said complaint dated 13.05.2006 already exhibited Ex.PW29/A there is no mention of cheque dated 26.06.1995 having been found during the trial. He never sought any explanation from Sh. R. Krishnamurthy about the said omission on his part in Ex.PW29/A. He denied the suggestion that he did not do so as he had made up his mind to act in a biased manner. He could not say whether the discovery of cheque dated 26.06.1995 is recorded in the order sheet dated 10.06.2003 of the main Uphaar case. The same is his reply with respect to enquiry report dated 25.06.2004 prepared by Sh. J. P. Singh, the then Ld. District & Sessions Judge, Delhi. He has been shown application dated 06.06.2006 moved by SI Abhinendra Jain for obtaining certified copies of some documents mentioned therein, is already exhibited Ex. PW38/DA and he stated that he did not remember if he examined all witnesses cited in para 26 of the application. He has been shown item 43 and 44 of Ex.PW38/DA, he did not remember if he had seen or examined. He denied the suggestion that certain documents that favoured the defence of the accused persons in the main Uphaar case had also gone missing. He denied the suggestion that he purposely suppressed that aspect of the case. He denied the suggestion that the document identified as (D34 in the main Uphaar case) and which figured as item 8 in application dated 20.01.2003 already exhibited as Ex.PW2/A in the present case was one such document that favoured the defence of the accused. He further stated that during his investigation, he had not read or examined an application for cancellation of bail of certain accused persons moved by AVUT in the main Uphaar

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case. He affirmed that the said application was in his possession and the same features as item 39 in Ex.PW38/DA. He further stated that in the two charge-sheets filed by him, he had not attributed the ownership/usage of any phone number by Sh. P.P. Batra. He further stated that after the two charge-sheets filed by him, he did not take any steps in the investigation of the present case. He voluntarily stated that he may have done some investigation though, till the time it was handed to his successor Sh. R.S. Chauhan (since deceased). He could not recall the date on which investigation was handed over by him to his successor. He has been shown a letter dated 10.07.2006 issued by Airtel acting through its nodal officer Sh. R. K. Singh already exhibited as Ex.PW27/B. He further stated that after receipt of this letter, he may have raised further queries to Airtel seeking CDRs. He could not show any document substantiating his averment in the last answer i.e. his seeking further queries to the Airtel. He affirmed that whenever a notice is issued to any service provider a copy of the said notice is retained by the EOW. The same practice ideally ought to be followed in all investigations. He did not remember if the letter no. 158/ACP/SIT/EOW, Crime Branch Delhi dated 07.07.2006 referred to in Ex.PW27/B was handed over by him to his successor Sh. R.S. Chauhan. He denied the suggestion that apart from a blank /inadmissible letter Ex.PW27/B there is no evidence linking mobile no. 9818031897 with Sh. P.P. Batra, accused. He denied the suggestion that without any evidence substantiating the above fact Sh. P.P. Batra was made an accused in the present case. He further stated that it may be correct that investigation of the present case remained with him till September/ October, 2007. He further stated that during his investigation, no evidence of any nature emerged showing custody of record of a case lying with copying agency of a concerned Court whenever certified copy of any document is applied for by parties to a case. He has no idea and he did no investigation on the point of parties applying for certified copies of main Uphaar case. He never examined any officials of Copying Agency of Patiala House Court Complex. He affirmed that during his investigation of the present case, he had examined one Sh. Anu Anand, who was working with Hutch Telecom. He did not remember when he had examined him for the first time. He

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affirmed that after examining him during his investigation he has never met Sh. Anu Anand thereafter. He has been shown a letter dated 04.10.2006 written by Sh. Anu Anand acting for Hutch Telecom already exhibited as Ex.PW36/M. He affirmed that in the said letter there is reference letter no. 226/ ACP/ SIT/ EOW, Crime Branch. He did not know whether he had annexed this reference letter with the charge-sheets filed by him in the present case. He further stated that he has not participated in the paravi of this case after investigation was handed over by him to Sh. R. S. Chauhan. He has no knowledge about who is the officer from EOW who has been doing the paravi in the present case for the last two years. He had analyzed the CDRs sent / forwarded by Sh. Anu Anand Ex.PW36/M. He has been shown a letter dated 29.09.2006 written by Sh. Anu Anand acting for Hutch Telecom already exhibited as Ex.PW36/A and he stated that in the said letter there is reference of letter dated 11.08.2006. He did not know whether he had annexed this reference letter with the charge-sheets filed by him in the present case. He had analyzed the CDR sent through that letter Ex. PW36/A. He did not remember any discrepancy in the chronology in the CDRs sent vide Ex.PW36/A. He denied the suggestion that he has failed in his duty as an Investigating officer in properly analyzing the CDRs. He denied the suggestion that CDRs not being in a chronological order implies tampering / doctoring of record. He denied the suggestion that the same renders the CDRs thoroughly untrustworthy. He did not remember whether in the CDRs sent vide Ex.PW36/M and Ex.PW36/A certain period were missing. He denied the suggestion that a reading of Ex.PW36/A shows that he had purposely not asked for CDRs for the month of July, 2002 and October, 2002. He denied the suggestion that to suppress this aspect he had not placed on record his reference letter with the two charge-sheet that he had filed in the present case. He did not remember having ever sought any more CDRs other than those sent vide Ex. PW36/A and Ex.PW36/M. After going through the CDRs, he did not remember if he noticed any contact between accused Dinesh Chandra Sharma and Sh. R.S. Khatri who was the IO of the main Uphaar case. He affirmed that while he was investigating the present case he had filed the status reports before the Hon'ble Delhi High Court in criminal Miscellaneous (Main) 2380 of 2006. He did not

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remember on how many occasions, he had filed such status reports. He has been shown a status report dated 04.08.2006 filed by him in the said case. He has been shown para 5 of the said status report wherein he had apprised the Hon'ble High Court of Delhi of his investigation with Revenue Sub-Registrar in Gurgaon, Noida, Faridabad and Ghaziabad, Registrar of Societies Delhi, MCD, Transport Department, Income Tax Department, etc. no material emerging out of this line of investigation was filed by him in the two charge-sheets filed by him. The witness affirmed that he had summoned CDR of only that period which he considered to be the alleged period of conspiracy. He did not remember if he, during his investigation became aware of the phone number of Sh. R. Krishanamurthy. He further stated that during his investigation, he did not come across any kind of contact between accused Sh. D.C. Sharma and Sh. R. Krishanamurthy. He denied the suggestion that he is deposing falsely on this score. He denied the suggestion that he is deposing falsely against his own record placed by him in the form of charge-sheet filed by him. He has been shown letter dated 04.10.2006 issued by Nodal Officer, Hutch already exhibited as Ex.PW36/M. He affirmed that the same was received by him during his investigation. He affirmed that a perusal of this letter shows that he had not summoned the CDR for the month of June, 2002 and July, 2002 pertaining to mobile number as reflected in letter Ex.PW36/M. He further stated that it is a matter of record that the CDR between 01.08.2002 till 25.08.2002 are also not reflected in the letter Ex. PW36/M and its annexure. He denied the suggestion that he has purposely omitted annexing or calling for CDRs of June and July, 2002 and 01.08.2002 to 25.08.2002 as that would have gone against the prosecution case. It is a matter of record whether or not he ever summoned call data record post November, 2002. After receiving these CDRs which came through Ex. PW36/M he had examined them thoroughly. He did not remember coming across any contact between Sh. R. Krishanamurthy and Sh. D.C.Sharma even after examining the said CDR. He further stated that same is his response with respect to contact between Sh.R.S. Khatri (IO of the main Uphaar case) and accused Sh. D.C.Sharma. He denied the suggestion that he is giving false evidence on this score. He affirmed that when he had arrested Sh. Dinesh Chandra

Sharma he had moved an application seeking his police custody. He affirmed that vide the said application he had sought police custody remand of accused Sh. Dinesh Chandra Sharma on three principal ground i.e. to find out conspiracy, to find out if a bribe had been paid and lastly, if the said accused had acquired movable/ immovable property. He affirmed that he had filed the first charge-sheet on 22.02.2007 against accused Sh. Dinesh Chandra Sharma. He denied the suggestion that there is no evidence either of bribery or acquisition of movable / immovable property by accused Sh. Dinesh Chandra Sharma in the first charge-sheet filed by him. He denied the suggestion that he is deposing falsely and against the record placed by him in the charge-sheet filed by him. He further stated that during his investigation, he had gone through an order dated 25.06.2004 passed by Sh. J.P. Singh, the then Ld. District & Sessions Judge already exhibited as Ex.PW5/A. He did not remember if the said order earmarked any time period when the documents in question may have been tampered with. The same is reply with respect to letter dated 03.04.2003 written by Ms. Mamta Sehgal, the then Ld. Additional Sessions Judge already exhibited as Ex.PW5/C. He did not know the time line of when 98 prosecution witnesses had been examined in the main Uphaar case. He did not read the entire oral testimony tendered in the main Uphaar case. He affirmed that FIR in the present case was registered on the directions of the Hon'ble Delhi High Court. His predecessor Mr. Vijay Malik, the then ACP had done the same. He affirmed that he was conducting investigation of the present case till September/ October, 2007. While the investigation is pending with him, he did not obtain any certificate under section 65B of the Indian Evidence Act from any service provider in respect of the CDRs that had been forwarded to him. When Anu Anand came to testify before this Court he did not make any contact with him. Accused Dinesh Chandra Sharma was dismissed in the year 2004 though he did not remember the month. He had gathered evidence to show that accused Dinesh Chandra Sharma was in contact with other accused after his dismissal in the year 2004. He affirmed that there is evidence in the form of cell phone contact that Dinesh Chandra Sharma was in contact with other accused persons prior to his dismissal in the year 2004. He volunteered that he had also contacted with

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the other accused persons prior to his dismissal in the year 2004. He denied the suggestion that he is deposing falsely on this score. He denied the suggestion that his answer is evasive and contrary to the record placed by him in his charge-sheet. The witness is shown 6th supplementary status report dated 07.12.2007 filed by his successor Sh.R.S. Chauhan and the same is exhibited as **Ex. PW38/DG** to which he stated that it is a matter of record that as per the status report the issue of conspiracy was still being probed. He was shown 5th supplementary status report dated 20.09.2007 filed by him which is **Ex. PW38/DH** and he stated that it is a matter of record that as per this status report the issue of conspiracy was still being probed at the time of filing of this status report. He is shown 1st supplementary status report dated 06.10.2006 filed by him which is **Ex. PW38/DI** and he stated that it is a matter of record that in para 1 of the said status report certain issues were shown as pending investigation. He further stated that he is not aware if any new evidence had surfaced after 7.12.2007 when status report Ex.PW38/DG was filed and before 17.01.2008 when 2nd supplementary charge-sheet was filed. He voluntarily stated that he was not associated with the investigation at that time.

In his cross-examination conducted on behalf of accused P.P. Batra, the witness is shown the remand application dated 23.11.2006 is exhibited as **Ex.PW38/DJ**. Mr Anoop Singh S/o Late Durga Singh was cited as a prosecution witness by him in the charge-sheet dated 12.02.2007. He is not aware and he did not carry out any investigation to find out how many witnesses were examined in the main Uphaar case trial between 19.07.2002 and 20.01.2003. He is not aware whether associations of victims of Uphaar tragedy (AVUT) had pressed framing of charge under section 304 of IPC against some of the accused persons. He stated that he was not aware if AVUT had filed several applications before Hon'ble ASJ, PHC, seeking summoning of Sh. Amodh Kant, IPS as an accused in the main Uphaar case. The witness voluntarily stated that he did not obtain any such specimen. He affirmed that letter dated 28.11.1996 (D84) already exhibited as Ex.PW10/C only the bottom portion was found torn and the top portion containing the letterhead was intact. He affirmed that cheque dated 30.11.1996 for an amount of Rs. 1.50 Lacs and another dated

20.2.1997 for an amount of Rs. 2,96,550/- were relocated in the file later. He denied the suggestion that in view of his above given answers, there was no motive on the part of the accused to tamper with the record of main Uphaar case. He further stated that during his investigation, no evidence surfaced suggesting that the Court staff of the main Uphaar case comprised of an Assistant Ahlmad also. He further stated that during his investigation, no evidence surfaced suggesting the custody of the record of main Uphaar case with the Steno and Reader of the Ld. Presiding Officer of the said case. He had examined during his investigation Reader and Steno of the main Uphaar case whose name was probably Jagan Nath and Mr. Verma. He further stated that during his investigation, he did not come across any Assistant Ahlmad in the court of Ld.ASJ who was trying the main Uphaar case. He denied the suggestion that he has made a false case of sole custody of record of the main Uphaar case in the hands of accused Dinesh Chandra Sharma. He denied the suggestion that he is deposing falsely on this score. He denied the suggestion that the enquiry conducted by Ld. ASJ against accused Dinesh Chandra Sharma had only found him guilty of negligence. He volunteered that the negligence on the part of the accused Dinesh Chandra Sharma was so grave and for that he was dismissed from service. He denied the suggestion that he had converted the case of negligence into criminal culpability by manufacturing false evidence. He denied the suggestion that the letter written by Bharti Airtel to him, Ex.PW27/B was prepared at his instance to create false evidence against the accused persons. He denied the suggestion that the said letter is an inadmissible document in law. He denied the suggestion that Ex.PW36/O i.e. a certificate under section 65B of the Indian Evidence Act tendered by PW36 is also a false and fabricated document to create false evidence against the accused persons. He affirmed that whenever any document or article is seized during investigation, it is mandatory to prepare a seizure memo to that effect. He affirmed that all seizure memos prepared by him during investigation of the present case were placed on record by him in the two charge-sheets filed by him in the present case. He denied the suggestion that document Mark Z–2 (Colly.) is a false and fabricated document prepared to create false evidence against the accused persons.

20.2.1997 for an amount of Rs. 2,96,550/- were relocated in the file later. He denied the suggestion that in view of his above given answers, there was no motive on the part of the accused to tamper with the record of main Uphaar case. He further stated that during his investigation, no evidence surfaced suggesting that the Court staff of the main Uphaar case comprised of an Assistant Ahlmad also. He further stated that during his investigation, no evidence surfaced suggesting the custody of the record of main Uphaar case with the Steno and Reader of the Ld. Presiding Officer of the said case. He had examined during his investigation Reader and Steno of the main Uphaar case whose name was probably Jagan Nath and Mr. Verma. He further stated that during his investigation, he did not come across any Assistant Ahlmad in the court of Ld.ASJ who was trying the main Uphaar case. He denied the suggestion that he has made a false case of sole custody of record of the main Uphaar case in the hands of accused Dinesh Chandra Sharma. He denied the suggestion that he is deposing falsely on this score. He denied the suggestion that the enquiry conducted by Ld. ASJ against accused Dinesh Chandra Sharma had only found him guilty of negligence. He volunteered that the negligence on the part of the accused Dinesh Chandra Sharma was so grave and for that he was dismissed from service. He denied the suggestion that he had converted the case of negligence into criminal culpability by manufacturing false evidence. He denied the suggestion that the letter written by Bharti Airtel to him, Ex.PW27/B was prepared at his instance to create false evidence against the accused persons. He denied the suggestion that the said letter is an inadmissible document in law. He denied the suggestion that Ex.PW36/O i.e. a certificate under section 65B of the Indian Evidence Act tendered by PW36 is also a false and fabricated document to create false evidence against the accused persons. He affirmed that whenever any document or article is seized during investigation, it is mandatory to prepare a seizure memo to that effect. He affirmed that all seizure memos prepared by him during investigation of the present case were placed on record by him in the two charge-sheets filed by him in the present case. He denied the suggestion that document Mark Z–2 (Colly.) is a false and fabricated document prepared to create false evidence against the accused persons.

He further denied the suggestion that for this reason, there is no seizure memo on record showing seizure of the said document. He has been shown document Mark Z-2 (Colly.). He affirmed that there is no seizure memo showing how and from whom this document came into the possession of the police. He has been shown his examination in chief dated 04.02.2020 wherein he has deposed about having obtained specimen signatures of Shiv Raj Singh and Anokhe Lal Pal. He further stated that he could not point out the said specimen signatures in the two charge-sheets filed by him. He further stated that he has been shown GEQD opinion dated 30.04.2007 already Ex.PW23/B. It is a matter of record that even in this opinion, there is no opinion of specimen signatures of Shiv Raj Singh and Anokhe Lal Pal. The above said opinion dated 30.04.2007 already Ex.PW23/B mentions his letter no. 1/ACB/SIT/EOW dated 02/01/2007. He further stated that the said letter is not available in the two charge-sheets filed by him. He further stated that when he passed on the investigation record of the present case in September 2007 to his successor, he did not prepare any handing over memo. He further stated that once investigation had been transferred in September, 2007, he did not participate in the investigation of the present case. He denied the suggestion that false evidence in the form of CDRs has been created in the present case to implicate the accused persons. He further denied the suggestion that this was done since he could not find any kind of evidence of any contact between the accused persons during his investigation. He affirmed that during the time the investigation of the present case was with him, he did not call for any data from any service provider except Hutch Telecom. He denied the suggestion that he did not do so because there was no evidence of any kind against Sh. P. P. Batra. He further stated that he has been shown a status report dated 04.08.2006, now marked as **Ex.PW38/DK.** He did not remember if during his investigation, he had examined Sh. Virender Kumar, Assistant Ahlmad in the court of Ms. Mamta Sehgal, Ld. ASJ under section 161 Cr.P.C. He volunteered that it is a matter of record. He has been shown first charge-sheet dated 12.02.2007. He affirmed that the said Virender Kumar has been mentioned as a prosecution witness at serial no. 28 in the list of witnesses. He denied the suggestion that in view of the above answer, his evidence dated 01.03.2021

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stands falsified. He affirmed that during the relevant time, a person named Sh. R.S.Verma was serving as Reader in the court of Ms. Mamta Sehgal, Ld. ASJ who was conducting trial as Presiding Officer in the main Uphaar case. He further stated that he had examined this R.S. Verma under section 161 Cr.P.C during the time the investigation was with him. He further stated that he did not carry out any investigation about whether accused Dinesh Chandra Sharma had availed of any leave from work during the relevant time. He denied the suggestion that he did not do so as that would have gone against the line of investigation that he had already decided to take in the present case. He further stated that he did not have any idea whether the main Uphaar case trial was going on a day to day basis or not. He further stated that during his investigation, he examined Sh. Sunil Kumar Nautiyal under section 161 Cr.P.C. during his investigation, he did not come across any evidence showing that Sunil Kumar Nautiyal had illegal possession of some documents of the main Uphaar case even after having handed over the record of the case to accused Dinesh Chandra Sharma. He further stated that he did not know who has acted as pairvi Officer of the present case. He further stated that he has been shown status report dated 06.10.2006 already Ex.PW38/DI wherein at para 6, he had informed the Hon'ble Delhi High Court about phone numbers of accused Dinesh Chandra Sharma, their usage and de-activation. He further stated that he did not find any evidence in continuation of para 6 of Ex.PW38/DI. He did not remember if during investigation, any reply/ written representation had been filed by any of the accused persons. He denied the suggestion that replies/ written statements were filed and he is deliberately suppressing deposing about the same since he has not filed them with the charge-sheets filed by him. He did not remember having obtained the complete oral testimony of PW78 R.S. Jakhar and PW81 DSP Prithvi Singh (the number indicates the serial number on which these two persons were examined in the main Uphaar case). He denied the suggestion that he has only placed part testimony of the said witnesses in his charge-sheet. He further stated that he had not taken specimen signatures of accused Dinesh Chandra Sharma while he was in police custody. He denied the suggestion that no CDRs or any phone number attributed to accused P.P. Batra was ever taken from any telecom service provider. He denied the suggestion that the answers given by him in his cross-examination dated 31.03.2021 against Sh. P.P. Batra are without any evidential basis. He denied the suggestion that no call details of land line nos. 6887052, 4677285, 6888953, 6451474, 7193021, 6858508, 6888041 and 4677755 were ever sought by him from any service provider. He denied the suggestion that he did not do so purposely. He denied the suggestion that he has not fairly investigated the case and created false evidence against the accused persons. He denied the suggestion that he has deposed falsely.

In his cross-examination conducted on behalf of accused Gopal Ansal, the witness stated that he had not done investigation with regard to the police officials who had got the copies of the charge-sheet in the main Uphaar case prepared nor he knew where the same was done or under whose supervision. He did not carried out the investigation with regard to the procedure prepared in the matter pertaining to the CBI and that how many copies of the charge-sheet are prepared in such matter. He further stated that all the documents in the main Uphaar case filed with the charge-sheet were intact when they were filed with the charge-sheet. He had not seen the said documents when they were filed with the charge-sheet. He denied the suggestion that he has deliberately made the false statement that documents were intact. He did not record the statement of the Ld. Presiding Officer who has framed the charge against the accused persons in the main Uphaar case who knew the condition of the documents. He further stated that he did not conduct investigation on the aspect of inspection of judicial file in main Uphaar case done by whom and when. He did not know how many times the prosecution had inspected the file in main Uphaar case during its trial. He had not inspected the said file to know the facts that how many times Ld. Spl. PP in the main Uphaar case has inspected the judicial case file of that main Uphaar case. He further stated that as far as his knowledge, inspection of the judicial file is conducted with ball pen or pencil. He had not examined Sh. Y. K. Saxena, Ld. Spl. PP in the main Uphaar case as to when he lastly inspected the judicial file of the main Uphaar case and that how long he carried out the inspection. He knew the fact that the Ahlmad of the concerned Court maintains a register wherein he mentioned the name, time and duration with regard to the inspection conducted by lawyer or respective parties. He did not seize the said register in this case nor he investigated the same. He did not ask nor he found out from Sh. Y. K. Saxena, Ld. Spl. PP, if he had prepared a rough note of the any document inspected by him, if any. He also did not ask from Sh. Y. K. Saxena, Ld. Spl. PP that if he had got the inspection of the said file conducted through his associate or through some other person. He could not say whether the documents in main Uphaar case were kept in almirah in the Ahlmad room or in steel box. He is aware that if the documents are kept in a steel box, the entire box is produced before the Court. He has filed main charge-sheet and first supplementary charge-sheet against the person against whom he found evidence and he charge-sheeted him. He further stated that accused Dinesh Chandra Sharma was appointed by an individual and not by the resolution passed by the Board of Resolution. He again further stated that he was appointed by the company. There were no minutes of meeting of the company with regard to the appointment of accused Dinesh Chandra Sharma in that company nor there was any minutes of meeting regarding payment of his salary. He could not say the exact date when the purported white fluid was applied on the said register. He volunteered that it was done some time in between 2004-2005. He has got the said register examined by GEQD, Hyderabad). He has not sought any opinion of the GEQD, Hyderabad regarding the life of white fluid and the ink. He denied the suggestion that he had conducted the investigation in a biased manner. He further stated that he had not collected any documents showing transfer of money, if any form Star Estates Management Ltd. to the account of A-Plus Security. He volunteered that they had contract for providing security services by A-Plus Security to Star Estates Management Ltd which he has filed on record. He has not seen any minutes of meeting of Star Estates Management Ltd. showing transfer of money in the account of A-Plus Security at any point of time. He denied the suggestion that Star Estates Management Ltd. had no interference in the internal and day to day affairs of A-Plus Security. He denied the suggestion that he had filed the present charge-sheet and supplementary charge-sheet on assumption and presumption knowing fully that no offence has been committed. He denied the suggestion that he is deposing falsely.

In his cross-examination conducted on behalf of accused Dinesh Chandra Sharma, the witness stated that he did not know as to how many accused persons in the main Uphaar case had raised objection for leading secondary evidence. He had filed the documents regarding handing over the judicial files with their documents from different Ahlmads whose name. He did not remember except the name of Sh. Sunil Kumar Nautiyal from whom the accused Dinesh Chandra Sharma had taken over the charge of judicial file and documents of the present case. He further stated that he had examined the said Ahlmad but had not obtained the handing over and taking over the charge memo from all of them. He denied the suggestion that he did not obtain the said memo because the said Ahlmads were not having the said memo. He further stated that he had not visited the Ahlmad room of the concerned Court. He further stated that he had not inquired as to how many Ahlmads of different courts were sitting in the room belonging to the Ahlmad of the present case nor he inquired how many persons were sitting in that room. He further stated that he is not aware if the Ahlmad and two Assistant Ahlmad of the court of Sh. S. N. Dhingra, the then Ld. ASJ were also sitting in that room. He did not know if accused Dinesh Chandra Sharma was assisted by two Assistant Ahlmad. He further stated that accused Dinesh Chandra Sharma had access to the said file and only he used to key the trunk/ almirah of the said judicial file and documents. He further stated that he had not inquired if the Ahlmad used to carry the said key of the trunk/ almirah with him or not or used to keep in the Court itself after his duty hours. The Reader used to keep the files after taking over the same by the Ahlmad on the date of hearing. He further stated that he had not inquired about the leaves availed by accused Dinesh Chandra Sharma during his tenure with the Court concerned. He further stated that he could not say about 50 leaves being availed by accused Dinesh Chandra Sharma at the relevant time. He further stated that he is not aware if the keys of the almirah/ trunk used to with Assistant Ahlmad namely Virender Yadav and Ms. Galoria Kashchap in his absence. He denied the suggestion that CBI Naib Courts had access to the judicial files of main Uphaar case. He further stated that once he (Dinesh Chandra

Sharma) acknowledged the receiving of the case file and the documents, it will clearly establish that he had taken sufficient time to count and verify them and found them to be in intact condition. He further stated that at the relevant time, only Dinesh Chandra Sharma was the accused and no other accused person was arraigned at that time as the accused so the question of confrontation did not arise. He further stated that during course of investigation, he has filed an affidavit, the accused Dinesh Chandra Sharma had disclosed that one of the relative of the Court, probably his name was Jagan was got employed in a school owned by accused persons in the Uphaar Tragedy case. He volunteered that no evidence was found in this regard. He did not know if the said Jagan was Steno in the court of Ms. Mamta Sehgal, the then Ld. ASJ. He further stated that he had not obtained the CDR of mobile numbers of all the court staff including Reader, Steno, two assistant Ahlmads, Naib Court and Orderly. He volunteered that he had obtained the CDR of mobile number bearing no. 9811027522 of accused Dinesh Chandra Sharma which is on record. He did not know the name of said employee of the school and the name of the school. He further stated that he chose to obtain CDR of accused Dinesh Chandra Sharma only as the custody of judicial file was with him. He denied the suggestion that he had deliberately not obtained the CDR of the said staff including Jagan whose relative was working in the school of the accused persons in Uphaar tragedy case despite knowing this fact to give benefit to other accused persons. He volunteered that the analysis of CDR of accused Dinesh Chandra Sharma had already established that he was in touch with the employee of Ansal Brothers including P.P.Batra. He denied the suggestion that he did not investigate the case properly. He further stated that he had analyzed the CDR of accused P.P.Batra. He did not remember whether apart from accused Dinesh Chandra Sharma, other court staff were also in touch with P.P.Batra through mobile phone. He could not tell with regard to other court staff then accused Dinesh Chandra Sharma regarding their conversation on phone with P.P.Batra. He did not remember if he had obtained the mobile numbers of other court staffs nor he can tell the same after going through the court file and police file. He further stated that he had not investigated with watch man/ chowkidar who locks the court

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rooms. Accused Dinesh Chandra Sharma was not taken anywhere except A-Plus Security office where he lead the police party during the PC remand and recovery was affected. He denied the suggestion that no recovery was affected at the instance of accused Dinesh Chandra Sharma. He denied the suggestion that accused Dinesh Chandra Sharma was not taken to office of A-Plus Security during his PC. He further stated that to fairly investigate the obliteration, destructions of evidence including its different angles the scope of investigation had no boundary. He further stated that he investigated the case without being prejudiced by the notion that being custodian of the file, accused Dinesh Chandra Sharma was guilty. He did not know whether trunk/ box was without any handle or lock. He did not remember what inquiry he had made to ascertain the fact of employment of relative of Jagan. He further stated that he has not done inquiry from A Plus Security if they were giving facilities of PF/ESI and other services to their employees. He denied the suggestion that accused Dinesh Chandra Sharma did not give any disclosure statement. He denied the suggestion that destruction of evidence was not useful to the accused Dinesh Chandra Sharma. He further stated that the documents were not related to accused Dinesh Chandra Sharma but same were in his custody and control. He further stated that the documents in question were related to Delhi Fire Services,minutes of meetings, different cheques issued by accused Sushil Ansal and Gopal Ansal and so on and as such they were vital for main Uphaar case. He further stated that during investigation, he could not find appointment letter, ID, salary slip of accused issued by A-Plus Security. He denied the suggestion that he could not find those documents as accused never worked with A-Plus Security. He further stated that during investigation, no money which could raise suspicion was recovered from his home or from his accounts. He further stated that the documents in question were beneficial to the accused Gopal Ansal and Sushil Ansal facing trial in the main Uphaar case and through those documents they attempted to save themselves from that case. He further stated that this fact he came to know during investigation till handing over the case file to subsequent IO but he could not tell the exact date. He further stated that he did not interrogate accused Dinesh Chandra Sharma in front of accused

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Sushil Ansal and Gopal Ansal during the time he was IO. He further stated that he interrogated accused Sushil Ansal and Gopal Ansal. He denied the suggestion that he has not carried out investigation in a fair and proper manner. He denied the suggestion that he started investigation with a pre - conceived notion that accused is guilty. He denied the suggestion that as he was prejudiced against accused he applied for cancellation of bail. He denied the suggestion that he carried out investigation in such a way to shield the real accused and to assuage the feelings of the complainant. He denied the suggestion that he is deposing falsely.

Accused **Sushil Ansal** was afforded opportunity to cross examine this witness but no cross examination was done.

In his cross-examination conducted on behalf of accused Anoop Singh, the witness denied the suggestion that he has never visited the office of the A Plus Securities with accused D.C. Sharma. He further denied the suggestion that he did not recover the employment and remuneration register rather the same was handed over to him by Anoop Singh at Police Station. He further denied the suggestion that the register given did not have any white fluid over entries or revenue stamps as stated by him and the same were applied by him to create false and fabricated evidence for ulterior motives. He further denied the suggestion that the signatures of Anoop Singh were taken on many blank papers. He further denied the suggestion that he made accused Anoop Singh to write again over the white fluid applied by him in the employment and remuneration registers to create false and fabricated evidence for ulterior motive. He further denied the suggestion that the specimen handwriting and signatures of the accused Anoop Singh were obtained forcibly and under coercion. He further denied the suggestion that accused D.C.Sharma was not employed by A Plus Securities at any point of time. He further denied the suggestion that accused Anoop Singh is innocent and has been falsely implicated in the present matter.

The following exhibit has been marked in the examination of PW-38 :

1	LIST OF DOCUMENTS FOR APPLYING THE CERTIFIED COPIES	**MARK 38/A**

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2	AN APPLICATION Dt 06.06.2006 FOR GETTING CERTIFIED COPIES OF PRELIMINARY ENQUIRY , DEPARTMENTAL ENQUIRY, DISMISSAL ORDER, APPOINTMENT & TRANSFER ORDER OF DC SHARMA	**MARK 38/B**
3	FORM C.A.I FOR CERTIFIED COPIES Dt 06.06.2006 APPLIED BY ABHINEDRA JAIN	**MARK 38/C**
4	FORM C.A.I FOR CERTIFIED COPIES Dt 06.06.2006 APPLIED BY AMIT ROY	**MARK 38/D**
5	FORWARDING LETTER Dt 18.07.2006 FROM MTNL TO ACP EOW GIVING DETAILS OF THE TELEPHONE NUMBERS., IN RESPONSE TO NOTICE U/S 91 CrPC OF IO.	**Ex PW 38/A**
6	HISTORY OF 3 TELEPHONE NUMBERS 23352269,23352270 & 23352518, IN RESPONSE TO NOTICE U/S 91 CrPC OF IO.	**Ex PW 38/B**
7	FORWARDING LETTER FROM MTNL ADDRESSED TO AVO CENTRAL, IN RESPONSE TO NOTICE U/S 91 CrPC OF IO.	**Ex PW 38/C**
8	BAIL CANCELLATION Dt 23.12.2006 OF DC SHARMA	**Ex PW 38/D**
9	HIGH COURT ORDER 04.01.2007 UPHOLDING THE CANCELLATION OF BAIL OF DC SHARMA	**Ex PW 38/E**
10	ORDER FOR EXTENSION OF JUDICIAL REMAND Dt 19.02.2007	**Ex PW 38/F**
11	NOTICE u/s 91 CRPC Dt 15.09.2007 TO	**Ex PW 38/G**

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	PROVIDE DOCUMENTS RELATING TO EMPLOYMENT OF PP BATRA	
12	LETTER 15.09.2007 FROM ACP, EOW U/S 91 TO SEML SEEKING INFORMATION w.r.t ADMINISTRATIVE CONTROL OF COMPANY, LIST OF BOARD OF DIRECTORS , DATE OF APPOINTMENT OF DV MALHOTRA & HIS STATUS IN THE COMPANY WITH PROOF OF PAYMENT OF SALARY.	**Ex PW 38/H**
13	LETTER Dt17.09.2007 FROM SEML TO ACP , EOW, IN RESPONSE TO NOTICE U/S 91 Cr.PC OF IO.	**Ex PW 38/I**
14	NOTICE TO PP BATRA DATED 23.06 2006	**Ex PW 38/DB**
15	NOTICE TO PP BATRA DATED 28.06 2006	**Ex PW38/DC**
16	NOTICE TO PP BATRA DATED 29.11. 2006	**Ex PW38/DD**
17	NOTICE TO PP BATRA DATED 22.09. 2007	**Ex PW 38/DE**
18	NOTICE TO PP BATRA DATED 02.02. 2007	**Ex PW 38/DF**
19	6^{TH} SUPPLEMENTARY STATUS REPORT FILED IN HIGH COURT ON 07.12.2007	**Ex PW38/DG**
20	5^{TH} SUPPLEMENTARY STATUS REPORT FILED IN HIGH COURT ON 20.09.2007	**Ex PW38/DH**
21	1^{ST} SUPPLEMENTARY STATUS REPORT FILED IN HIGH COURT ON 06.10.2006	**ExPW 38/DI**
22	REMAND APPLICATION OF D C SHARMA DATED 23.11.2006	**Ex PW 38/DJ**
23	COPY OF APPOINTMENT OF DV	**MARK 'Z'**

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	MALHOTRA Dt 20.02.1995	
24	LETTER Dt 02.04.2004 w.r.t EXTENSION OF DV MALHOTRA'S EMPLOYMENT	**MARK 'Z/1'**
25	CONTRACTS EXECUTED BETWEEN A PLUS SECURITY & SEML **Pg Nos. 53-99 OF THE CHARGE SHEET**	**MARK 'Z/2'** **(COLLY)**

50. **PW-39 Sh. Anokhe Lal Pal** S/o Sh. Mohan Lal Pal was examined. In his examination in chief, he stated that in the year 2004, he was Director in A-Plus Security and Training Institute Pvt. Ltd and its office was probably being run from the premises bearing no. L-85, Saidullajab, Delhi. He could not remember the correct address. He further stated that at that time, Anoop Singh (now accused) was Chairman of the said company and his son Shiv Raj Singh was also a Director of the said company. He did not know if any person namely Dinesh Chandra Sharma was working at that time. Since he was assigned the work of out station operation i.e. the affairs of providing the security personnels to different sugar mills in the State of UP and he used to remain out of Delhi. He could not tell the names of the companies in Delhi where company A-Plus Securities was providing security personnel. He had worked in the said company for about 8 years. After looking at the document i.e. contract for providing security services dated 30.06.2004, the witness stated that he did not have any idea about the signature appended on the said document. After obtaining permission from the Court, Ld. Addl.PP cross examined him. In his cross examination by Ld. Addl. PP, he affirmed that in the year 2004, the office of A-Plus Securities was situated at premises no. A-96, M.B.Road, Saidullajab, New Delhi. He further stated that he very rarely used to come to the office of A-Plus Securities as he used to be stationed at Meerut. He further stated that he used to visit the office of A-Plus Securities once or twice in a month. He further stated that he did not have any idea about the staff working in the office of A-Plus Securities at that time. He further stated that he did not have any idea if their company i.e. A-Plus

Securities used to provide security services to a company i.e. Star Estates Management Ltd. in Delhi.

Accused **P.P. Batra, Anoop Singh, Dinesh Chandra Sharma, Gopal Ansal and Sushil Ansal** were afforded opportunity to cross examine this witness but no cross examination was done.

51. **PW-39 Sh. Anokhe Lal Pal** S/o Sh. Mohan Lal Pal was recalled for **re-examination on behalf of prosecution**. In his examination in chief, he stated that he had been Director at A-Plus Securities for about 8 or 10 years. He could not remember the date of his joining as a Director in the said company nor he remembered when he resigned from the said company. He voluntarily stated that it has been almost 8 to 10 years when he resigned from the said company. He further stated that his resignation letter Ex.PW 31/L is the copy of the resignation letter which he had tendered for his resignation from the said company. The said resignation letter is submitted with the ROC alongwith form 32 to update their record. The annual return is Ex.PW31/M, Balance Sheet Ex.PW31/N, Annual Return Ex.PW31/O and Balance Sheet Ex.PW31/P bear his signatures at point A. The document already marked Z-2 (Colly.) is shown to the witness to seek his answer whether these documents bear his signature at point A and the witness stated that *"Agar original mil jaaye to mai bata sakta hu ki mere sign hain ya nahin"*. He stated that in the documents Ex.PW31/L, Ex.PW31/M, Ex.PW31/N, Ex.PW31/O, Ex.PW31/P, his signatures are clear and for that reason, he has identified it. Again, Ld. Addl. PP sought permission to cross examine witness on the ground that he is evasive and giving contradictory reply and showing hostile animus and same was allowed. In cross-examination by Ld. Addl. PP, he admitted that the way he appended his signatures on Ex.PW31/L, Ex.PW31/M, Ex.PW31/N, Ex.PW31/O, Ex.PW31/P is the same on all his official documents be it bank or other official dealings. He affirmed that his signatures on the aforesaid documents is same which are in his passport and driving license. While he was asked that one can easily make out his signatures from the photocopy of any documents signed by him he replied that *"uske baare me mujhe koi idea nahin hain... kabhi kabhi aisa ho jaata he"*. He was asked that if clear copies of the contract for security services are shown to him,

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can he identify his signatures to which he replied " *agar original mil jaaye to pehchaan sakta huin*". He testified that the signatures at point A on Ex. PW31/P (Colly. Internal page 39, 43) are clear signatures of mine. He affirmed that in day to day affairs we file photocopies of documents and the same are considered genuine for certain purposes. He affirmed that while being a Director he had signed several documents as an authorized signatory of his company. He further stated that he did not have any idea if their company A-Plus Security was providing security and allied services at different locations of Star Estates Management Ltd. Witness was asked about his signatures on resignation letter Ex.PW31/L and the deposition dated 24.03.2021 having identical signature, however, signature on deposition dated 11.02.2020 is different to which he replied "*aisa kuch man me nahin thaa... naam se thoda ho jaayen*". He stated that he did not have any idea as to number of companies where their company, A-Plus Security used to provide security and allied services during his tenure as a Director of the company. He denied the suggestion that he has tried to mislead the Court by feigning ignorance and refused to identify his signature on the various contracts between SEML and A-Plus Security already Marked Z-2 (Colly.) taking advantage of the fact that his name was not there. He denied the suggestion that instead of appending his actual signature on his deposition recorded on 11.02.2020 he deliberately wrote his full name just to avoid getting caught telling lie before this Hon'ble Court. He denied the suggestion that he has been won over by the accused person being a former Director of A-Plus Security belonging to accused Anoop Singh and deposing falsely to cover up their misdeed and benefit them in the present case.

In his cross-examination conducted on behalf of accused Anoop Singh, the witness stated that since he has attended the Court for the first time on 11.02.2020. He had written his full name on his deposition recorded on that day.

Accused **P.P. Batra, Sushil Ansal and Gopal Ansal** were afforded opportunity to cross examine this witness but no cross examination was done.

In his cross-examination conducted on behalf of accused

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Dinesh Chandra Sharma, the witness stated that there were two Directors, himself and Shiv Raj Singh and one Chairman, accused Anoop Singh in A Plus Security while he was serving as a Director in that company. He further stated that the recruitment in the said company was used to be made through HR department. He again stated that he did not have any idea. He further stated that he did not know what documents were used to be obtained from the candidate for recruitment. He again stated that ID of the candidate, his photographs and his educational qualifications were used to be obtained for the same purpose. He further stated that police verification of the candidate was also to be conducted. He further stated that he has never heard the name Dinesh Chandra Sharma or that if he was working in the said company. He further stated that he has joined investigation in this case and his signatures was also obtained by the IO. He further stated that IO did not ask him to provide any document regarding any employee by name Dinesh Chandra Sharma. He affirmed that no employee by the name of Dinesh Chandra Sharma was working in the said company.

52. **PW-40 Sh. Shiv Raj Singh** was examined. In his examination in chief, he stated that in the year 2004, he was one of the Director in A-Plus Security and Training Institute being run from premises no. A-96, MB Road, Saidullazab, Delhi. He further stated that Sh. Anokhe Lal Pal was also a Director of the said company. His father, accused Anoop Singh was Chairman of the said company. He did not know if any person namely Dinesh Chandra Sharma was working in their company. He was not sure if the company i.e. Star Estates Management Ltd. in Delhi was their client and they used to provide security personnels at different locations. He did not know any person by name D.V. Malhotra. After looking at the document i.e. contract for providing security services dated 30.06.2004, the witness stated that he did not have any idea about the signature appended on the said document. Ld. Addl.PP after seeking permission of the Court cross examined him. In his cross examination by Ld. Addl. PP, he stated that he cannot say if they had executed the service contract with State Estates Management Ltd. to provide security personnels at their different locations. He denied the suggestion that he is deliberately concealing this fact as his father is one of the accused in this case. He

affirmed that police had examined him in this case and recorded his statement. He denied the statement dated 30.11.2006 Mark **PW-40/A**. He denied the suggestion that in October, 2004, Brdg. D.V. Malhotra, Incharge of Security, State Estate Management Ltd had referred accused Dinesh Chandra Sharma to him for providing him job in their company and that he had employed him in their office to look after the banking and transport works (field works) of the company for monthly salary of Rs. 15,000/-. He denied the suggestion that he had stated the said fact in his statement Mark PW40/A recorded by IO. He denied the suggestion that he is deliberately identifying the signature of his father or the authorized signatories of their company appended on the documents on record. He denied the suggestion that he is also not deliberately admitting the execution of the service contract for providing security to Star Estates Management Ltd. at their different locations. He denied the suggestion that they used to maintain wages and remuneration qua their employees working out their company i.e. A-Plus Security Pvt. Ltd. and that he had mentioned the name of accused Dinesh Chandra Sharma in the said register. He denied the suggestion that he was called in the office of CBI at Chanakyapuri and was examined with regard to the employment of accused Dinesh Chandra Sharma in their company. He denied the suggestion that he had stated the said fact in his statement Mark PW40/A. He denied the suggestion that they came to know the fact that the accused Dinesh Chandra Sharma was a suspended employee of the court and they removed him from job. He denied the suggestion that he had stated the said fact in his said statement Mark PW40/A wherein the said facts are mentioned. He denied the suggestion that after having known the said fact, his father/ accused Anoop Singh had applied white fluid over the name of accused Dinesh Chandra Sharma mentioned in the wages and remuneration register and also wrote the name of "Ram Karan Singh" over the white fluid. He denied the suggestion that accused D.V. Malhotra (since deceased) in charge of security namely Star Estates Management Pvt. Ltd used to deal with him being Director of the company with regard to providing security personnel to the said company. He denied the suggestion that he is deliberately concealing the true facts of the case as his father is one of the accused in

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the present case. He denied the suggestion that he is deposing falsely.

Accused **P.P. Batra, Anoop Singh, Dinesh Chandra Sharma, Gopal Ansal & Sushil Ansal** were afforded opportunity to cross examine this witness but no cross examination was done.

The following exhibit has been marked in the examination of PW-40 :

1	STATEMENT OF SHIV RAJ SINGH Dt 30.11.2006 (u/s 161)	**MARK PW 40/A**

53. **PW-41 SI Alka Sharma**, No. D-2020 was examined. She stated in her examination in chief that on 17.05.2006, she was posted as ASI and was serving as Duty Officer. Her duty hours were from 9 to 5 p.m. She further stated that on that day, at 04.10pm, SI Ishwar Sngh had produced rukka of this case already Ex.PW29/A sent by Sh. Vijay Malik, ACP (CBT Section) EOW, Crime Branch for registration of FIR. She recorded the present FIR in her own handwriting, carbon copy of the same is marked as **Ex.PW41/A** (OSR). The FIR was recorded vide DD No. 13A. She also made endorsement to the said effect at point C to C bearing her signature at point D. She handed over the carbon copy of the FIR and the said rukka already marked as Ex.PW29/A to SI Ishwar Singh for further handing them over to Sh. Vijay Malik, ACP (CBT Section) EOW, Crime Branch for investigation.

Accused **P.P. Batra, Anoop Singh, Dinesh Chandra Sharma, Gopal Ansal & Sushil Ansal** were afforded opportunity to cross examine this witness but no cross examination was done.

The following exhibit has been marked in the examination of PW-41 :

1	CARBON COPY OF THE F.I.R	**Ex PW 41/A**

54. **PW-42 Sh. Amitav Ganguly** S/o Late Sh. S. Ganguly was examined. He stated in his examination in chief that some time in April, 2003, he joined M/s Ansal Properties and Industries Ltd., as Additional Vice President. He left the said company on 31.08.2015. He was working as Group Companies Secretary. He further stated that the name of said

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company was changed to M/s Ansal Properties & Infrastructure Ltd. He further stated that while he was working as VP and Company Secretary of M/s Ansal Properties and Industries Ltd. some time in the month of March, 2005, he had applied for transfer of telephone numbers belonging to M/s Ansal Properties and Industries Ltd. in the name of new company as the name of the company was changed from M/s Ansal Properties and Industries Ltd to M/s Ansal Properties & Infrastructure Ltd. The applications filed by him in this regard already Ex.PW33/A, Ex.PW33/B bearing the seal of the company and his signature at point A on both the applications. He had also annexed the fresh certificate of incorporation, already Ex.PW33/C with regard to the change of name of the company, certified by him point A. He further stated that he had also filed two affidavits mentioning the telephone numbers belonging to M/s Ansal Properties and Industries Ltd same are already Ex.PW33/D and Ex.PW33/E bearing the seal of the company and his signature at point A. He had also annexed the copy of the paid bill of telephone numbers i.e. 23352270 and 23352269 already marked as Ex.PW33/G and Ex.PW33/F. He further stated that in the month of April, 2004, he had also given a letter with regard to the extension of employment of accused D.V. Malhotra (since died) with Star Estates Management Ltd from 01.04.2004 to 31.03.2005. Same is already marked as Mark Z1 bearing his signature at point A. He had issued a said letter as an authorized signatory of the said company. He further stated that accused D.V. Malhotra was employed as Assistant General Manager with Star Estates Management Ltd on 20.02.1995. His salary was revised with effect from 01.04.2004. He further stated that he being an authorized signatory of Star Estates Management Ltd at that time had intimated the accused D.V. Malhotra regarding his said increment. The copy of the letter is not traceable on record and is now mark as **Ex.PW42/A** bearing his signature at point A (Ld. counsel for accused persons do not have any objection in this regard)

In his cross-examination conducted on behalf of accused Prem Prakash Batra, he affirmed that his applications Ex. PW33/A and Ex. PW33/B do not bear the date in the column meant for it. He further stated that the company in question was situated at Ansal Bhawan, K.G.

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Marg, New Delhi. He affirmed that the address of the company in his said applications are mentioned as 1110, Ansal Bhawan, K.G. Marg, New Delhi. He volunteered that the said form had not been filed in his own handwriting. He further stated that he did not know from which date the transfer of telephone numbers of the said company became effective.

Accused **Anoop Singh, Dinesh Chandra Sharma, Gopal Ansal and Sushil Ansal** were afforded opportunity to cross examine this witness but no cross examination was done.

The following exhibit has been marked in the examination of PW-42 :

1	LETTER FROM SEML Dt 24.06.2004 w.r.t REVISION OF SALARY OF D V MALHOTRA	**Ex PW 42/A**

55. **PW-43 Sh. Arvind Kumar** S/o Late Sh. B.R. Dohare was examined. He stated in his examination in chief that in the year 2003 he was running a automobile workshop at A-96, Ground Floor, MB Road, Saidullazab, New Delhi. He could not remember if on 25.11.2006 he was called by police officials from his workshop to A-Plus Security and Services Institute Pvt. Ltd, at A-96, Second Floor, MB Road, Saidullazab, New Delhi to join some proceedings being conducted by police officials. He could not remember who was the proprietor of the said company. The seizure memo already Ex.PW18/B bears his signature at point D. He further stated that after going through the said seizure memo, he distinctly remembered that the office of A-Plus Security and Services Institute Pvt. Ltd, at A-96, Second Floor, MB Road, Saidullazab, New Delhi. After taking permission from the Court, ld. Addl. PP cross examined him and in his cross examination, he affirmed that due to passage of time, he has forgotten some of the accounts of the said proceedings. He voluntarily stated that his memory is also weak. He further affirmed that he remembered that he was called by the police officials to join the said proceedings wherein they have seized two registers already marked Ex.PW18/C and Ex.PW18/D through seizure memo Ex.PW18/B bearing his signature at point D. He could not remember the name of the proprietor of the said company but he can try to identify/ recognize him if produced

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before him. The witness has identified the accused Anoop Singh to be the said person who was running the said security office at relevant time and had produced the said registers.

In his cross-examination conducted on behalf of accused Anoop Singh, the witness denied the suggestion that he has not joined any such proceeding as stated by him in his examination in chief. He denied the suggestion that his signature was obtained on blank papers and later same was converted into seizure memo.

Accused **P.P. Batra, Dinesh Chandra Sharma, Gopal Ansal and Sushil Ansal** were afforded opportunity to cross examine this witness but no cross examination was done.

56. OBJECTIONS DURING EXAMINATION OF PROSECUTION WITNESSES : -

56(A). PW1 : During the testimony of PW1 objection was raised on behalf of defence that documents i.e. which is bunch containing 1 to 400 pages cannot be marked as PW1/A (Colly.), the said objection is baseless as original of the same is lying in Hon'ble Supreme Court of India and the copies as per procedure being adopted in Hon'ble Supreme Court of India were obtained by IO. Similarly, another objection raised regarding admissibility of seizure memo Ex.PW1/A of nine register is baseless as the existence of this document has been proved through evidence.

56(B). PW3 : During the examination in chief of PW3 objection regarding mode of proof were raised qua Ex.PW3/A (certified copy of the cheque) issued in favour of Sushil Ansal and its seizure memo Ex.PW3/B on behalf of defence, the said objections are baseless as these documents have been duly proved through proper procedure and evidence.

56(C). PW5 : During the testimony of PW5, objection was raised qua certified copy of order dated 25.06.2004 passed by Sh. J. P. Singh, the then Ld. District & Sessions Judge which is Ex.PW5/B regarding its mode of proof, the said objection is baseless as the certified copy of the record are admissible in evidence.

56(D). PW7 : During the testimony of PW7, objection was raised qua document Ex.PW7/A to Ex.PW7/F by the defence. The said objection is baseless as these documents were exhibited after seeing the original from

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the record (OSR).

56(E). PW8 : During the testimony of PW8, objection was raised qua order dated 27.04.2001 of Ld. District & Sessions Judge Ex.PW8/A whereby PW8 was transferred to the Court of Sh. Sanjay Garg, the then Ld. MM, regarding its mode of proof. The said objection is baseless as this document was exhibited after seeing the original order and placing its certified copy on record. Another objection was raised by Ld. Addl. PP regarding the question asked in cross-examination of the witness, that whether he had told the investigating officer during recording of his statement that he had checked the records and not the file, the said objection is sustainable as the fact which has been testified in cross-examination for the first time cannot be confronted with his earlier statement under section 161 Cr.P.C.

56(F). PW10 : During the testimony of PW10, objection was raised qua documents Ex.PW10/P, Ex.PW10/Q, Ex.PW10/R, Ex.PW10/S, Ex.PW10/T & Ex.PW10/U by Ld. Defence counsel regarding mode of proof. The said objection is baseless as these documents were exhibited after certified copies of the same were filed on record and original of the certified copies seen from the original record of main Uphaar tragedy case.

56(G). PW13 : During the testimony of PW13, objection was raised regarding Ex.PW10/C (colly.) stating that same is a certified copy of a photocopy, the said objection is baseless as the said document was exhibited during the evidence of main Uphaar case by way of secondary evidence as such the certified copy of the same is admissible in evidence.

56(H). PW14 : During the testimony of PW14 while exhibiting document Ex.PW14/A objection was raised by defence on mode of proof and admissibility stating that the witness is neither a scribe nor the author of the document, the said objection is discarded as Ex.PW14/A is the photocopy of the torn seizure memo and the portion where the signatures of the witness was appended is torn off, however, same is there on the certified copy of the photocopy of the seizure memo. Another objection was raised regarding Ex.PW10/B (Colly.) which is certified copy of the photocopy of complete seizure memo regarding its mode of proof and admissibility, the said objection is baseless as the certified copy was obtained of the

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photocopy of complete seizure memo which was exhibited during the course of main trial by way of secondary evidence and which had signatures of witness at point A.

56(I). PW16 : During the testimony of PW16, objection was raised qua Ex.PW10/B(Colly.). The said objection is baseless as this document had already been exhibited as per due procedure. Another objection was raised regarding deposition of witness in main Uphaar case which is Ex.PW16/A. The said objection is also baseless as the original was produced before the Court for inspection.

56(J). PW17 : During the testimony of PW17, objection was raised regarding certified copy of the torn page C-123 obtained from photocopy of the untorn document Ex.PW10/C (Colly.) and which has been duly admitted by the witness as such the objection is baseless.

56(K). PW19 : During the testimony of PW19, objection was raised regarding mode of proof and admissibility qua certified copies of photocopies of missing pages viz. 1,9,12,14,18,19 from the charge-sheet of present case and their certified copies are already exhibited Ex.PW10/P, Ex.PW10/Q, Ex.PW10/R, Ex.PW10/S, Ex.PW10/T & Ex.PW10/U as such the objection is not sustainable.

56(L). PW22 : During the testimony of PW22, objection was raised on behalf of accused Gopal Ansal and Sushil Ansal regarding Ex.PW10/L & Ex.PW10/M, however, the said objection is baseless as the same are the certified copies of the photocopies of both cheques which were proved by way of secondary evidence in the main Uphaar case. Similarly, the objection was raised regarding deposition of the witness recorded in main Uphaar case Ex.PW22/A and same is also not sustainable as original deposition was produced before the Court.

56(M). PW23 : During the testimony of PW23, objection was raised qua Ex.PW23/B on the ground that Ex.PW23 is not the author of the said forwarding letter. The said objection is baseless as a document can be proved through some one else who can identify the signatures of his colleague or with whom he had been working having knowledge of the signatures of him. Another objection was raised regarding Ex.PW23/F for which supplementary opinion was placed by the witness, the said objection

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is baseless as expert can provide supplementary opinion regarding his report for the purpose of clarity.

56(N). PW27 : During the testimony of PW27, objection was raised regarding Ex.PW27/A (seizure memo and letter Ex.PW27/B) on the ground that these documents are in nature of statement of facts as such hit by section 162 Cr.P.C. The said objection is baseless as a document can be proved through some one else who can identify the signatures of his colleague or with whom he had been working having knowledge of the signatures of him.

56(O). PW28 : During the testimony of PW28, objection was raised regarding Ex.PW28/B which is the deposition of the witness recorded in main Uphaar case the said objection is dismissed as original testimony was produced before the Court while exhibiting this document.

56(P). PW31 : During the testimony of PW31, objection raised by Ld. Addl. PP is sustainable as documents were already de-exhibited.

56(Q). PW32 : During the testimony of PW32, objection was raised qua Ex.PW32/A submitting that same cannot be taken on record as Ex.PW32/A is neither author nor scribe of the document. The said objection is dismissed as the witness has produced the record maintained by the department in normal course and procedure. Similar objection was raised qua Ex.PW32/B, Ex.PW32/C and same is also dismissed.

56(R). PW34 : During the testimony of PW34, objection was raised qua Ex.PW10/O and Ex.PW10/N, however, the said objection is unsustainable as these documents got exhibited by way of secondary evidence as Ex.PW93/A and Ex.PW93/B in the main Uphaar case. Also, objection qua Ex.PW34/A is also dismissed as the deposition of the witness recorded in the main Uphaar case was produced before the Court in original.

56(S). PW37 : During the testimony of PW37, objection was raised qua Ex.PW37/B which is copy of charge-sheet of main Uphaar case running in 63 pages, the said objection is dismissed as original was produced before the Court. Similarly, objection was raised regarding Ex.PW10/F which is occurrence book of control Room HQ from page no. 64-426. the said objection is dismissed as original was produced from the record of main Uphaar case. Similarly, objection was raised regarding Ex.PW10/FF

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which is copy of DOB register of B.C.P. Fire Station. the said objection is dismissed as original was produced from the record of main Uphaar case. Similarly, objection was raised regarding Ex.PW37/C which is copy of framing of charge dated 27.02.2001 of Ld. ASJ from page 817 to 927 running in 111 pages, the said objection is dismissed as original was produced from the record of main Uphaar case. Similarly, objection was raised regarding Ex.PW37/D which is order on sentence dated 23.11.2007 passed in main Uphaar case running in 51 pages, the said objection is dismissed as original was produced from the record of main Uphaar case. Similarly, objection was raised regarding Ex.PW14/A which is copy of the seizure memo dated 18.07.1997 from page no. 979-980, the said objection is dismissed as original was produced from the record of main Uphaar case. Similarly, objection was raised regarding Ex.PW21/A which is copy of the file containing minutes of MD's meeting and correspondence, the said objection is dismissed as original was produced from the record of main Uphaar case. Similarly, objection was raised regarding Ex.PW37/E which is copy of the ordersheet dated 31.01.2003, the said objection is dismissed as original was produced from the record of main Uphaar case. Similarly, objection was raised regarding Ex.PW37/F which is copy of the order dated 31.03.2003, the said objection is dismissed as original was produced from the record of main Uphaar case. Similarly, objection was raised regarding Ex.PW37/G which is copy of the order dated 23.12.2004, the said objection is dismissed as original was produced from the record of main Uphaar case. Similarly, objection was raised regarding Ex.PW10/J (colly.) which is copy of the casual leave register maintained in HQ, Delhi Fire Service for the period 1995-1996, the said objection is dismissed as original was produced from the record of main Uphaar case.

56(T). PW38 : During the testimony of PW38, objection was raised qua Ex.PW38/B(Colly.) and Ex.PW38/C and the said objection is dismissed as these documents are proved as per due procedure. Similarly, objection was raised qua Ex.PW18/C and Ex.PW18/D, same are also dismissed as these documents are proved as per due procedure. Similarly, objection was raised qua Ex.PW 38/D and Ex.PW27/A, objection are dismissed being vague.

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57. STATEMENTS OF ACCUSED PERSONS UNDER SECTION 313 Cr.P.C

Statement of accused Dinesh Chandra Sharma was recorded in Court wherein all the incriminating facts emerged during evidence were put to him distinctly, separately and specifically. Accused gave his answers which were duly recorded. However, qua other accused persons namely Sushil Ansal, Gopal Ansal, P.P. Batra and Anoop Singh, due to suspension of physical hearing on account of Covid-19 second wave, all the incriminating facts were also put to them distinctly, separately and specifically by way of questions sent to them to their respective emails and they after going through it furnished their replies in the format and send it through pdf file which was received on official email ID of the Court and its physical copy was obtained and filed with the record. During the course of final arguments, physical signatures were obtained on the said statement.

It is pertinent to mention here that all the accused persons gave evasive answers in their statement under section 313 Cr.P.C. No explanation has been put forth by them except a bald and vague statement that they are innocent.

58. DEFENCE EVIDENCE

In Defence Evidence, four witnesses were examined.

58(A). DW-1 Sh Surender Kumar, JJA (Civil Writ Branch), Hon'ble Delhi High Court, Shershah Suri Marg, New Delhi was examined. He produced the summoned record i.e. the original record pertaining to Writ Petition (C) No. 4567/1997 titled as Association of Victims of Uphaar Tragedy Vs. Union of India & Ors., including its Annexures A, B and C. Certified copies of the same are taken on record, same are running into 68 pages including its Annexures are marked as **Ex. DW-1/A (colly)**. Original record seen and returned. No cross-examination was conducted by Ld. Addl. PP.

58(B). DW2 Sh. Rajender Prasad, Senior Court Assistant, Section 8, Hon'ble Supreme Court of India was examined and he produced the original petition pertaining to appeal no. 600-602/2010, titled as *Association of Victims of Uphaar Tragedy v. Sushil Ansal and anr*. However, as per order no. 56/SCR/2013, the Annexures filed with these

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appeals have been weeded out. As per said rule, such Annexures are weeded out after one year after disposal of the appeal / petition. No cross-examination was conducted by Ld. Addl. PP.

58(C). DW3 Sh. Prakash Chandra, Supervisor, MTNL, Commercial Branch, Chanakaya Puri, Delhi was examined. He was summoned by to produce CDR and CAFs related to landline phone numbers i.e. 6887052, 4677285, 6888953, 4677755, 6888041, 6858508. However, he stated that due to the governing policy relating to retention of record pertaining to CDRs/ CAFs the same have been destroyed. As per the policy, the CDRs/ CAFs are supposed to be preserved for a period of one year. The date for calculating the period of one year starts from the date of installation of the landline number. On going through the record, I was able to obtain subscriber post-connection details in respect of the above mentioned numbers. He informed the Court that the digit "2" was prefixed before the said landline numbers in the year 2002. On going through the record, I was able to obtain subscriber post -connection details in respect of the above mentioned numbers. Same running into 16 pages alongwith a covering letter on behalf of Commercial Officer, MTNL, Chanakaya Puri, Delhi and sample license agreement applicable 2007 onwards (4 pages) are taken on record and marked as **Ex. DW3/A (Colly.).** No cross-examination was conducted by Ld. Addl. PP.

58(D). DW4 Ms. Veena Satewal, Branch Incharge, Record Room (Sessions), PHC, Delhi was examined and she produced the original file of FIR bearing no.432/97 PS Hauz Khas later re-registered as RC No. 3(S)/97/SIC/IV, New Delhi U/s 304/337/338/285/287/436/427 IPC. The certified copy is exact copy of each and every page of the examination in chief and cross examination of PW-29 V.S. Randhawa. The certified copy is now marked as exhibited as **Ex.PW4/A**. From the original record of FIR bearing no.432/97 PS Hauz Khas later re-registered as RC No. 3(S)/97/SIC/IV, New Delhi U/s 304/337/338/285/287/436/427 IPC, she produced the ordersheet as maintained in the original record from 08.01.2003 to 29.04.2003 and ordersheet 05.05.2003 (running into pages

58(E). The certified copy of the ordersheets as mentioned above is now marked as Ex. DW4/B (Colly.). No cross-examination was conducted by

Ld. Addl. PP.

59. EVALUATION OF THE PROSECUTION EVIDENCE

59(A). COMPLAINT AND FIR

PW2 Sh. Y. K. Saxena while conducting the prosecution of the main Uphaar case pointed out certain documents of the record torn off/ obliterated/ mutilated/ defaced/ removed and thereafter, after permission from the Court filed an application providing list of such documents to the Court. The certified copy of the petition moved by him Ex.PW2/A containing details of such torn/ missing/tampered documents at serial no. 1 to 9. PW30 Sh. R. Krishnamurthy who happened to be the General Secretary of AVUT and had been regularly attending the Court hearings and was keenly watching the progress of the trial and during the same, when he came to know that certain crucial document were either mutilated/ defaced by smearing ink on them or some were torn, he apart from seeking cancellation of bail of accused Gopal Ansal, Sushil Ansal and H.S. Panwar and after dismissal of Dinesh Chandra Sharma through AVUT filed petition before Hon'ble High Court of Delhi for registration of criminal case regarding the incident of tampering of documents and the same petition was allowed. PW30 filed a formal complaint dated 13.05.2006 Ex.PW29/A. During his cross-examination, PW30 stated that the said documents were crucial and relevant to establish the involvement of Gopal Ansal, Sushil Ansal and H.S. Panwar for the trial in main Uphaar case, however, stated that same were not related to Dinesh Chandra Sharma. On the basis of said complaint Ex.PW29/A dated 13.05.2006 which was handed over to PW29 and PW29 handed over PW15 (Inspector Ishwar Singh) a rukka Mark X was prepared and on the basis of said complaint, the present FIR No. 207/2006 PS Tilak Marg was registered which is **Ex.PW41/A**. PW-41 SI Alka Sharma was the Duty Officer on 17.05.2006 and upon production of rukka Ex.PW29/A by SI Ishwar Singh the present FIR was registered in her own hand-writing. Ex.PW41/A was recorded vide DD no. 13A and she handed over copy of FIR and rukka Ex.PW29/A to SI Ishwar Singh to be handed over to Sh. Vijay Malik ACP, EOW, Crime Branch. As such the complaint Ex.PW29/A and the FIR Ex.PW41/A has been duly proved.

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59(B). THE MOVEMENT OF THE FILE REGARDING CHAIN OF CUSTODY :

59(B)(i). The charge-sheet of the main Uphaar case was filed on 15.11.1997 in the Court of Sh. Brijesh Sethi, the then Ld. MM and the case was committed to the court of Ld. ASJ Sh. L. D. Malik on 04.01.1999.

59(B)(ii). PW6 Sh. Shyam Lal was the Ahlmad of the court of Sh. Brijesh Sethi, the then Ld.MM and as per his testimony he checked the list of documents including charge-sheets, seizure memo etc. and found that all the said documents were intact and no document was found missing, no ink was found sprinkled on any document or no document was torn. He handed over the case file complete in all respect after the order of committal to Sh. Gajraj Singh, the then Ahlmad of the Court of Sh. L. D. Malik, the then Ld. ASJ. He testified that he had not taken assistance from the Assistant Ahlmad at that time and he spent whole day in scrutinizing the documents of the said case. He prepared the index of documents and handed over the same to Sh. Gajraj Singh in his Court and obtained a receipt of handing over of the said case file. He himself paginated the case file before handing over the same to Sh. Gajraj Singh. He denied the suggestion that he did not count the pages of the charge-sheet or he had not checked the papers of the charge-sheet. He stated that document alongwith charge-sheet were in plastic bag and he without opening it handed over the same as it is to the Ahlmad of committal Court. However, he clarified that he checked the entire record including the bag. He took the acknowledgment of receipt of the file from Sh. Gajraj Singh and pasted the same in the register but he did not know where the register is. The testimony of PW6 is reflective of the fact that during the time, the file of the main Uphaar case was with Ld.MM before its committal no discrepancy in any document was noticed. It is important to note that before Ld.MM, compliance of section 207 Cr.P. C is made wherein the copies of charge-sheet alongwith Annexure / documents were provided to the accused persons. Record demonstrates that accused persons filed applications under section 207 Cr.P.C for providing deficient copies and same were provided to them. It is noteworthy that the charge-sheet were filed on 15.11.1997 and the case was committed to the Court of Sessions on 04.01.1999 as such during the said period, the charge-sheet

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remained under the custody of PW6 and no discrepancy regarding any document was noticed. After due pagination and indexing, the charge-sheet was handed over to Sh. Gajraj Singh and he after checking the documents, accepted it through a receipt of handing over. It is pertinent to note that as per routine procedure, such receipt of handing over/ taking over of the file are not kept for long as any shortcoming / discrepancy ought to be pointed out by the subsequent Ahlmad while counting the pages and verifying the record. As per the testimony of PW6, the file of main Uphaar case was containing voluminous documents and it used to be kept in a almirah in the room. PW6 categorically denied the suggestion that he had not counted the pages of the charge-sheet rather he asserted that he himself paginated the charge-sheet. During cross-examination of PW6 stated that charge-sheet was not sealed and was in loose form and documents filed alongwith it were in plastic bags and he did not open the said plastic bags and boras and handed over as it is to the Ahlmad of Ld. ASJ where the case was committed, however, PW6 upon being re-examined by Ld. Special Prosecutor clarified that he had checked the entire record including the bags and further stated that bags contained documents like seizure memo and maps. Nothing favourable to the defence could be elicited from the testimony of PW6 which could suggest that at any point of time, while the file was in his custody, there was any instance of any document being missing/ torn/ obliterated/defaced. Rather it is evident that due compliance of section 207 Cr.P.C has been made and each and every document was provided to all the accused persons which were 16 in number and after due compliance of section 207 Cr.P.C the Court ordered its committal to Ld. Sessions Court. These facts taken in totality indicate that custody of the documents was proper before the Ld. M.M. till its committal to the Court of Sessions. The Ahlmad of the committal Court obtained the file with its documents complete in all respect from PW6 by way of memo after due verification and counting. Sh.Gajraj Singh did not raise any issue either orally or in writing to the Ld. Presiding Officer of the Court regarding missing/ obliterating/ tampering/ defacing of any document in the said file and infact issued acknowledgment of receipt to PW6. Mere non-production of said receipt do not in any way affect the testimony of PW6 and his

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account that as these receipts are not supposed to be kept for years is reasonable and as per procedure. Because if at all any discrepancy is noticed by the subsequent Ahlmad he has to raise it before executing the receipt. There is a sanctity attached towards execution of receipt while handing over/ taking over files or charge and it is not empty formality. The Executor very well knows the consequences of these receipts and in common parlance the concerned official execute it only when he/she is satisfied after verification of the record that it is complete in all respect.

59(C). Sh.Gajraj Singh was the Ahlmad of the court of Ld. ASJ who received the case file from PW6 after due verification and he was succeeded by Mr. Sunil Kumar Nautiyal and Sh. Gajraj Singh prepared a handing over / relinquishment report dated 01.05.2000 which is Ex.PW7/F and the said file came in custody of PW8. PW8 Sh. Sushil Kumar Nautiyal testified that some time in the year 2000, he was transferred to the court of Ms. Mamta Sehgal, the then Ld. ASJ and taken charge of the files alongwith their documents pertaining to the cases pending in that Court from concerned Ahlmad Sh.Gajraj Singh. On 27.04.2001, he was transferred to the court of Sh. Sanjay Garg, the then Ld. MM, PHC. Dinesh Chandra Sharma joined in his place on 30.04.2001 through joining report Ex.PW7/D. PW8 prepared a charge report for handing over the pending case files to Dinesh Chandra Sharma running in 10 pages which is Ex.PW7/C (colly.). PW8 handed over charge to Dinesh Chandra Sharma on 22.05.2001 and handing over/ relinquishment report was prepared which is Ex.PW7/E. He handed over the complete charge of all the pending cases including their documents to his successor Dinesh Chandra Sharma. The file of the Uphaar case, document & registers were duly received by Dinesh Chandra Sharma who appended his signatures on list Ex.PW7/C at point A. The files which were pending with Sh. R.S. Verma, the then Reader in that Court were also received by him and he appended his signatures at point B on Ex.PW7/C. The list and the case files, documents and registers alongwith handing over charge / relinquishment report already Ex.PW7/E bearing signatures of PW6 at point A. As per PW6, Dinesh Chandra Sharma had checked all the files and matched the same with the list and the case file of the main Uphaar case was also included in the said list and he did check

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the files one by one in the presence of PW6. Dinesh Chandra Sharma had also checked the page numbers of the files and documents and there was no shortcoming in the files and documents. In his cross-examination, PW8 categorically stated that once he had handed over the charge of his office to his successor he ceases to be the custodian of the files. He maintained that regarding main Uphaar case documents they were duly checked as per pagination on the document files contained in iron trunks. He categorically denied that he was in illegal custody of files even after he parted with the charge as Ahlmad of the court of Ms. Mamta Sehgal, the then Ld. ASJ. He denied the suggestion that during the Court hours when the proceedings of the case used to be conducted the custody of the file used to be with the Naib Court of CBI. He asserted that while inspection, Naib Court of the CBI as well as Ahlmad used to be present and he used to get inspection conducted in the Court or in the Ahlmad room as the case may be. He denied the suggestion that he had taken over the charge without paging and indexing. He admitted to have prepared a report while taking charge from Sh.Gajraj Singh. He stated that the judicial file of the main Uphaar case had no pagination but documents annexed therewith were paginated. He stated that he used to put lock in the Ahlmad room after closing the office. He stated that during his tenure, Ahlmad room was not shifted. He stated that it took him one and a half and two days in preparing the list and 2-2 ½ days to hand over the files to Dinesh Chandra Sharma. The charge of the files were handed over to Dinesh Chandra Sharma on day to day basis in accordance with the list prepared by him. His testimony is indicative of the fact that he received the files in due course as per handing over memo from Sh. Gajraj Singh and during his tenure which is from 01.05.2000 to 22.05.2001, no shortcoming of any sort was noticed in the record of main Uphaar case file and PW6 also handed over custody of files to Dinesh Chandra Sharma through proper receipts as such the custody of the file shifted in a proper manner leaving no scope of any confusion/ suspicion. Dinesh Chandra Sharma joined duties on 30.04.2001 vide Ex.PW7/D and PW6 relinquished the charge on 22.05.2001 and during this time, no question regarding missing / obliterating/ tampering/ defacing was raised by Dinesh Chandra Sharma to PW6 or to the Presiding Officer which suggests

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that the custody of files moved smoothly and safely.

59(D). PW4 Jagan Nath who was posted as Stenographer in the court of Ms. Mamta Sehgal, the then Ld. ASJ testified that case files used to be in the custody of Sh.Gajraj Singh and after his transfer and his successor Mr. Sunil Nautiyal and after him, it remained in custody of Dinesh Chandra Sharma. PW4 deposed that whenever the case was fixed for hearing, Reader of the Court used to receive the files from Ahlmad. The files were handed over to the Reader in the evening of previous day to the Reader of the Court. After completion of the proceedings, the files were sent back to the Ahlmad probably in the evening or next date of hearing and during the intervening period, files remain with the Reader. It is a matter of common knowledge and procedure that Ahlmad who is custodian of the record prepares peshi one day in advance and give files to the Reader on the same day or one day in advance. After the files are taken up for hearing by the Court, the ordersheets or the evidence recorded during the day alongwith files are returned to the Ahlmad after the work is over. This is a routine practice which is observed and while hearing of this case, after the advent of Dinesh Chandra Sharma, this practice continued like in other cases, however, in the main case, while day to day hearing was going on as such the part of the file containing daily ordersheets used to be with the Stenographer, however, the movement of file was as usual. PW4 testified that during the intervening time, when the Reader received the files from the Ahlmad and after the completion files sent back to the Ahlmad, the custody of the files remains with Reader, the said statement has to be understood in the proper context as the mere fact files are lying with Reader during the course of proceedings during the day, the files still remain in the constructive custody of the Ahlmad as once he receives the files, he is required to check about it being complete in all respect. Similarly, while the file remain with Stenographer for typing an order, also, the similar principle apply as after receipt of files by the Ahlmad, he is duty bound to check its completeness. The testimony of PW4, PW6 & PW8 seen in the light of documents produced by PW7 demonstrate that the chain of custody of the file shifted to Dinesh Chandra Sharma properly through memos which are well documented. The file was in proper custody of

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Dinesh Chandra Sharma from the date of handing of files i.e. 03.05.2001 as per Ex.PW7/C. The Naib Court, Peon, Lawyers, litigants are integral part of open Court system and the mere fact that the file moves around them during the proceedings same should not be misconstrued as temporary loss/ lack of custody of the Ahlmad because eventually it reaches to the Ahlmad and who has to see that same is intact in all respects. In this regard, the following rules of Delhi High Court Rules are relevant :

CUSTODY OF JUDICIAL RECORDS

1. The following orders as to the assumption and relinquishment of charge of judicial records shall apply to holders of the undermentioned posts :

(a) Courts of District and Sessions Judges, Additional District and Sessions Judges	1. Ahlmads. 2. Record Keepers.
(b) Courts of Senior Subordinate Judges, Administrative Subordinate Judges and other Subordinate Judges.	1. Ahlmads. 2. Execution Moharrirs. 3. Guardian Moharrirs. 4. Readers to Administrative Subordinate Judges.
(c) Small Cause Courts.	1. Ahlmads. 2. Naib Sheriffs-in-charge of execution work. 3. Insolvency Clerks.

2. When any of the officials named in Rule 1, having custody of pending judicial records is transferred to another office permanently, or proceeds on leave for a period of two months or more, he shall make over full and complete charge of the records in his custody to the official relieving him.

3. The relieving official shall, in the presence of the official to be relieved, check all the records leaf by leaf with the indices attached thereto, see that no document is missing, and then sign a certificate to the effect that he has carefully checked all the records made over to him and has received the documents mentioned in the indices attached to them. If any part of any record or any document is found to be missing the matter shall immediately be brought to the notice of the Presiding Officer of the Court.

4. If any document or part of the record is subsequently found to be missing, the Presiding Officer of the Court shall immediately take action

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for its recovery or reconstruction. He shall also fix responsibility on the custodian if the document was on the index or on the official whom the custodian relieved, if it was not on the index.

5. When an official having charge of such records is granted leave for a period of less than two months or is temporarily transferred to another post, those records only which are required for cases which are likely to come up for hearing in the ordinary course during his absence shall be taken over by the relieving official and the procedure laid down in paragraphs 2 and 3 adopted. The remaining records shall be locked up the key of the lock being kept by the Presiding Officer of the Court. If any further records are needed during the absence of the permanent custodian, they shall be taken out and properly checked under the supervision of the Presiding Officer before being taken over by the temporary custodian.

6. So far as the record room is concerned, only the files not yet acknowledged by the Record Keeper need be checked.

7. For the purpose of photographs 2 to 6, both the relieved and relieving official will be regarded as on duty in the same post while charge is being transferred. In cases covered by paragraph 2, the transfer of charge shall not ordinarily take more than four days, but this period may be extended to 7 days under the written sanction of the Presiding Officer of the Court, and to 10 days under the written sanction of the District and Sessions Judge. In cases under paragraph 5, not more than half a day should be allowed for the transfer of charge.

In view of the aforesaid rules formulated by Hon'ble High Court of Delhi, no scope for doubt is left that Ahlmad is the exclusive custodian of the file and at no point, it will be assumed that custody of files was intermittent.

60. THE REMOVED / TAMPERED / OBLITERATED/ DEFACED DOCUMENTS

PW2 Sh. Sh. Y. K. Saxena was the Special Prosecutor, CBI in main Uphaar case RC-3/ 97/SIC- IV/New Delhi. During the trial of the said case, certain documents were not traceable and upon checking, it was noticed that some of the material documents were either removed, tampered with by sprinkling blue ink on the pages of some documents and some were found torn. PW2 filed a petition in his own hand-writing bearing his signatures dated 20.01.2003 which is Ex.PW2/A containing details of such documents at serial no. 1 to 9 which are as follows :

(i). Seizure Memo dt. 18.07.1997 for seizure of documents mentioned there in the second page of this document (SM) is half torn (D-20);

(ii). File of DFS regarding Uphaar Cinema, Green Park, New Delhi containing Note sheets page 1 to 30 and correspondence pages 1 to 128. the correspondence page 123 is half torn which is a letter dt. 28.11.96 (D-84);

(iii). One Register i.e. occurrence book of control room, HQ, DFS, containing pages 1 to 400. The pages no. 363 to 400 are missing. The relevant page 379 is also missing (D-89);

(iv). OB register of BCP Fire Station, ND 13.12.96 to 18.1.97 containing pages 1 to 400. Its page nos. 95 to 104 are missing and pages 109 to 116, ink has been spread. The relevant pages are 96 to 113 (D-91);

(v). Casual leave register maintained in Headquarter, DFS for the period 1995-96 pertaining to casual leave of the officers to the rank of station officers upto Dy. Chief Fire Officer. The page no. 45 to 50 are missing. The relevant page is no. 50 (D-92). Its seizure memo dated 5.8.97 is also missing;

(vi). Four cheques (original) i.e.

(a) Cheque No. 955725 dated 26.06.1995 for Rs. 50,00,000/- drawn on Punjab National Bank, Rajinder Nagar alongwith its SM dt. 27.8.97 (D-24),

(b) Cheque no. 805578 dated 30.11.1996,

(c) Cheque no. 805590 dated 20.02.1997, both alongwith SM dt. 18.8.97 (D-25),

(d) Cheque no.183618 dated 23.05.1996 alongwith SM dt. 27.8.97 (D-26).

(vii) File containing minutes of MD Meetings and correspondence (total 40 sheets). Its page no. 1,9,12,14,18 and 19 are missing. Its page no. 1 to 17 are relevant (D-28),

(viii) One set of loose sheets containing 62 pages regarding correspondence about Uphaar Cinema. It pages 1 and 2 are missing (D-34),

(ix) One file of DCP (Lic) containing 132 documents. The document no. 2,33,41,42,111,119 and 127 are missing (D-93).

It is important to note that accused Dinesh Chandra Sharma later on produced cheque no. 955725 dated 26.06.1995 for Rs. 50,00,000/- on 10.06.2003 and cheque no. 805590 dated 20.02.1997 for Rs. 2,96,550/- and cheque no. 805578 dated 30.11.1996 for Rs. 1,50,000/-.

61. The aforesaid documents were part of the record of main Uphaar case and after it came to fore that these documents are missing/ obliterating/ tampering/ defacing the factum of existence of these documents was required to be proved by prosecution and in order to do so the prosecution produced witnesses who happened to be associated with the seizure of these documents or associated with the proceedings while seizing of said documents from custodian of that document.

61(A). After the petition of Ld. APP dated 20.01.2003 Ex.PW2/A was allowed and the Court permitted the prosecution to lead secondary evidence regarding the aforesaid documents, the copies of the documents were got copied by the IO (from the separate set of documents kept by the IO while filing the charge-sheet) and filed by him in the Court with his affidavit and the documents which were missing/ tampered/ obliterated/ torn were proved by the author / scribe / witness of the said documents in the main Uphaar case and same were proved by the prosecution through PW1, PW11, PW13 (Fire Officials) and PW3, PW22, PW34 (Bank Officials) and PW10, PW12, PW16, PW19, PW20, PW26, PW28, PW14, PW17 (CBI Officials) to prove the said documents.

62. DOCUMENTS PROVED DURING TESTIMONY OF FIRE OFFICIALS, BANK OFFICIALS AND CBI OFFICIALS

62(A). PW1 categorically stated that when Ex.PW1/A (colly.) was handed over by him to CBI, the missing pages no. 95 to 104 in the bunch of 400 pages were existing and same were legible. He proved seizure memo Ex.PW1/A of 9 registers. He categorically denied the suggestion that he was not present when seizure memo Ex.PW1/A was drawn by CBI officer. He also stated that he counted the pages while handing over the said registers and paging existed on said registers and numbering was printed. He gave the copy of the seizure memo to his senior ADO Sh. A.K.

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Bhatnagar. The testimony of this witness shows that the missing pages no. 95 to 104 in the bunch of pages from 1 to 100 page in Ex.PW1/A (colly.) were existing in legible condition at the time of seizure. His testimony corroborates his earlier testimony which was made in the main Uphaar case as this document was duly proved by way of secondary evidence upon the strength of his testimony. As such the prosecution has proved that while OB register of Bhikaji Cama Place, Fire Station, New Delhi dated 13.12.1996 to 18.01.1997 was seized vide seizure memo Ex.PW1/A it contained pages from 1 to 400 which were intact and legible which form part of record of main Uphaar case. PW28 taken into possession the document described in seizure memo which is Ex.PW1/A from PW1. Both PW28 and PW1 appended their signature on Ex.PW1/A. PW28 corroborates that while he seized the said register it contained 400 pages, however, during his deposition in the main Uphaar case, page no. 95 to 104 were found missing and from page no. 109 to 116 blue ink was sprinkled, however, the said register was intact in all respect while seized.

62(B). PW11 categorically stated before the Court during his examination that he handed over the Occurrence Book maintained at Delhi Fire Services, Control Room Headquarter to CBI office in Samrat Hotel containing 1 to 400 pages and he was examined in main Uphaar case as witness and where he saw the occurrence book and informed the Court that some pages are missing. He upon seeing occurrence book Ex.PW10/E stated that page no. 363 onwards are missing and he can identify the missing pages if shown to him. He proved the seizure memo Ex.PW11/A which is the certified copy of the seizure memo which he stated to have handed over to Inspector Tribhuvan and also bears his signatures at point A and B. He categorically denied the suggestion that the portion in Ex.PW11/DA is false regarding page no. 379 which he proved to be the same copy of original page no. 379 of occurrence book during his testimony in the main Uphaar case. As such he corroborated his testimony made earlier in the main Uphaar case and proved Ex.PW10/E containing page no. 1 to 400. PW26 corroborates the same i.e. seizure of one original register titled as occurrence book of the Control Room, Delhi Fire Service (HQ) containing 1 to 400 pages from PW11 through Ex.PW11/A. PW11

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also testified that during his deposition in main Uphaar case wherein he identified page no. 379 amongst the missing pages and page no. 363 to 400 were missing from the occurrence book. PW26 testified that he seized one original register titled as OB from the Control Room, Delhi Fire Service from PW11 through seizure memo Ex.PW11/A bearing his signatures at point B as such he corroborates the testimony of PW11 regarding Ex.PW11/A.

62(C). **PW13 Sh. R. C. Sharma** identified the certified copy of torn document i.e. letter written to Delhi Fire Services from Mr. Vimal Kumar Nagpal, Vice President (Services), Ansal Properties and Industries Ltd dated 28.11.1996 and further affirmed that the said document was handed over to the Inspector from CBI. PW13 proved photocopy of original of said document alongwith affidavit of PW10 which is Ex.PW10/C (colly.). The witness stated that Ex.PW10/C bears the signatures of H.S. Panwar at point A. He was examined in the main Uphaar case and his testimony in the instant case corroborated the fact of proof of Ex.PW10/C (colly.). Further, PW10 testified in his testimony that original document Mark D84 which is annual inspection of Uphaar cinema dated 28.11.1996 proved the same by identifying and furnishing on record photocopy of the original alongwith its affidavit and certified copy of the same is Ex.PW10/C (colly.).

62(D). **PW3 Sh. Mukesh Chander Khullar** deposed that in the year 1997 on the instructions of Senior Manager of the Bank, he went to the office of CBI and handed over a cheque of Rs. 50,00,000/- issued in the current account of M/s Green Park Theaters Association Pvt. Ltd in favour of Sushil Ansal. The certified copy of the cheque is Ex.PW3/A. The certified copy of the seizure memo of the said cheque is Ex.PW3/B bearing his signatures at point A. He also testified as a witness in the main Uphaar case where he was shown photocopy of the said cheque as such the witness proved Ex.PW3/A & Ex.PW3/B and which is also corroborated by his earlier testimony in the main Uphaar case. PW20 corroborates the taking of possession of the aforesaid cheque from PW3 through seizure memo and proved the certified copy of the said seizure memo Ex.PW3/B bearing his signatures and certified copy of the cheque is Ex.PW3/A.

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62(E). PW22 Sh. M. L. Dhupar deposed that probably on 18.8.1997 he handed over two cheques to CBI officer. He testified that in the main Uphaar case, he was shown photocopy of two cheques which he identified after verifying from the record. He proved seizure memo Ex.PW10/K bearing his signatures at point B which pertaining to cheque no. 805578 dated 30.11.1996 issued by Gopal Ansal, authorized signatory for Ansal Theaters & Clubhotels Pvt. Ltd in favour of M/s Music Shop for an amount of Rs. 1,50,000/- and another cheque no. 805590 dated 12.02.1997 issued by Gopal Ansal, authorized signatory for Ansal Theaters & Clubhotels Pvt. Ltd in favour of M/s Chancellor Club for Rs. 2,96,550/-. He identified certified copies of the photocopies of both cheques Ex.PW10/L and Ex.PW10/M. As such the witness proved Ex.PW10/K,Ex.PW10/L & Ex.PW10/M and which is also corroborated by his earlier testimony in the main Uphaar case. Further, the testimony of PW22 is corroborated from the testimony of PW10 who testified that he filed the photocopy of document D25 which is seizure memo dated 18.08.1997 which is Ex.PW10/K (certified copy) and certified copies of aforesaid cheques Ex.PW10/L & Ex.PW10/M (certified copy). Further, testimony of PW12 also corroborates as he was Assistant IO to PW10. He proved Ex.PW10/K which is seizure memo of the aforesaid two cheques and same bears his signatures at point A.

62(F). PW34 Sh. Ishwar Bhatt deposed that on 27.08.1997, he handed over a cheque bearing no. 183618 dated 23.05.1996 drawn on Syndicate Bank, Green Park Extension, New Delhi in favour of Chief Engineer (Water) for an amount of Rs.9,711/- duly signed by Gopal Ansal, Authorized signatory for Ansal Theaters & Clubhotels Pvt. Ltd and he handed over the said cheque to Mr. A. K. Gupta, Inspector CBI on the instructions of Chief Manager. He signed on the seizure memo and during his testimony in the main Uphaar case he approved the photocopy of the seizure memo as well as of said cheques to be of their original. He proved Ex.PW10/O and Ex.PW10/N being certified copies of photocopies of cheque and seizure memo and identified his signatures at point B & C. He testified that the photocopies of said documents got exhibited by way of secondary evidence as Ex.PW93/A and Ex.PW93/B in the main Uphaar

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case and his testimony is Ex.PW34/A (in the present case). As such the witness proved Ex.PW10/O & Ex.PW10/N and his testimony in main Uphaar case Ex.PW34/A which is also corroborated by his earlier testimony in the main Uphaar case. Further, the testimony of PW34 is corroborated from the testimony of PW10 who testified that he filed the photocopy of document D26 which is seizure memo dated 27.08.1997 which is Ex.PW10/N (certified copy) and certified copies of aforesaid cheques Ex.PW10/O(certified copy). Further, testimony of PW12 also corroborates as he was Assistant IO to PW10. He proved Ex.PW10/N which is seizure memo of the aforesaid cheque and same bears his signatures at point A.

62(G). PW10 Sh. Rai Singh Khatri was IO of the case and his testimony revealed that after the FIR no. 432/1997 of PS Hauz Khas was taken over by CBI for investigation all the original documents alongwith record seized by Delhi Police was taken over by him. Various other relevant documents were seized by him and his assisting IOs from various departments vide different seizure memo. He filed the charge-sheet alongwith all relevant document in the court of Sh. Brijesh Sethi, Ld. MM, the then Ld. MM on 15.11.1997. Photocopies of the charge-sheet and the documents were prepared under his direct supervision for supplying the same to the accused persons as well as for keeping the same for the purpose of record and he kept one set of charge-sheet with him. After it was informed to him that total 9 documents were found to be torn/ obliterated/ tampered/ sprinkled with ink he arranged the relevant documents for the purpose of trial from his set of charge-sheet alongwith his sworn affidavit Ex.PW10/A (colly.). During his testimony, the Court made observation regarding the said documents of their having torn/ mutilation/ disappearance/ obliteration and defacement. Document D-20 of original main Uphaar case is Ex.PW10/B (colly.). Document D-84 from the original Uphaar case is Ex.PW10/C (colly.). Document i.e. page no. 379 of D-89 from the original Uphaar case is Ex.PW10/D. Photocopies of pages 1 to 362 of D-89 are Ex.PW10/E (colly.). Document i.e. pages 96 to 113 of D-91 are Ex.PW10/F (colly.). The document i.e. certified copy of seizure memo of D-92 is Ex.PW10/G and photocopy of page no. 50 is Ex.PW10/H. Photocopies of the said register running into 1 to 70 pages (page no. 71 to 92 are blank in original register and page no. 45 to 50 are missing) are Ex.PW10/J (colly.). The photocopy of document D-24 is Ex.PW3/B and certified copy of cheque dated 26.06.1995 for Rs. 50 Lakh is Ex.PW3/A. Photocopy of document D-25 i.e. seizure memo dated 18.08.1997 is Ex.PW10/K and certified copies of two cheques of Rs. 1,50,000/- and Rs. 2,96,550/- are Ex.PW10/L and Ex.PW10/M. Photocopy of document D-26 proved through certified copy is Ex.PW10/N and certified copy of cheque dated 23.05.1996 of Rs. 9,711/- is Ex.PW10/O. Photocopy of document D-28 are proved through certified copy is Ex.PW10/P, Ex.PW10/Q, Ex.PW10/R, Ex.PW10/S, Ex.PW10/T & Ex.PW10/U. In his cross-examination, PW10 categorically stated that he got prepared 17 sets of charge-sheet and documents and out of which he kept one set for him. He took acknowledgment from the Ahlmad to whom he handed over the original charge-sheet and Ahlmad duly checked the said record. He had provided the lock and two keys to the Ahlmad to keep the documents in safe custody as the documents were supplied in one iron trunk. On behalf of the defence, some contradictions were highlighted in the statement of the witness under section 161 Cr.P.C and his testimony before Court but same were not material.

62(H). PW12 Ashok Gupta was CBI Inspector in the year 1997 and he was Assistant IO to PW10. He proved Ex.PW10/K which is seizure memo of two seized cheques which was taken into possession by him. He also proved Ex.PW10/L which is certified copy of another cheque was taken into possession by him from Sh. Ishwar Bhatt, Assistant Manager, Syndicate Bank. The three cheques proved by him are Ex.PW10/L, Ex.PW10/M & Ex.PW10/O.

62(I). PW16 Prithvi Singh was serving as DSP in CBI in the year 1997. He was also assisting to PW10. He testified that on 26.07.1997, Inspector Satpal Singh handed over him certain document alongwith their common seizure memo which was prepared by Inspector R.S. Jakhar which he handed over to PW10 and the said documents were in intact condition. While he was testifying in main Uphaar case, the said seizure memo was in torn condition and he proved the said seizure memo through photocopy of untorn seizure memo of original seizure memo dated 18.07.1997. He proved photocopy of torn seizure memo Ex.PW14/A and certified copy of

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photocopy of untorn seizure memo is Ex.PW10/B (colly.). His deposition in main Uphaar case is Ex.PW16/A. Nothing favourable to the defence could be elicited in his cross-examination by accused persons.

62(J). PW19 M.S. Partyal was the DSP of CBI in the year 1997 and he was assisting PW10 in the investigation of the main Uphaar case. He seized attendance register of Managers of Uphaar cinema for the month of May and June, 1997 and a file containing minutes of MD's meeting and other correspondence containing 40 sheets from Sh. Malhotra, Deputy Manager, Uphaar Cinema in the presence of Sh. Avtar Singh (public witness PW21) . He testified that during his deposition in main Uphaar case 6 pages were found missing in the file of the minutes of meeting and also told the numbers of pages 1, 9,12,14,18 & 19 and on the basis of photocopies of the missing pages, he approved the same which were exhibited through secondary evidence and the said exhibits are Ex.PW10/P,Ex.PW10/Q, Ex.PW10/R, Ex.PW10/S, Ex.PW10/T & Ex.PW10/U. As such these documents are proved by PW19. The witness in his cross-examination testified that seizure memo of these documents was exhibited in main Uphaar case as Ex.PW98/A. He categorically stated that seizure memo had signature of Avtar Singh, the independent witness PW21. He also stated that photocopy of page 1.

62(K). PW20 N.S. Virk was the DSP of CBI in the year 1997. He proved the seizure memo of cheque no. 955725 dated 26.06.1995 for Rs. 50 Lakh after seeing the certified copy of its photocopy which is Ex.PW3/B and certified copy of the photocopy of said cheque Ex.PW3/A as he had taken into possession of original cheque and seized it vide aforesaid seizure memo. He categorically denied the suggestion that misplacement of document can happen occasionally in cases where record is voluminous.

62(L). PW26 Tribhuvan was Inspector, CBI in the year 1997 and he seized one original register titled as OB of the Control Room of DFS Headquarter containing 1 to 400 pages from Sh. A. K. Bhatnagar through seizure memo and proved the said seizure memo on the basis of certified copy which is Ex.PW11/A having signature at point B. He also deposed that during the deposition in main Uphaar case he was shown the photocopy of page no. 379 from amongst the missing pages and he approved the same to

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be true copy of its original which is Ex.PW10/D. The copy of occurrence book from page no.1 to 362 is Ex.PW10/E (colly.). He also proved the seizure memo of one casual leave register maintained at Headquarter of Delhi Fire Service for the period of 1995 – 1996 pertaining to availed casual leave by Officers with a rank of Station Officer to Deputy Chief Fire Officer containing 1 to 92 pages as Ex.PW10/G. He also proved the missing pages no.45 to 50 which is Ex.PW10/J (colly.) and page no. 50 as Ex.PW10/H on the basis of certified copy of the photocopy. He proved his deposition in main Uphaar case as Ex.PW26/A. He affirmed that an additional set of the documents and charge-sheet is always kept separately for the convenience of the Court and record.

62(M). PW28 Deepak Gaur was DSP, CBI in the year 1997 and associated with the investigation conducted by PW10. He proved Ex.PW1/A which is certified copy of seizure memo prepared by him while taking possession of some documents. He deposed that during his testimony in the main Uphaar case. He was shown occurrence book register of BCP, Fire Station which is described at serial no. 3 in the seizure memo Ex.PW1/A which originally contained 100 pages, however, when it was shown to him, page no. 95 to 104 were missing and on page no. 109 to 116 blue ink was sprinkled making them illegible while the said register was intact in all respects when it was seized. He proved the certified copies of photocopies of page no. 96 to 113 which is Ex.PW10/F (colly.) and certified copies of photocopies from page no. 109 to 116 is Ex.PW28/A (colly.). The photocopy of complete occurrence book register is Ex.PW10/FF (colly.). He proved his deposition in main Uphaar case dated 29.03.2003 Ex.PW28/B. In cross-examination some contradiction are pointed out however same are insignificant. Witness categorically stated that he seized the said documents on the direction of PW10.

62(N). PW14 Bal Kishore was posted as ASI, SIT Section, Crime Branch, in the year 1997 and he was associated with the investigation of the main Uphaar case and he testified that he and Inspector R.S. Jakhar seized 10 documents from Mr. S.S. Gupta working in the office of Mr. Ansal through a seizure memo and witness identified the original seizure memo dated 18.07.1997. Photocopy of said torn seizure memo is Ex.PW14/A. Certified

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copy of the photocopy of complete seizure memo exhibit during the course of main trial is Ex.PW10/B (colly.) bears his signatures at point A. He testified that seizure memo Ex.PW14/A was intact in all respects while it was prepared.

62(O). PW17 Satya Pal Singh was posted as Inspector, Crime Branch in the year 1997 and associated with SIT of the main Uphaar case and he testified that on 12.07.1997, he taken into possession the file of Delhi Fire Service pertaining to Uphaar cinema which consisted of 30 pages of note sheets and 128 pages of correspondence and emergency occurrence book of Delhi Fire Service for a period 30.5.1997 to 15.06.1997 and there were 400 pages were in the book out of them page no. 1 to 292 were returned and remaining pages were blank. At the time of seizure, they were intact in all respects. The witness proved certified copy of the photocopy of the untorn document already exhibited as Ex.PW10/C (colly.). Witness upon seeing original page no. C-123 of the correspondence file stated that the said page in torn condition, however, while it was seized, it was intact in all respects and also bears his signatures. He also proved certified copy of original torn seizure memo which is already exhibited as Ex.PW14/A and also stated that same was intact at the time, however, left half lower portion of the second page is torn now. He also proved certified copy of photocopy of untorn seizure memo which was exhibited during trial of main Uphaar case by secondary evidence which is already exhibited as Ex.PW10/B (colly.).

62(P). All the documents as per Ex.PW2/A were proved during evidence of this case by their author, witness, custodian. As such there remains no doubt left regarding the fact that these document were infact intact at the time when they were submitted before Ld. MM and till custody of the file was with Dinesh Chandra Sharma.

62(Q). From the aforesaid witnesses, it was proved that following documents were destroyed from the judicial file which are :

(i) Seizure Memo dated 18.07.1997;

(ii) Page no. 123 of the file of Delhi Fire Service having inspection report dated 18.11.1996;

(iii) Seizure Memo dated 27.08.1997 alongwith cheque no. 995725 dated

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26.06.1995 for Rs. 50 Lacs;

(iv) Seizure Memo dated 18.08.1997 alongwith cheque no. 805578 dated 30.11.1996 for Rs. 1.50 Lacs;

(v) Seizure Memo dated 27.08.1997 alongwith cheque no. 183618 dated 23.05.1996 for Rs. 9711/-;

(vi) File containing minutes of MD's conference of Uphaar Grand regarding covering letter for MD's conference held on 07.05.1997, 02.04.1997 and 01.05.1997;

(vii) One register i.e. occurrence book of the Control Room (HQ), Delhi Fire Service, wherein relevant page is 379 pertaining to departure entry of H.S. Panwar, Fire Officer for inspection of Uphaar cinema on 12.05.1997;

(viii) Occurrence Book of Bhikaji Kama Place, Fire Station wherein page no. 95 to 104 are missing and ink has been spread over page no. 109 to 116 and page no. 96 to 113 contain information of movement of fire officers to attend fire calls and conduct inspection from 21.12.1996 to 23.12.1996;

(ix) Casual Leave register maintained in Delhi Fire Service (HQ) for the period 1995 to 1996 and seizure memo of the same wherein page no. 45 to 50 were missing and page no. 50 showing that H.S. Panwar was on leave on 22.12.1996.

63. POLICE WITNESSES OF INVESTIGATION OF THIS CASE

63 (A). PW18 Inspector Harish Chander was posted at EOW in 2006 and on 22.11.2006, he alongwith IO/ACP Amit Roy and other team members arrested Dinesh Chandra Sharma from his house and his arrest memo and personal search memo was prepared where he put his signatures in the presence of two public witnesses Jitender Kumar Sharma and Shyam Sunder and during investigation, accused Dinesh Chandra Sharma took the team to office of A Plus security where Anoop Singh was present who produced two registers and same were taken into possession by IO through seizure memo in the presence of public witness Arvind Kumar. PW18 correctly identified Anoop Singh and Dinesh Chandra Sharma in the Court. He also proved disclosure statement of accused Dinesh Chandra Sharma as Ex.PW18/A, seizure memo of two register Ex.PW18/B, the first register is

Ex.PW18/C and second register is Ex.PW18/D.

63(B). PW37 Inspector Rajesh Sah was posted as SI at EOW in the year 2014 and in the month of January, he was asked by DCP, EOW that some more documents from the trial court record from the main Uphaar case are required and provided him a rough list and then he made an application which is Ex.PW37/A before Central Agency Section, Hon'ble Supreme Court of India and collected the said documents on 03.02.2014. After collecting the documents consisting of 1776 pages a supplementary charge-sheet was prepared which is Ex.PW37/B. The copy of trial court judgment of Ld. ASJ dated 20.11.2007 is Ex.PW 37/H.

63(C). PW38 Amit Roy is the IO of this case and after investigation was entrusted to him he prepared a list of documents for applying their certified copies which were missing/torn/obliterated and defaced which is Mark 38/A. Another list seeking dismissal order and preliminary enquiry against Dinesh Chandra Sharma is Mark 38/B. The form for applying certified copy is Mark 38/C & Mark 38/D. He placed on record documents which are already Ex. PW5/A, Ex. PW5/B, Ex. PW5/C, Ex. PW8/A, Ex. PW10/B, Ex. PW3/A, Ex. PW10/C, Ex. PW10/K, Ex. PW10/L, Ex. PW10/M, Ex. PW10/N, Ex. PW10/O, Ex. PW10/P to Ex. PW10/U, Ex. PW10/C, Ex. PW11/A, Ex. PW10/D, Ex. PW1/A, Ex. PW10/F, Ex. PW28/A, Ex. PW10/G, Ex. PW10/H. He obtained certified copies of affidavit Ex.PW10/A and the list of documents annexed with it Ex.PW30/DB. He seized photocopy of appointment letter of Dinesh Chandra Sharma Ex.PW7/A, joining letter Ex.PW7/B, charge report Ex.PW7/C, photocopy of his joining report Ex.PW7/D, photocopy of handing over charge / relinquishment report already Ex.PW7/E and photocopy of his handing over relinquishment report Ex.PW7/C vide seizure memo Ex.PW9/A. He served notice under section 91 Cr.P.C to MTNL which is Ex.PW38/A (forwarding letter), history of three telephone numbers 23352269, 23352270 and 23352518 is Ex.PW38/B (Colly.) with another forwarding letter addressed to AVO Central, written by Dharampal Singh, Div. Engineer Ex.PW38/C. He served a notice under section 91 Cr.P.C to Hutch company to provide the CDR of relevant mobile numbers and pursuant thereof the CDR of relevant mobile number for relevant

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period were provided to him vide forwarding letter Ex.PW36/M and Ex.PW36/A. The certified copies of CDR are already Ex.PW36/B, already Ex.PW36/C, already Ex.PW36/D, already Ex.PW36/F, already Ex.PW36/G, already Ex.PW36/H, already Ex.PW36/I, already Ex.PW36/J, already Ex.PW36/K and already Ex.PW36/L. On 25.11.2006, he alongwith Insp. Harish Chander reached at the office of A Plus Security, Saidulajab, M.B. Road, New Delhi and from there he had taken into possession through seizure memo Ex.PW18/B two registers of employment and remuneration. He arrested Dinesh Chandra Sharma and also conducted his personal search however, both these memos got misplaced and they are not on record. His disclosure statement is Ex.PW18/A. The bail of Dinesh Chandra Sharma was canceled vide order dated 23.12.2006 which is Ex.PW38/B and the order of Hon'ble High Court of Delhi dated 04.01.2007 is Ex.PW38/E. JC extension vide application cum order dated 19.02.2007 is Ex.PW38/E. The GEQD report dated 19.04.2007 is Ex.PW23/A, its annexure Ex.PW23/C and forwarding letter Ex.PW23/B, letter received from GEQD dated 28.06.2007 is Ex.PW23/D, specimen writing of Anoop Singh is Ex.PW23/E (colly.), supplementary report dated 13.08.2007 is Ex.PW23/F and forwarding letter by GEQD is Ex.PW23/G. The report pursuant to section 91 Cr.P.C notice by Airtel is Ex.PW27/B. The seizure memo of said letter is Ex.PW27/A. Notice under section 91 Cr.P.C dated 15.09.2007 is Ex.PW38/G. Letter dated 15.09.2007 to Director, SEML is Ex.PW38/H, the reply is Ex.PW38/I.

64. RECORD PRODUCED BY ROC TO ESTABLISH RELATIONSHIP OF ACCUSED WITH SEML

64(A). PW25 produced the certified copy of Certificate of Incorporation, details of Director, Annual Return of the period of the period 2004-2005 with Annexure-I, Annexure-II, Form 32 regarding appointment of Rajiv Chopra as Additional Director and Cessation of Aditya Wadhera as Director, consent of Rajiv Chopra and resignation of Aditya Wadhera and the certified copies of the same is Ex.PW25/B (colly.) and Certificate under section 65B is Ex.PW26/C. However, the said record was de-exhibited.

64(B). PW31 proved the certified true copy of Annual Return of financial year ending on 31st March, 2005 for AGM held on 30.09.2005 Ex.PW31/M

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and Balance Sheet for the financial year ending on 31.03.2005 alongwith notice to shareholder and Director and Auditors report running in 10 pages having internal page no. from 17 to 26 is Ex.PW31/N (colly.).

64 (C). PW39 Anokhe Lal Pal admitted his resignation letter Ex.PW31/L. In his cross-examination by Ld. PP, he admitted that the way appended his signatures on Ex.PW31/L, Ex.PW31/M, Ex.PW31/N, Ex.PW31/O, Ex.PW31/P is the same as on his all official documents, however, he avoided identifying his signatures through the photocopies on the contract for security services. His testimony revealed that he was dithering in telling the correct facts as his answers were vague except the documented facts regarding the Chairmanship of Anoop Singh in the company A-Plus Securities & Training Institute Pvt. Ltd. At this juncture, where the conduct of witnesses is such where he attempts to mislead the Court by denying to identify his signature then its always better for the Court to apply its own wisdom especially if provided under the law. Thus, this Court has no alternative than to exercise the powers conferred by section 73 of Indian Evidence Act, 1872. A careful comparison of signatures of PW39 on various contracts between Star Estates Management Ltd and A-Plus Securities already marked Z-2 (colly.) with admitted signatures on Ex.PW31/P, reveals that they do tally and are in the hand-writing of one and the same person i.e. PW39. As such the contract between Star Estates Management Ltd and A-Plus Securities stood proved. As such the contract between Star Estates Management Ltd and A-Plus Securities stood proved.

65. RECORD FROM MTNL

65 (A). PW32 proved original history register containing relevant entries pertaining to landline nos. 23352269, 23352270 & 23352518 all allotted to Ansal Properties and Industries and their copy of history register is Ex.PW32/A, Ex.PW32/B & Ex.PW32/C respectively. In cross-examination, witness stated that he had never seen KYC pertaining to these numbers as he was asked to produce history register only.

65 (B). PW33 G.S. Bakshi proved record pertaining to landline nos. 23352269, 23352270 & 23352518 all allotted to Ansal Properties and Industries regarding change of company to Ansal Properties & Infrastructure Ltd and the said application is Ex.PW33/A and Ex.PW33/B, the affidavit Ex.PW33/D and the affidavit of indemnity is Ex.PW33/E.

66. DOCUMENTS FROM API

66 (A). PW24 Vivek Gandhi proved Certificate regarding employment of P.P. Batra of Ansal Properties & Infrastructure Ltd which is Ex.PW24/A.

66(B). PW42 Sh. Amitabh Ganguly proved application Ex.PW33/A, Ex.PW33/B which are filed for transfer of telephone numbers belonging to M/s Ansal Properties and Industries Ltd to Ansal Properties and Infrastructure Ltd. He also proved two affidavits filed in support of application which is Ex.PW33/D & Ex.PW33/E. He proved the letter with regard to extension of employment of D.V. Malhotra (since deceased) with Star Estates Management Ltd from 01.04.2004 to 31.03.2005 Ex.PW42/A.

67. CONTENTION ON BEHALF OF PROSECUTION

The sum and substance of the prosecution case is that some of the accused persons namely Sushil Ansal, Gopal Ansal, H.S. Panwar who were facing trial in the main Uphaar case conspired with P.P. Batra an employee in the M/s Ansal Properties & Industries Ltd which is owned by Sushil Ansal, Gopal Ansal and Dinesh Chandra Sharma who was custodian of said case file to tamper/obliterate/ mutilate/ deface some relevant/ crucial documents sought to be relied by prosecution to scuttle the process of evidence for securing their acquittal in the main Uphaar case by preventing the Court from passing a judgment. Accused P.P. Batra who was employee of the Ansals acted as a link between Sushil Ansal, Gopal Ansal, H.S. Panwar and Dinesh Chandra Sharma. Both P.P. Batra and Dinesh Chandra Sharma were in direct contact through mobile phones and landline and in furtherance of their conspiracy, documents from the file of the main Uphaar case were Destroyed / Tampered/Obliterated/ Mutilated/ Defaced at a very crucial time when the trial was at a very advance stage and Hon'ble High Court of Delhi directed expeditious trial by atleast fixing a matter 10 times in a month. The said fact came to the knowledge of the Court and a Fact Finding enquiry was ordered followed by a Departmental Enquiry against Ahlmad Dinesh Chandra Sharma and he was subsequently dismissed from service. After his dismissal, Dinesh Chandra Sharma through P.P. Batra at the behest of Sushil Ansal and Gopal Ansal was provided a job at A-Plus Securities Agency belonging to Anoop Singh upon the recommendation of

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D.V. Malhotra, General Manager of M/s Star Estates Management Ltd, a subsidiary company of M/s Ansal Properties & Industries Ltd. Dinesh Chandra Sharma was paid salary higher than the usual rate at A-Plus Securities as for a similar nature of work he was paid Rs. 15,000/- instead of Rs. 7,500/- paid to other field officers. When Anoop Singh became aware of police investigation, he applied fluid on the name of Dinesh Chandra Sharma in the wages and remuneration register of his firm and wrote a fictitious name to prevent the evidence being collected by the police. He also removed the revenue stamps where Dinesh Chandra Sharma used to append his signatures to avoid detection of his signatures by police. It is submitted that the conspiracy amongst the accused persons was subsisting while Dinesh Chandra Sharma was given job and even thereafter as accused persons intending to prevent Dinesh Chandra Sharma from working some where else so as to keep conspiracy a secret by paying double the remuneration. It is also submitted that at every stage of the trial, opposition was made by the accused persons from leading secondary evidence to exhibiting documents which was part of their larger conspiracy to stall the trial.

On behalf of prosecution, several judgments are filed and same are taken on record.

> *It is important to note that in Government of Karnataka v. Gowramma (2007) 13 SCC 482, it was held by Hon'ble Supreme Court of India....*
> *Para 17, Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper . Para 18, the following worlds of Hidayatullah, J. in the matter of applying precedent have become locus classicus : (Abdul Kayoom v. CIT AIR p. 688 para 19)*
> *Para 19, each case depends on its own facts and a close similarily between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptations to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line, a case falls, the broad resemblance to another case is not at all decisive. "*

Considering the aforesaid judgment, the precedent filed on

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behalf of prosecution are grasped for the purpose of legal proposition involved in it and same would be considered for rendering judgment in the facts of the present case.

68. CONTENTIONS OF THE ACCUSED PERSONS :-

68 (A). CONTENTION OF ACCUSED DINESH CHANDRA SHARMA

It was canvassed that investigation was conducted in a biased manner by the police as initially charge-sheet was filed against him only. However, other accused persons were charge-sheeted through supplementary charge-sheet. Further, the place of arrest and the manner is disputed as IO could not produce the arrest memo before the Court. Further the witnesses of the arrest were not examined which were shown to be participated at the time arrest of the accused. No recovery of incriminating material was effected from the accused during his police custody. Prosecution has failed to connect accused no. 1 to the telephonic calls. The documents as mentioned in application dated 20.01.2003 Ex.PW2/A were related to accused persons involved in main Uphaar case and Dinesh Chandra Sharma was one of the custodian of the record only. It is submitted that accused could not have obtained any benefit from missing of document rather he tried his level best for tracing the documents before initiation of preliminary enquiry against him. It is submitted that accused infact traced some documents and other accused persons filed their objections against leading secondary evidence. It is submitted that departmental enquiry does not make out a case for criminal prosecution as while dismissing the accused the then Ld. District & Sessions Judge did not recommend initiation of any criminal proceedings against him. It is also submitted that some other court officials were also in touch with representatives of main Uphaar case however, their call detail record were not obtained by the IO and call details filed by the IO is fabricated and in pick and choose manner to save the skin of real culprits. PW4 Jagan Nath who was the Stenographer was regularly in touch with the accused persons, however, his call details record was not placed on record by the IO. IO did not confirm whether the missing record as per Ex.PW2/A was ever seen by any concerned person who dealt with the said missing record which were received by accused. Receipt of handing over and taking over charge was not filed by the IO. IO did not carry out any investigation let alone fair investigation regarding as to who has brought / provided the iron trunk and how many keys were prepared for keeping the voluminous record of the Uphaar trial case in trunks and who used to open the locks of the room and close the room after working hours. Also, no investigation is conducted regarding Chowkidars who were entrusted to open and close the Court room and Ahlmad room. It is submitted that accused was not in exclusive possession of the file as in the absence of him, Ahlmad and Reader used to perform his work. As the file ran into thousands of pages and the entire file was kept in a trunk and same used to be moved to the Court by Peons and remained in the court on various occasions and the said record inspected by various persons as such accused was not in exclusive possession of the file. It is submitted that no benefit in whatsoever manner has been received by accused which is substantiated by the investigation except the employment in A Plus Security which does not call for invocation of 409 IPC as same was allegedly done after the dismissal from the service. It is submitted that missing documents were selected and may have favoured the other accused persons but same were not at all favourable to Dinesh Chandra Sharma. It is submitted that no wrongful gain was made to the accused and no wrongful loss was caused to the prosecution case. It is submitted that *mens rea* is missing in the given facts which is essential to sustain the charge under section 409 IPC. It is submitted that conspiracy as alleged in the present case has not been proved as two circumstances which are relied by the prosecution which is the job of the accused with A-Plus Securities and the absence of CAF of phone no. 9811027522 have not been proved. The landline numbers do not belong to accused and accused has duly explained the said fact in question no. 69 in his statement. Accused cannot be held guilty for abetment as he is not accused of main offence. Accused also cannot be held guilty for the offence under section 201 IPC as ingredient essential to it are missing.

On behalf of accused Dinesh Chandra Sharma, several judgments have been filed and same are taken on record, however, considering the judgment titled as *Government of Karnataka v. Gowramma (2007) 13 SCC 482(Supra)*, the precedents filed on behalf of accused are grasped for the

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purpose of legal proposition involved in it and same would be considered for rendering judgment in the facts of the present case.

The contention raised on behalf of accused are dealt one by one.

68(A)(i). So far as the contention of biased police investigation is concerned, the said contention seems to be untenable as no evidence has been produced to substantiate the same. After registration of FIR, the IO alongwith other police officials reached to the house of the accused as he was the prime suspect being custodian of the file and after his arrest, took police remand from the Court and upon his disclosure statement recovery of two registers was effected where he was found working after dismissal from the job. The mere fact that other accused persons were charge-sheeted through supplementary charge-sheet is no ground to assume that investigation is biased as IO filed supplementary charge-sheet against other accused persons only after receiving evidence qua them.

68(A)(ii). So far as the plea of accused regarding non-production of arrest memo and its witnesses before the Court is concerned, the said plea can be discountenanced as the fact of arrest of the accused has been proved through the testimony of police officials which is unrebutted on the said score.

68(A)(iii). So far as the plea of the accused that no recovery was effected from him during his police custody is concerned, the said plea is baseless as during his police remand, he made a disclosure statement which is Ex.PW18/A and pursuant to his disclosure he took police party to the office of A-Plus Securities where two registers Ex.PW18/C and Ex.PW18/D were seized vide seizure memo Ex.PW18/B which were recovered at his instance.

68(A)(iv). So far as the plea of the accused that prosecution has failed to connect accused no. 1 to the telephonic calls, the said plea is unsustainable on the premise that the Call Data Record of his mobile number 9811027522 reflects several calls made to accused P.P. Batra and vice versa which detail has been duly proved through PW36 as the digital evidence produced by PW36 remains unrebutted and therefore reliable and trustworthy. Further Ex.PW27/A and Ex. PW27/B proved that the mobile number of P.P. Batra was 9818031897 and on the same number calls vice a versa were recorded and evidence to this effect has been produced which has been proved thereby proving the circumstance that during the relevant period both of them were conspiring for the purpose of destruction of evidence.

68(A)(v). So far as the plea of the accused that the documents so destructed as per Ex.PW2/A were related to accused persons involved in main Uphaar case and he could not have benefited from them, the said plea holds no water as in pursuance of criminal conspiracy with other accused persons, he destructed those documents by different modes while having lawful custody of file and after his dismissal he was found working in the company for double remuneration which job was provided through the accused persons as such undeniably he got benefited from the said act of destruction of documents.

68(A)(vi). It is correct that while dismissing the accused person, Ld. District & Sessions Judge did not recommend initiation of any criminal proceedings against him, however, same cannot be construed to be an immunity against the criminal prosecution if the act complained of falls within the domain of criminal act covered under IPC as well.

68(A)(vii). Merely because some other court officials were also in touch with representatives of main Uphaar case and failure of the IO to obtain their call records is no ground to disbelieve the evidence which has surfaced against the accused indicating his active involvement as part of larger conspiracy for *quid pro quo*. It is Dinesh Chandra Sharma and not PW4 who was the custodian of file. The files which used to remain with PW4 during the day for orders were received by Ahlmad after the proceedings are over and never ever any shortcoming was pointed out regarding any document by the Ahlmad. He was the custodian of the file and was obligated to ensure its intactness every time the files received by him during the Court hours after the routine work.

68(A)(viii). Regarding missing record as per Ex.PW2/A, the relevant witnesses of proceedings, seizure, custodian were produced as witnesses before the Court and their testimony remained unshakable and they proved the documents as per Ex.PW2/A, therefore, IO was not required to confirm personally as to whether these documents were seen by said witnesses.

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68(A)(ix). It is proved through evidence that Dinesh Chandra Sharma took charge of the files from previous Ahlmad Mr. Sunil Kumar Nautiyal by way of charge handing memo which is Ex.PW7/C, further, as per the testimony of PW10, he provided an iron trunk with keys to the Ahlmad at the time of filing charge-sheet and in which the record was kept by Ahlmad. So far as the plea that investigation regarding the locking and opening of room after working hour is concerned, it is observed that invsetigation on this aspect was not required once it is clear that Ahlmad has the wherewithal to keep the files in safe custody and who is under lawful obligation to keep them in safe custody.

68(A)(x). The plea of the accused that he was not in exclusive possession of the files is groundless as Ahlmad is the custodian of files and in the instant case the transition of the custody of files from the previous Ahlmads has been smooth and proper and the mere fact that when Ahlmad is on leave in his place, Reader or Assistant Ahlmad works is no ground to assume that custody of files passes on to them as once Ahlmad resumes duty he has to ensure everything is in order or raise concern in case of anything missing or any discrepancy in any record. Further, even if the file is bulky having voluminous record and in parts, used to be moved by Peons, inspected by various persons, the same is not sufficient to hold that custody of the files shifted to them as it will still remain with the Ahlmad only as after the proceedings he receives the files again.

68(A)(xi). So far as the plea of the accused that accused has received no benefit except the employment after his dismissal as such section 409 IPC is not made out is concerned, the said plea is untenable as Section 409 IPC provides for breach of trust by government official who is entrusted with some property and *interalia* provides that in case of breach of lawful direction and disposal of the property so entrusted, the liability is attracted. In the instant case, accused was entrusted with the file of main Uphaar case and he pursuant to a conspiracy with the accused persons of main Uphaar case destructed the crucial documents which had the tendency to show complicity and collusion of those accused persons in the main Uphaar case and during the continuation of the said conspiracy he was provided a job as a reward / price as such he committed criminal breach of trust by

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destructing the file for his illegal gain in the form of future job for higher remuneration. The import of the section cannot be confined to misappropriation in the form of money or usage and same can be widened to include such misappropriation wherein something in the form of job for higher remuneration was provided to the accused after the commission of the desired work. As such the invocation of section 409 IPC is proper as necessary ingredients are satisfied considering its scope and import. It is noteworthy that wrongful loss was caused to the prosecution case by destruction of documents as an attempt was made to subterfuge the trial process with an objective to stall it and abort it as it is not possible for the trial to proceed sans documents. Furthermore, these were not the formal documents but those documents which had the potential to expose the collusion and complicity of the accused persons involved in the conspiracy. The *mens rea* is writ large as well as *actus reas* through a well thought plan to execute to achieve the objective of destruction of documents by the custodian of the file.

68(A)(xii). The two important circumstances *i.e.* the job of the accused with A-Plus Securities and CDR of phone no. 9811027522 have been proved by way of evidence. As the factum of job have been proved through evidence and same has been authenticated through GEQD report Ex.PW23/A. Further, the CDRs of phone no. 9811027522 have been proved as such mere omission to prove CAF would not be enough to discredit the CDRs because same was not mandated at the relevant time. It is not disputed that accused was not the Ahlmad or he was not using the said mobile number as in his statement under section 313 Cr.P.C accused has failed to render explanation to the question regarding his mobile number. Further, from the testimonies of PW32, PW33, it is proved that landline no. 23352269, 23352270 & 23352518 belong to M/s Ansal Properties & Industries Ltd in 1994 and thereafter, changed to M/s Ansal Properties & Infrastructure Ltd with effect from 21.03.2005.

68(A)(xiii). The CDR of mobile no. 9811027522 of Dinesh Chandra Sharma show following calls made to Sushil Ansal, Gopal Ansal at landline numbers of M/s Ansal Properties & Industries Ltd, P.P. Batra and Vijay Katyal, API :

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S. No	DATE	TIME	CALL MADE TO	MOBILE / LANDLINE NUMBER	DURATION	EXHIBIT No./Pg No.
1.	13.05.2002	103920	Ansal Properties & Industries Ltd. (API)	3353062	34	**Ex PW 36/N – Pg 401, Vol-V Ex PW 33/D- Pg No. 359, Vol -V**
2.	13.05.2002	103920	Ansal Properties & Industries Ltd.	3353062	34	**Ex PW 36/N – Pg 401 ,Vol-V Ex PW 33/D- Pg No. 359, Vol-V**
3.	14.05.2002	95109	Ansal Properties & Industries Ltd.	3738104	13	**Ex PW 36/H Pg 387 Vol-V Mark DA @ 257G , Vol-IV**
4.	15.05.2002	140225	Ansal Properties & Industries Ltd.	3738104	18	**Ex PW 36/H Pg 388 Vol-V Mark DA @ 257G , Vol-IV**
5.	17.05.2002	162706	Ansal Properties & Industries Ltd.	3738104	24	**Ex PW 36/H Pg 388 Vol-V Mark DA @ 257G , Vol-IV**
6.	21.05.2002	103729	Ansal Properties & Industries Ltd.	3738104	70	**Ex PW 36/H Pg 388 Vol-V Mark DA @ 257G , Vol-IV**
7.	22.05.2002	102016	Ansal Properties & Industries Ltd.	3738104	34	**Ex PW 36/H Pg 388 Vol-V Mark DA @257G , Vol-IV**
8.	22.05.2002	103714	Ansal Properties & Industries Ltd.	3738104	35	**Ex PW 36/H Pg 388 Vol-V Mark DA @ 257G , Vol-IV**
9.	24.05.2002	104635	Ansal Properties & Industries Ltd.	3738104	52	**Ex PW 36/H Pg 388 Vol-V Mark DA @ 257G , Vol-IV**

10.	24.05.2002	114230	Ansal Properties & Industries Ltd.	3738104	21	**Ex PW 36/H Pg 388 Vol-V Mark DA @ 257G , Vol-IV**
11.	28.05.2002	140950	Ansal Properties & Industries Ltd.	3738104	18	**Ex PW 36/H Pg 389 Vol-V Mark DA @ 257G , Vol-IV**
12.	29.05.2002	123041	Ansal Properties & Industries Ltd.	3738104	108	**Ex PW 36/N Pg 401 Vol-V Mark DA @ 257G , Vol-IV**
13.	29.05.2002	104316	Ansal Properties & Industries Ltd.	3352268	18	**Ex PW 36/N– Pg 401 Vol-V Ex PW 33/D- Pg No. 359, Vol-V**
14.	30.05.2002	103508	Ansal Properties & Industries Ltd.	3738104	48	**Ex PW 36/H Pg 387 Vol-V Mark DA @ 257G , Vol-IV**
15.	18.06.2002	130337	Ansal Properties & Industries Ltd.	3738104	50	**Ex PW 36/I Pg 390 Vol-V Mark DA @ 257G , Vol-IV**
16.	03.08.2002	114039	Ansal Properties & Industries Ltd.	3738104	53	**Ex PW 36/J Pg 391 Vol-V Mark DA @ 257G , Vol-IV**
17.	19.08.2002	121016	Ansal Properties & Industries Ltd.	3738104	51	**Ex PW 36/J Pg 392 Vol-V Mark DA @ 257G , Vol-IV**
18.	19.08.2002	121134	Ansal Properties & Industries Ltd.	3738104	48	**Ex PW 36/J Pg 392 Vol-V Mark DA @ 257G , Vol-IV**
19.	19.08.2002	162405	Ansal Properties & Industries Ltd.	3738104	40	**Ex PW 36/J Pg 392 Vol-V Mark DA @ 257G , Vol-IV**
20	26.08.2002	112710	Ansal Properties &	3353062	50	**Ex PW 36/N Pg 401 Vol-V**

			Industries Ltd.			**Ex PW 33/D 359 Vol-V**
21	29.08.2002	151739	Ansal Properties & Industries Ltd.	3738104	26	**Ex PW 36/J Pg 392 Vol-V Mark DA @ 257G , Vol-IV**
22	06.09.2002	102935	Ansal Properties & Industries Ltd.	3738104	22	**Ex PW 36/N Pg 401 Vol-V Mark DA @ 257G , Vol-IV**
23	06.09.2002	102957	Ansal Properties & Industries Ltd.	3738104	25	**Ex PW 36/N Pg 401 Vol-V Mark DA @ 257G , Vol-IV**
24	06.09.2002	113524	Ansal Properties & Industries Ltd.	3738104	35	**Ex PW 36/N Pg 401 Vol-V Mark DA @ 257G , Vol-IV**
25	06.09.2002	120912	Ansal Properties & Industries Ltd.	3738104	38	**Ex PW 36/N Pg 401 Vol-V Mark DA @ 257G , Vol-IV**
26	06.09.2002	124815	Ansal Properties & Industries Ltd.	3738104	***	**Ex PW 36/N Pg 401 Vol-V Mark DA @ 257G , Vol-IV**
27	06.09.2002	165524	Ansal Properties & Industries Ltd.	3738104	24	**Ex PW 36/N Pg 401 Vol-V Mark DA @ 257G , Vol-IV**
28	06.09.2002	121938	Ansal Properties & Industries Ltd.	3352270	28	**Ex PW 36/K Pg 401 Vol-V Ex PW 32/B Pg 352 Vol-V**
29	06.09.2002	134355	Ansal Properties & Industries Ltd.	3352269	60	**Ex PW 36/N Pg 401 Vol-V Ex PW 32/A 351 Vol-V**
30	07.09.2002	143603	Ansal Properties & Industries Ltd.	3738104	32	**Ex PW 36/K Pg 394 Vol-V Mark DA @ 257G , Vol-IV**

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31	13.09.2002	133948	Ansal Properties & Industries Ltd.	3738104	27	**Ex PW 36/K Pg 394 Vol-V Mark DA @ 257G , Vol-IV**
32	21.09.2002	152925	Vijay Katial , API	9810064446	40	**Ex PW 36/N Pg 401 Vol-V Ex PW 27/B Pg 295 Vol -IV**
33	28.09.2002	121253	Ansal Properties & Industries Ltd.	3353316	19	**Ex PW 36/N Pg 401 Vol-V Ex PW 33/D Pg 359 Vol-V**
34	28.9.2002	134729	Ansal Properties & Industries Ltd.	3738104	95	**Ex PW 36/N Pg 401 Vol-V Mark DA @ 257G , Vol-IV**
35	03.10.2002	165612	Ansal Properties & Industries Ltd.	3353316	5	**Ex 36/N Pg 401 Vol-V Ex PW 33/D Pg 359 Vol-V**
36	26.10.2002	152021	PP Batra Steno, API	9818031897-.	6	**Ex PW 36/N Pg 402 Vol-V Ex PW 27/B Pg 295 Vol -IV**
37	26.10.2002	154755	PP Batra Steno, API	9818031897	16	**Ex PW 36/N Pg 402 Vol-V Ex PW 27/B Pg 295 Vol -IV**
38	26.10.2002	164529	PP Batra Steno, API	9818031897	4	**Ex PW 36/N Pg 402 Vol-V Ex PW 27/B Pg 295 Vol -IV**
39	01.11.2002	110734	PP Batra Steno, API	9818031897	43	**Ex PW 36/N Pg 402 Vol-V Ex PW 27/B Pg 295 Vol -IV**
40	02.11.2002	105102	PP Batra Steno, API	9818031897	11	**Ex PW 36/N Pg 402 Vol-V Ex PW 27/B Pg 295 Vol -IV**
41	02.11.2002	145009	PP Batra Steno, API	9818031897	79	**Ex PW 36/N Pg 402 Vol-V Ex PW 27/B Pg 295 Vol -IV**

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42	07.11.2202	114128	Ansal Properties & Industries Ltd.	3738104	21	**Ex PW 36/N Pg 402 Mark DA @ 257G , Vol-IV**
43	11.11.2002	132646	PP Batra Steno, API	9818031897	21	**Ex PW 36/N Pg 402 Vol-V Ex PW 27/B Pg 295 Vol -IV**
44	13.11.2002	80806	PP Batra Steno, API	9818031897	52	**Ex PW 36/N Pg 402 Vol-V Ex PW 27/B Pg 295 Vol -IV**
45	14.11.2002	90027	PP Batra Steno, API	9818031897	27	**Ex PW 36/N Pg 403 Vol-V Ex PW 27/B Pg 295 Vol -IV**
46	18.11.2002	113958	PP Batra Steno, API	9818031897	12	**Ex PW 36/N Pg 403 Vol-V Ex PW 27/B Pg 295 Vol -IV**
47	18.11.2002	123730	PP Batra Steno, API	9818031897	23	**Ex PW 36/N Pg 403 Vol-V Ex PW 27/B Pg 295 Vol -IV**
48	26.11.2002	121027	PP Batra Steno, API	9818031897	6	**Ex PW 36/N Pg 403 Vol-V Ex PW 27/B Pg 295 Vol -IV**
49	26.11.2002	121419	PP Batra Steno, API	9818031897	2	**Ex PW 36/N Pg 403 Vol-V Ex PW 27/B Pg 295 Vol -IV**

Total Number calls made by Dinesh Chandra Sharma to API landlines -34
Total Number calls made by Dinesh Chandra Sharma to PP Batra - 13
Total Number calls made by Dinesh Chandra Sharma to Vijay Katyal (API) -1

These CDRs establish the link between accused Dinesh Chandra Sharma and P.P. Batra as several calls were made by Dinesh Chandra Sharma to M/s Ansal Properties & Industries Ltd landline and to P.P. Batra.

68 (A) (xiv). With regard to the argument that CDR of only Dinesh Chandra Sharma was obtained by the IO and not the other accused persons, to this argument, it is observed that Dinesh Chandra Sharma was the pivotal

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person who was supposed to be contacted for destruction of document and who had the custody of the document as such his CDR was of most importance. The fact that CDRs of other accused persons is not obtained by IO, was not necessary as the fulcrum of the conspiracy was around Dinesh Chandra Sharma.

68 (B). CONTENTION OF ACCUSED P. P. BATRA

The following four circumstances have been alleged against accused P.P. Batra :

C1 : He was doing Pairvi of the Uphaar Cinema trial as an employee of Ansal Properties and Industries Ltd;

C2 : He was the link between the Ansals and accused no. 1 Dinesh Chandra Sharma through phone contact;

C3 : He secured a job for accused no. 1 Dinesh Chandra Sharma in M/s A-Plus Security and Training Institute Pvt. Ltd after he was terminated 25.06.2004;

C4 : Accused Anoop Singh altered the attendance register of M/s A-Plus Security and Training Institute Pvt. Ltd., when accused Anoop Singh became aware of police investigation.

It is submitted that accused P.P. Batra was doing Pairvi for other accused persons and the same has been adversely inferred against him despite the same role was also performed by four other employees of M/s Ansal Properties & Industries Ltd. Accused herein was the junior most employee of M/s Ansal Properties and was working as a Steno in the company's legal Cell as such it is unfathomable that he was privy to the alleged conspiracy to the exclusion of other four employees. Prosecution has failed to attribute any individual motive to the accused. No palpable benefit accrued to the accused from the alleged commission of offence. The CDRs and ownership of mobile no. 9818031897 to P.P. Batra cannot be relied upon due to inexplicable flaws pointing out towards manipulation as conspicuous date format, disturbance in chronology of time, haphazard entries, disturbance in chronology of date, long gaps and missing data existed in the CDRs. Further, the explanation rendered by PW36 is fallacious on several counts which leads to inference that they are tempered with. Further, a valid certificate under section 65B (4) of Indian Evidence

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Act has not been filed by PW36. Ownership of phone no. 9818031897 not proved and same is hit by section 162 Cr.P.C. Further, prosecution has not been able to produce the best evidence to prove the ownership of number attributed to accused. The job of accused Dinesh Chandra Sharma as alleged by the prosecution with A-Plus Securities is completely irrelevant qua accused for construing his complicity in the alleged conspiracy. No nexus existed between Dinesh Chandra Sharma and P.P. Batra. The attendance register and its alleged alteration cannot be an evidence to show participation of accused in the alleged conspiracy. Mere association / employment of accused with M/s Ansal Properties & Industries Ltd and contact with Dinesh Chandra Sharma cannot be taken as incriminating circumstance for inferring his complicity in the alleged conspiracy. No overt act has been established against him which could show his agreement for and participation in the alleged conspiracy. No legally admissible evidence exist against the accused which could prove that he was in contact with Dinesh Chandra Sharma.

On behalf of accused *P.P. Batra*, several judgments have been filed and same are taken on record, however, considering the judgment titled as *Government of Karnataka v. Gowramma (2007) 13 SCC 482(Supra)*, the precedents filed on behalf of accused are grasped for the purpose of legal proposition involved in it and same would be considered for rendering judgment in the facts of the present case.

The contention raised on behalf of accused are dealt one by one : -

68 (B)(i). So far as the contention raised on behalf of accused P.P. Batra that he was just doing pairvi of other accused persons and same role was performed by four other employees also and being the junior most employee of M/s Ansal Properties & Industries Ltd where he was working as a Stenographer as such he cannot be privy to the alleged conspiracy is concerned, the said contention can be discountenanced for the reason that you need not be occupying a very high or influential position in the company of the accused for entering into a criminal conspiracy with other accused persons. Admittedly, P.P. Batra was doing pairvi for the Ansal Brothers and he was consistently keeping in touch with accused Dinesh Chandra Sharma on his mobile phone through his mobile or landlines

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which has been established by evidence and being a pairvi officer, he had the opportunity to enter into criminal conspiracy with Dinesh Chandra Sharma. It is important to note that doing pairvi involves and interaction may be through phone or personally for a while only to know the status of the things but where numerous calls were exchanged during the relevant time even at odd hours, for a continuous period of time the same is indicative that something more was going on than pairvi. As per the evidence, accused Dinesh Chandra Sharma approached P.P. Batra after his dismissal and P.P. Batra got him a job through D.V. Malhotra at A-Plus Securities. The said circumstance indicate that the relationship was not only for the sake of pairvi but same was on account of continuing criminal conspiracy and when the opportunity arose i.e. dismissal of the accused Dinesh Chandra Sharma the remaining part of the conspiracy was executed by accused P.P. Batra. To say that he derived no palpable benefit from the alleged commission of offence would be misleading as it is not necessary that he must have derived something tangible thing or asset because at times people in the organization are prompted by several other incentives like promotion or otherwise for indulging in criminal conspiracy. Merely because the prosecution could not adduce any evidence to prove any tangible benefit obtained by accused P.P. Batra same is no ground to believe that he was not benefited from the said conspiracy. It is not important for a conspirator to have acquired any benefit in the form of money/ property as he may do it for variety of reasons. Further, accused was working for the Ansal Brothers same is sufficient motive for him for committing the act of criminal conspiracy. So far as the objection raised qua admissibility of CDRs owing to conspicuous date format, disturbance in chronology of time, haphazard entries, disturbance in chronology of date, long gaps and missing data is concerned the said discrepancy has been explained plausibly by PW36 in his cross-examination wherein he stated that the format in which data was stored in main server remains but its format undergoes changes to suit the requirement of the investigation agency and that requires manual intervention. PW36 also explained that the CDR pertains to the year 2002 and he extracted these details in the year 2006, when the memory of online server get filled, they randomly transfer some data to DAT file and upon receiving request for providing data / record it is retrieved from DAT and during the process of decoding as per required format the data was extracted from DAT file. As such the judgment filed by accused in support of the said contention titled as *Ravi Kant Sharma v. State 2011 SCC ONLINE DEL 4342* is respectfully distinguished as in the said judgment deficiencies were related to IMEI, the month/date/year/format, logical call sequence was not followed, and in some places date/ month/ year used instead of month/date/year format and no certificate under section 65B Indian Evidence Act was produced with the CDR report.

68 (B)(ii). So far as the plea of accused P.P. Batra that certificate under section 65B of Indian Evidence Act as filed by PW36 cannot be relied upon , the said contention is baseless as the said certificate produced by PW36 conform to the ingredient of the section.

68 (B)(iii). So far as the plea of accused P.P. Batra that phone no. 9818031897 qua its ownership has not been proved and same is hit by section 162 Cr.P.C is concerned, to this it is observed that the ownership of this number has been proved through Ex.PW27/A & Ex.PW27/B which provides the details of the subscriber of this number to the IO and the oral testimony of PW27 before the Court for proving the said communication proves the said documents. The plea that Ex.PW27/B is hit by section 162 Cr.P.C is not sustainable as the said document was produced by witness before the IO pursuant to the notice under section 91 Cr.P.C and same is admissible in evidence. Further, the oral testimony of the said witness regarding the said document proves the said document. It is important to note that the bar created under section 162 Cr.P.C is regarding any statement made to police during investigation and same cannot be attracted towards a document produced by a witness pursuant to notice under section 91 Cr.P.C by the IO during investigation.

68 (B)(iv). So far as the plea of accused that no nexus exist between P.P. Batra and Dinesh Chandra Sharma is concerned the said plea is fallacious on the face of it as P.P. Batra is the connecting link between accused persons of main Uphaar case and Dinesh Chandra Sharma. Admittedly he was doing pairvi of the case and while doing it, he entered into a criminal

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conspiracy with other accused persons for destruction of evidence and the overt act in the form of regular calls to Dinesh Chandra Sharma and arranging a job for Dinesh Chandra Sharma after his dismissal with A-Plus Securities establishes the said fact.

68 (B)(v). The attendance register and the alleged alteration evidences the fact of job of Dinesh Chandra Sharma with A-Plus Securities and as per the evidence, it was at the behest of P.P. Batra as P.P. Batra got the job through D.V. Malhotra who was not known to Dinesh Chandra Sharma. The fact of job of accused Dinesh Chandra Sharma through P.P. Batra is an evidence of active participation of accused P.P. Batra in the alleged conspiracy.

68 (B)(vi). The subsequent act of Dinesh Chandra Sharma of contacting P.P. Batra after his dismissal for job tend to prove that P.P. Batra was party to the conspiracy as a connecting link and to provide Dinesh Chandra Sharma what was promised to him for the desired work. The reference by P.P. Batra through D.V. Malhotra for providing job to Dinesh Chandra Sharma is a deed which clearly establish his conspiratorial role in the alleged conspiracy.

68 (B)(vii). CDR of mobile no. 9818031897 of accused P.P. Batra & landline numbers of API from where calls were made to accused Dinesh Chandra Sharma as under :

S.No.	DATE	TIME	CALLS MADE FROM	CALLS MADE TO	DURATION
1	01.11.2002	81214	9818031897 (PP BATRA)	9811027522 (DC SHARMA)	79
2	01.11.2002	105544	9818031897 (PP BATRA)	9811027522 (DC SHARMA)	29
3	01.11.2002	113618	3738104 API	9811027522 (DC SHARMA)	33
4	01.11.2002	151604	3738104 API	9811027522 (DC SHARMA)	72

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5	02.11.2002	111948	9818031897 (PP BATRA)	9811027522 (DC SHARMA)	24
6	07.11.2002	183318	9818031897 (PP BATRA)	9811027522 (DC SHARMA)	49
7	11.11.2002	142737	9818031897 (PP BATRA)	981102752 2 (DC SHARMA)	20
8	14.11.2002	114256	3738104 (API)	9811027522 (DC SHARMA)	57
9	18.11.2002	174521	9818031897 (PP BATRA)	9811027522 (DC SHARMA)	71
10	20.11.2002	81618	9818031897 (PP BATRA)	9811027522 (DC SHARMA)	30
11	25.11.2002	131339	3738104 (API)	9811027522 (DC SHARMA)	33
12	27.11.2002	122738	3352270 (API)	9811027522 (DC SHARMA)	20
13	28.11.2002	1142 25	3738104 (API)	9811027522 (DC SHARMA)	67
14	28.11.2002	132855	3738104 (API)	9811027522 (DC SHARMA)	16
15	29.11.2002	122241	3738104	9811027522	19

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			(API)	(DC SHARMA)	
16	29.11.2002	122325	3738104 (API)	9811027522 (DC SHARMA)	11

Total Number calls made by API Land Lines to D C Sharma -9
Total Number calls made by P P Batra to D C Sharma - 7

These CDRs go on to establish that P.P. Batra was in direct contact with Dinesh Chandra Sharma and the frequency of the calls and duration show a circumstance that they were in conspiracy.

68 (B) (viii). It is trite law that any denial by the accused should be specific and categoric and evasive answer is akin to tacit admission. During the statement under section 313, accused P.P. Batra gave evasive answers from question no. 69 to 118 onwards. The accused never denied that he was not using mobile numbers nor produced any evidence to rebut the said contention of the prosecution as this fact being in his exclusive knowledge is required to be proved by him in terms of Section 106 Indian Evidence Act.

68 (B)(ix). Apart from the evidence produced through CDR, the contact of accused P.P. Batra with Dinesh Chandra Sharma has been proved by way of unchallenged testimony of the witnesses. Further, CAF of the mobile numbers was not an requirement at the relevant time as instructions were issued regarding it on 22.11.2006 which is duly substantiated from judgment titled as *"Cellular Operators Association of India v. Union of India & Anr". 2012 SCC Online TDSAT 724* evidently these mobiles were in use much before this date as such the plea of non production of CDR by prosecution stands discounted. Further, CAF was made mandatory pursuant to judgment and order dated 27.04.2012 rendered by Hon'ble Supreme Court of India in WP(C) No. 285/10 following which Government of India through notification File No. 800-09/20010-VAS dated 09th August, 2012 made it necessary.

68 (C). CONTENTION ON BEHALF OF SUSHIL ANSAL

On behalf of accused, it was submitted that on behalf of prosecution, huge unexplained delay exist for initiating the prosecution in the present case as

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on 20.07.2002, it was brought to the notice to all that one document D84 is found torn from the bottom, however, the present FIR came to be registered on 17.05.2006. It is further submitted that prosecution has imputed motive on the accused by attributing three sets of documents to him and the said allegation is baseless and illogical. It is submitted that there is no allegation that accused Dinesh Chandra Sharma received any financial perks/ incentive or other benefit from the accused persons for the said tampering as such the allegation belies logic and common sense. It is submitted that tampering can also be the handy work of complainant AVUT and its members and investigation on the said aspect has not been done. It is submitted that in the present case, in the absence of any investigation being carried out to rule out the "alternate hypothesis" it is illegal to condemn the acts of the accused not done by him. It is submitted that facts of the main Uphaar case cannot be read into present case except to the extent which have been proved in the present case in accordance with law. It is submitted that the disclosure statement Ex.PW18/A of accused Dinesh Chandra Sharma is inadmissible in evidence in terms of section 25 of Indian Evidence Act and no where points out towards involvement of Sushil Ansal in the alleged tampering. It is submitted that statement of accused Anoop Singh cannot be relied upon as he was subsequently made an accused from a witness which is hit by section 162 Cr.P.C and 25 Indian Evidence Act. Further, recovery of two registers Ex.PW18/C & Ex.PW18/D are inadmissible in terms of section 27 of Indian Evidence Act as accused Anoop Singh was not in custody of the IO on 25.11.2006. It is submitted that GEQD reports regarding the two registers could not be proved as PW23 the expert did not produce the Certificate under section 65B of Indian Evidence Act and his reasoning was based on an undated document which cast serious doubt or its veracity. The manner of taking handwriting samples of accused is hit by section 311A of Cr.P.C as no permission was sought from the Court before taking samples of Anoop Singh. It is submitted that vicarious liability cannot be invoked in the present case as no Director / official / employee of the company can be made as an accused in a criminal case unless the company is also made as an accused in the said case. It is submitted that call detail record has not been duly proved. It is submitted that no adverse inference can be drawn against Dinesh Chandra Sharma just for the reason that he was found guilty in departmental enquiry. It is submitted that unfair and prejudicial investigation has been carried out by the IO. Exclusive dominion of files was not with the accused Dinesh Chandra Sharma.

On behalf of accused Sushil Ansal, several judgments have been filed and same are taken on record, however, considering the judgment titled as *Government of Karnataka v. Gowramma (2007) 13 SCC 482(Supra)*, the precedents filed on behalf of accused are grasped for the purpose of legal proposition involved in it and same would be considered for rendering judgment in the facts of the present case.

The contention of accused are dealt one by one here in below : -

68(C) (i). With respect to contention raised on behalf of accused Sushil Ansal that huge unexplained delay exist in the prosecution case if reckoned from the date when the first document was noticed torn till the filing of the FIR, to this is observed that the fact of missing documents came to the notice gradually and in the month of January, 2003, the Ld. SPP noticing the tampering of the documents filed application Ex.PW2/A and before that also, Ld. Presiding Officer asked Ahlmad to report on the aspect of missing documents and after the facts surfaced the leave was granted to the prosecution to lead secondary evidence and progress of the trial started. In the meantime, the departmental proceedings also initiated which took time for culmination and thereafter, AVUT approached Hon'ble High Court of Delhi and the present FIR was lodged. It is not the case that nothing happened after the fact of tampering came to fore. Simultaneous proceedings were going on and finally the FIR was registered on the directions of Hon'ble High Court of Delhi after it was held in the departmental enquiry that Ahlmad was careless and negligent. The delay is well explained as such the contention deserves to be dismissed.

68(C) (ii). So far as the contention raised on behalf of Sushil Ansal that imputing motive upon the accused on the basis of three sets of documents is unfair, the said argument is baseless as these documents had the material and content to prove the complicity of the accused in the main Uphaar case.

68(C) (iii). So far as the argument that Dinesh Chandra Sharma did not

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receive any financial perk from the accused is concerned the said argument is untenable as accused Dinesh Chandra Sharma after his dismissal was found working with A-Plus Securities and the said job was arranged through P.P. Batra from D.V. Malhotra (since deceased) who was the General Manager of Star Estates Management Ltd which was a subsidiary of M/s Ansal Properties & Industries Ltd. It is worth noticeable that accused Dinesh Chandra Sharma despite having no knowledge of field officer was given double the salary which belies the contention of the accused.

68(C) (iv). So far as the argument that tampering could be the handy work of AVUT the said argument is preposterous as AVUT is a body representing victims of the Uphaar tragedy and they had nothing to gain from such nefarious act. AVUT is actively involved for the pursuit of justice and casting aspersions without any evidence is akin to adding insult to injury.

68(C) (v). So far as the contention of the accused that in the absence of any investigation being carried out to rule out the "alternate hypothesis" it is illegal to put allegations against him is concerned, the said contention is hollow as investigation appear to be done in a fair manner and charge-sheet, supplementary charge-sheet was filed on the basis of evidence which has been duly proved during evidence.

68(C) (vi). So far as the contention that relevant evidence or facts of main Uphaar case cannot be read in this case is concerned, the said contention is vague as this case emanated from the main Uphaar case following destruction of evidence during the course of trial as such the facts are intertwined and a careful look is germane to properly appreciate the evidence.

68(C) (vii). The Ld. Defence Counsel argued that the action of Investigation Officer in obtaining specimen writing and signatures of accused person during investigation of the case amounts to violation of Article 20 (3) of the Constitution of India and Section 311 A Cr.P.C and reliance has been placed upon a full bench judgment of our own Hon'ble High Court in ***Sapan Haldar and Another vs. State, 191 (2012) DLT 225*** wherein it has been held that during investigation of a case, neither can the Investigation Officer obtain a sample writing of the accused nor can even a Magistrate so direct. In this regard, the judgment of the Larger Bench of

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Eleven Hon'ble Judges of *Hon᾿ble Supreme Court in* ***State of Bombay vs. Kathikalu Oghad, (1962) 2 SCR 10*** is relevant, wherein it was held that by giving impressions or specimen handwriting, accused person does not furnish evidence against himself and does not violate Article 20 (3) of the Constitution. This judgment has been followed by *Hon᾿ble Supreme Court again in* ***State of U.P. vs. Boota Singh and others AIR 1978 SC 1770*** and relevant extract (Para 41) reads as under :-

> *"....Before closing this part of the case, we might advert to an argument advanced before us by Mr. Mulla regarding the specimen signature of the respondent Boota Singh taken by the police during investigation. Mr. Mulla submitted that the act of the investigating officer in taking the specimen signature of the respondent Boota Singh was hit by Section 162 of the Criminal Procedure Code and also amounted to testimonial compulsion so as to violate the guarantee contained in Article 20 (3) of the Constitution. The matter is no longer res integra and is concluded by a decision of this Court in the case of* ***State of Bombay v. Kathi Kalu Oghad (1962) 3 SCR 10*** *where the court observed as follows (At P.1820 of AIR SC):-*
>
> *"That is why it must be held that by giving these impressions or specimen handwriting, the accused person does not furnish evidence against himself. So when an accused person is compelled to give a specimen handwriting or impressions of his finger, palm or foot, it may be said that he has been compelled to be a witness; it cannot however be said that he had been compelled to be a witness against himself."*
>
> *It was also held that merely taking a specimen handwriting does not amount to be giving a statement so as to be hit by Section 162, Criminal Procedure Code. In view of this decision of the Court, Mr. Mulla did not pursue the point further.*
>
> *Hon᾿ble Supreme Court has also followed these judgments, in its celebrated judgment titled as* ***State (N.C.T. of Delhi) vs. Navjot Sandhu @ Afsan Guru 2005 (11) SCC 600,*** *the relevant observations found at Para No. 18 of the judgement calls for attention as under: -*
>
> *"This conclusion was reached by the High Court even after excluding the evidence of PW-23, Principal Scientific Officer who confirmed that the signatures on the delivery receipt-Ext. PW-1/6 tallied with his specimen signatures. In this context, a contention was raised before the High Court that in view of Section 27 of POTA, specimen*

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signature should not have been obtained without the permission of the Court. In reply to this contention urged before the High Court, Mr. Gopal Subramanium, the learned senior counsel for the State clarified that on the relevant date, when the specimen signatures of Afzal were obtained, the investigation was not done under the POTA provisions and de hors the provisions of POTA, there was no legal bar against obtaining the handwriting samples. The learned counsel relied upon by the 11 Judge Bench decision of this Court of State of Bombay v. Kathikalu Oghad 1962 (3) SCR 10 in support of his contention that Article 20 (3) of the Constitution was not infringed by taking the specimen handwriting or signature or thumb impressions of a person in custody. Reference has also drawn to the decision of this Court in State of U.P. v. Boota Singh (1979) 1 SCC 31. We find considerable force in this contention advanced by Mr. Gopal Subramanium.."

"The judgment of Hon'ble Supreme Court on the point is ***Rabindra Kumar Pal @ Dara Singh v. Republic of India 2011 (2) SCC 490*** *and straight question before* ***Hon'ble Supreme Court*** *was as to whether in cases prior to amendment in Cr. PC in 2005, the I.O. has power to obtain specimen writing and* ***Hon'ble Supreme Court*** *answered it in the affirmative and relevant Para reads as under:-*

Another question which we have to consider is whether the Police (CBI) had the power under the Criminal Procedure Code to take specimen signature and writing of A3 for examination by the expert. It was pointed out that during investigation, even the Magistrate cannot direct the accused to give his specimen signature on the asking of the police and only in the amendment of the Criminal Procedure Code in 2005, power has been given to the Magistrate to direct any person including the accused to give his specimen signature for the purpose of investigation. Hence, it was pointed out that taking of his signature/writings being per se illegal, the report of the expert cannot be used as evidence against him. To meet the above claim, learned Addl. Solicitor General heavily relied on a 11-Judge Bench decision of this Court in The State of Bombay v. Kathikalu Oghad and Ors., (1962) 3 SCR 10. This larger Bench was constituted in order to re-examine some of the propositions of law laid down by this Court in the case of M.P. Sharma and Ors. v. Satish Chandra, District Magistrate, Delhi and Ors., (1954) SCR 1077. After adverting to various factual aspects, the larger Bench formulated the following questions for consideration:

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"2. ... ... On these facts, the only questions of constitutional importance that this Bench has to determine are; (1) whether by the production of the specimen handwritings - Exs. 27, 28, and 29 - the accused could be said to have been 'a witness against himself' within the meaning of Article 20(3) of the Constitution; and (2) whether the mere fact that when those specimen handwritings had been given, the accused person was in police custody could, by itself, amount to compulsion, apart from any other circumstances which could be urged as vitiating the consent of the accused in giving those specimen handwritings. ... ...

4. ... ... The main question which arises for determination in this appeal is whether a direction given by a Court to an accused person present in Court to give his specimen writing and signature for the purpose of comparison under the provisions of section 73 of the Indian Evidence Act infringes the fundamental right enshrined in Article 20(3) of the Constitution.

The following conclusion/answers are relevant: 10. ... ... Furnishing evidence" in the latter sense could not have been within the contemplation of the Constitution-makers for the simple reason that - though they may have intended to protect an accused person from the hazards of self- incrimination, in the light of the English Law on the subject - they could not have intended to put obstacles in the way of efficient and effective investigation into crime and of bringing criminals to justice. The taking of impressions or parts of the body of an accused person very often becomes necessary to help the investigation of a crime. It is as much necessary to protect an accused person against being compelled to incriminate himself, as to arm the agents of law and the law courts with legitimate powers to bring offenders to justice. ... 11. ... ... When an accused person is called upon by the Court or any other authority holding an investigation to give his finger impression or signature or a specimen of his handwriting, he is not giving any testimony of the nature of a 'personal testimony'. The giving of a 'personal testimony' must depend upon his volition. He can make any kind of statement or may refuse to make any statement. But his finger impressions or his handwriting, in spite of efforts at concealing the true nature of it by dissimulation cannot change their intrinsic character. Thus, the giving of finger impressions or of specimen writing or of signatures by an accused person, though it may amount to furnishing evidence in the larger sense, is not included within the expression 'to be a witness'.

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12. ... ... A specimen handwriting or signature or finger impressions by themselves are no testimony at all, being wholly innocuous because they are unchangeable except in rare cases where the ridges of the fingers or the style of writing have been tampered with. They are only materials for comparison in order to lend assurance to the Court that its inference based on other pieces of evidence is reliable. They are neither oral nor documentary evidence but belong to the third category of material evidence which is outside the limit of 'testimony'.

16. In view of these considerations, we have come to the following conclusions :-
(1) An accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more. In other words, the mere fact of being in police custody at the time when the statement in question was made would not, by itself, as a proposition of law, lend itself to the inference that the accused was compelled to make the statement, though that fact, in conjunction with other circumstances disclosed in evidence in a particular case, would be a relevant consideration in an enquiry whether or not the accused person had been compelled to make the impugned statement.

(2) The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not 'compulsion'.

(3) 'To be a witness' is not equivalent to 'furnishing evidence' in its widest significance; that is to say, as including not merely making of oral or written statements but also production of documents or giving materials which may be relevant at a trial to determine the guilt innocence of the accused.

(4) Giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression 'to be a witness'.

(5) 'To be a witness' means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in Court or otherwise.
(6) 'To be a witness' in its ordinary grammatical sense means giving oral testimony in Court. Case law has gone beyond this strict literal interpretation of the expression which may now bear a wider meaning, namely, bearing testimony in Court or out of Court by a person accused of an offence, orally or in writing.

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(7) To bring the statement in question within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made." In view of the above principles, the procedure adopted by the investigating agency, analyzed and approved by the trial Court and confirmed by the High Court, cannot be faulted with. In view of oral report of Rolia Soren, PW 4 which was reduced into writing, the evidence of PW 23, two letters dated 01.02.2002 and 02.02.2002 addressed by Mahendra Hembram (A3) to the trial Judge facing his guilt coupled with the other materials, we are unable to accept the argument of Mr. Ratnakar Dash, learned senior counsel for Mahendra Hembram (A3) and we confirm the conclusion arrived by the High Court.

In view of the consistent view of the ***Hon'ble Supreme Court*** *in* ***Navjot Sandhu @ Afsan Guru's*** *case (supra),* ***Kathikalu Oghad*** *Case (Supra) and* ***Dara Singh's*** *case (supra), investigating officer has not committed any illegality in obtaining the specimen writing and signatures of the accused during investigation. Here it is relevant to refer Article 141 of the Constitution of India which reads as under:-*

Article 141 : Law declared by Supreme Court to be binding on all courts: the law declared by the Supreme Court shall be binding on all courts within the territory of India. It is mandated upon every court of law, the tribunals throughout the country to follow the rulings and the law declared by the Hon'ble Supreme Court. Thus, in the light of the law declared by the Hon'ble Supreme Court, the arguments advanced by the defence that the accused was compelled to give the specimen writings violating the law, cannot be borrowed to declare the acts of investigation as opposed to law. "

In view of the aforesaid,the contention on behalf of accused that IO made an illegality by obtaining signature of accused Anoop Singh is discarded.

68(C) (viii). With respect to the contention that GEQD reports cannot be admitted in evidence. To this contention, it is observed that the process through which they are analysed and prepared is not a computer and same does not fall within the ambit of electronic evidence and therefore, requirement of section 65B is not attracted. Further, VSC 5000 was not a

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computer who was used for storing data but a magnifier having a mirror and the printer as such 65B certification was not necessary. The opinion of the expert would not go in vain if he uses undated document in Court while deposition if the said documents are relevant and provide justification for the opinion. In *Natasha Singh v. CBI CRL. M.C. 4406/2013 & CRL. M.A. No. 15774/2013Delhi High Court*

> *The real function of the expert is to put before the Court all the materials together with reasons which induce him to arrive at the conclusion. It is thereafter for the Court to form its own judgment by its own observation of those materials.*

11. In "Malay Kumar Ganguly v. Dr. Sukumar Mukherjee & Ors.', AIR 2010 SC 1162, the Supreme Court held as under :

> *"43. A Court is not bound by the evidence of the experts which is to a large extent advisory in nature. The Court must derive its own conclusion upon considering he opinion of the experts which may be adduced by both sides, cautiously, and upon taking into consideration the authorities on the point on which he deposes*
> *44. Medical science is a difficult one. The Court for the purpose of arriving at a decision on the basis of the opinions of experts must take into consideration the difference between an 'expert witness' and an 'ordinary witness'. The opinion must be based on a person having special skill or knowledge in medical science. It could be admitted or denied. Whether such an evidence could be admitted or how much weight should be given thereto, lies within the domain of the court. The evidence of an expert should, however, be interpreted like any other evidence."(Emphasis given)*
>
> *In 'State of Himachal Pradesh v. Jai Lal & Ors.', 1999 (7) SCC 280, the Supreme Court held as under :*
> *"17. Section 45 of the Evidence Act which makes opinion of experts admissible lays down that when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of hand-writing, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.*

An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration alongwith the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. "

Therefore, the objection raised on behalf of accused are dismissed.

68(C) (ix). With respect to contention raised on bahalf of Sushil Ansal that CDRs of accused Dinesh Chandra Sharma and P.P. Batra have not been proved in accordance with law, the said contention lacks merit as the CDRs have been duly proved by way of evidence.

68(C) (x). With respect to the contention raised on behalf of accused that in the absence of company being arraigned as an accused he cannot be prosecuted the said contention is baseless as the criminal conspiracy has been hatched between persons and not the company. Accused entered into criminal conspiracy with other co-conspirator for the destruction of evidence to prevent punishment coming his way and same is not done by the company so no question of its arraignment.

68(C) (xi). So far as the contention of accused Dinesh Chandra Sharma should not be condemned on the basis of his departmental enquiry, to this argument, it is observed that the present case is based on a conspiratorial charge which is an offence under section IPC and for which independent evidence has to be considered and the mere fact the accused was indicted in the departmental enquiry is of no consequence in this case.

68(C) (xii). So far as the discrepancy in the Ex.PW2/A, Ex.PW30/DB is concerned, it is observed that as per Ex.PW2/A, there were 9 documents where as on 21.01.2003, as per Ex.PW30/DB those 9 documents became 6 documents and as per Ex.PW10/A they again become 9 documents, to this it is observed that Ex.PW30/DB is not a complete list of missing documents dated 21.01.2003 as it is evidently clear from Ex.PW30/DB that the Ld.

Presiding Officer Ms. Mamta Sehgal ordered Ahlmad to report regarding the documents by 21.01.2003 which is indicative that same is prior to 21.01.2003 as for tracing document some time is given to the Ahlmad. Further, in serial no. 6 in Ex.PW2/A, 3 documents i.e. D24, D25 (two cheques) and D26 are mentioned, however, in Ex.PW30/DB, these cheques have been shown as 3 separate documents at serial no. 6,7 & 8 and therefore, the number of documents became 8 because document no. D28, D93 & D34 are not mentioned in the list. Further, before ACP R.S. Khatri, the IO of the main Uphaar case could file his affidavit containing the list of the missing/ torn document, Dinesh Chandra Sharma found two documents which are D93 and D34 and for this reason, in the affidavit of Sh. R.S. Khatri, two documents mentioned at serial no. 8 & 9 in Ex.PW2/A are not stated. The fact of document D93 resurfaced has been duly mentioned in Ex.PW37/E. The fact of document D34 resurfaced has been duly mentioned in Ex.PW5/A. Also, it is pertinent to note that no objection came from the accused during secondary evidence regarding relocation of D28.

68(C) (xiii). With respect to the contention that disclosure statement of accused Dinesh Chandra Sharma is inadmissible Ex.PW18/A as same is hit by section 25 of Indian Evidence Act and the recovery of two employment registers Ex.PW18/C and Ex.PW18/D is inadmissible, to this contention, it is observed that first condition necessary for this section is the discovery of facts, albeit a relevant fact in consequence of the information received from a person accused of an offence and thereafter, it is to be seen that discovery of such act must be deposed to and at that time accused should be police custody. Also, it is important that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. In the given facts, the discovery of the registers were made at the instance of Dinesh Chandra Sharma while he was in police custody as such the statement Ex.PW18/A is not hit by section 25 of Indian Evidence Act.

68(C) (xiv). So far as the contention of the accused that statement dated 25.11.2006 under section 161 Cr.P.C of the accused was in the capacity of the witness and same cannot be relied upon as he was subsequently made an accused, the said contention is baseless as such statement can be relied

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upon and its veracity cannot be challenged on the mere fact that he was transposed as accused.

68(C) (xv). So far as the contention of the accused that the agreement between SEML and A Plus security could not be proved, the said contention is misconceived as through PW39 Anokhe Lal Pal despite a confusion created by him regarding his signatures but after careful comparison of the signatures by the Court by invoking power under section 73 of Indian Evidence Act, it is proved that in the agreement between these two concerns, he was the signatory. Since DV Mahlotra has passed away, his testimony was important to prove the said agreement. The record produced by ROC shows that APIL has the majority share holding in SEML. As per company law, if the holding company have more than 50% of the shares of the subsidiary company then the management is governed by holding company. The arguments raised on behalf of Sushil Ansal that APIL does not have more than 1% share of SEML was apparently misleading. **68(C) (xvi).** So far as the contention that the landline numbers of the M/s Ansal Properties & Industries Ltd have not been proved by way of evidence, to this argument, it is observed that same were proved to be owned by M/s Ansal Properties & Industries Ltd and from these landline numbers calls were made to Dinesh Chandra Sharma. This fact has not been denied by accused persons. Rather they would have explained about these calls made through the landline numbers to Dinesh Chandra Sharma. This indicate that the calls made through landline number to Dinesh Chandra Sharma are not disputed and accordingly proved.

68(C) (xvi). So far as the plea of the accused that documents D-84, D-24, D-28 were found torn/defaced during day to day hearing when noticed, the said contention is misleading as when this incident came to fore day to day trial was not going on.

68(C) (xvii). So far as the contention on behalf of the accused person that document Mark Z could not be exhibited. To this, it is observed that during the testimony of PW33 T.S. Sharma in the main Uphaar case when the torn document was discovered, the photocopy of the said document D24 was

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produced and same was referred as Mark Z. The said document was proved through testimony of PW49 R.C. Sharma which was exhibited as PW10/C. The said document was intact while testimony of PW78 R.S. Jakhar was recorded and thereafter, it was torn as such the contention is dismissed.

68 (D). CONTENTION ON BEHALF OF ACCUSED GOPAL ANSAL

On behalf of accused Gopal Ansal, it is contended that entire case of prosecution is based on motive alone without any evidence as to the *mens rea or actus reas* which are important to prove an offence. Accused gave a no objection in the main Uphaar case for leading secondary evidence as such derived no benefit whatsoever by the alleged missing/ obliterating/ tampering/ defacing of documents. The prosecution case is based upon suspicion only and no circumstance exist against the accused which could lead to any inference of his complicity. The prosecution case suffers from misjoinder of charges and wrong and inaccurate framing of charge. The prosecution has failed to establish the exclusive custody of judicial file with accused Dinesh Chandra Sharma as such no offence under section 409 of IPC is made out qua him. The complainant had illegal access to judicial record of main Uphaar case which creates doubt on the prosecution case. The reports of enquiry conducted against Dinesh Chandra Sharma cannot be treated as evidence against him. Mere negligence does not amount to criminal breach of trust as such invocation of section 409 IPC is unjustified. The ingredients of section 109 IPC are missing. The testimony of PW2 cannot be relied upon as said witness could not be cross examined due to his demise. The non-production of CAF would make call detail record inadmissible in evidence. The possibility of misuse of alleged mobile phone number/ handsets of the accused persons cannot be ruled out. Prosecution has failed to prove that P.P. Batra and Dinesh Chandra Sharma were in touch with each other. The investigating agency conducted the investigation in a pre-determined manner on several crucial aspects. The prosecution has failed to establish beyond reasonable doubt that accused Dinesh Chandra Sharma was provided with a job at A-Plus Securities and Training Institute Pvt. Ltd at the behest of Gopal Ansal. The IO was not empowered to take specimen signatures of Anoop Singh prior to coming into force of section 311 Cr.P.C rendering GEQD report inadmissible. Accused Gopal Ansal was not controlling the affairs of Star Estates Management Ltd as such no liability can be fastened on him. Accused gave plausible explanation to the incriminating evidence put to him under section 313 Cr.P.C.

The judgments relied upon by accused Gopal Ansal have been filed and same are taken on record, however, considering the judgment titled as *Government of Karnataka v. Gowramma (2007) 13 SCC 482(Supra)*, the precedents filed on behalf of accused are grasped for the purpose of legal proposition involved in it and same would be considered for rendering judgment in the facts of the present case.

The contentions raised on behalf of accused are discussed one by one :-

68 (D) (i). So far as the contention of the accused that essential ingredient of a crime i.e. *mens rea* and *actus reus* are missing is concerned. The said argument is untenable as mens rea as well as actus reus in the form of overt act / series of acts are present in the present gamut of facts. Not only conspiracy was entertained by the accused persons but same was executed in a meticulous planning and it was subsisting through out till he got a job or till the trial continued.

68 (D) (ii). So far as the contention of the accused that he gave no objection for leading secondary evidence in the main Uphaar case is concerned the said contention is farcical as his brother and co-accused challenged the said application which must be a part of the conspiracy to procrastinate the trial as apparently the missed documents were also indicating his involvement in the main Uphaar case. Further, accused is trying to take benefit of his own wrong by projecting himself to be in favour of the trial through leading secondary evidence, however, he was the one of the co-conspirator.

68 (D) (iii). So far as the contention of the accused that the prosecution case is based on suspicion only the said contention is devoid of any merit as clear circumstance have been proved by prosecution which can be inferred from the evidence produced on record which point out towards the complicity of the accused unerringly.

68 (D) (iv). So far as the contention of the accused that prosecution case suffers from misjoinder of charges and in accurate framing of charges. The said contention is contemptible as the order on charge has been upheld by

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Hon'ble High Court of Delhi vide order dated 12.05.2017.

68 (D) (v). So far as the contention of the accused that prosecution has failed to establish that accused Dinesh Chandra Sharma was having exclusive custody of the file as such invocation of section 409 IPC is improper, the said argument is devoid of substance as Dinesh Chandra Sharma was in exclusive custody of the files and same has been established upon the strength of the evidence and the Delhi High Court Rules.

68 (D) (vi). So far as the contention of the accused that complainant had illegal access to the files is concerned the said argument is vague and without any substance/evidence.

68 (D) (vii). So far as the contention of accused Dinesh Chandra Sharma should not be condemned on the basis of his departmental enquiry, to this argument, it is observed that the present case is based on a conspiratorial charge which is an offence under section IPC and for which independent evidence has to be considered and the mere fact the accused was indicted in the departmental enquiry is of no consequence in this case.

68 (D) (viii). So far as the contention of the accused that ingredient of section 109 IPC are missing. The said contention is devoid of merit as abetment can be done by conspiracy also.

68 (D) (ix). So far as the contention of the accused that testimony of PW2 cannot be considered while evaluation of evidence. The said contention is without any reasonable basis as PW2 prepared Ex.PW2/A which remains an undisputed document and to the extent the said testimony can be relied upon.

68 (D) (x). So far as the contention of the accused that CAF of the mobile number of accused was not produced, to this is observed that CAF was not an requirement at the relevant time as instructions were issued regarding it on 22.11.2006 which is duly substantiated from judgment titled as *"Cellular Operators Association of India v. Union of India & Anr". 2012 SCC Online TDSAT 724* evidently these mobiles were in use much before this date as such the plea of non production of CDR by prosecution stands discounted. Further, CAF was made mandatory pursuant to judgment and order dated 27.04.2012 rendered by Hon'ble Supreme Court of India in WP(C) No. 285/10 following which Government of India through

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notification File No. 800-09/20010-VAS dated 09th August, 2012 made it necessary.

68 (D) (xi). So far as the contention of the accused that prosecution has failed to establish that accused Dinesh Chandra Sharma was provided job with A-Plus Securities, the said contention can be discountenanced on the ground that the agreement between Star Estates Management Ltd and A-Plus Securities has been duly proved and accused was found working there which is proved through GEQD reports.

68 (D) (xii). So far as the contention of the accused that Gopal Ansal was not controlling the affairs of Star Estates Management Ltd is concerned, it is not required that he must be controlling the affairs of the said company as in conspiracy it is not required that some position is held by him as long as he is a member of the conspiracy.

68 (D) (xiii). So far as the contention of the accused that accused gave plausible explanation in his statement under section 313 Cr.P.C, to this it is observed that the answers provided by the accused are evasive and misleading.

68 (D) (xiv). So far as the contention of the accused that IO was not empowered to collect signatures of the accused Anoop Singh as per section 311 Cr.P.C. the said contention has been already dealt in detail.

68 (E). CONTENTION ON BEHALF OF ACCUSED ANOOP SINGH KARAYAT

On behalf of accused Anoop Singh, it is submitted that he is innocent and he was not part of the conspiracy as conspiracy came to an end upon destruction of documents and Dinesh Chandra Sharma was employed much after the said conspiracy. Further, the allegation of disappearance of evidence is baseless and also not supported by any forensic evidence. Further, the employment of Dinesh Chandra Sharma has not been proved with A-Plus Securities. Several judgments have been filed and same are taken on record, however, considering the judgment titled as *Government of Karnataka v. Gowramma (2007) 13 SCC 482(Supra)*, the precedents filed on behalf of accused are grasped for the purpose of legal proposition involved in it and same would be considered for rendering judgment in the facts of the present case.

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So far as the plea of accused that he is not involved in the alleged conspiracy as his role is merely shown to the extent of providing job to Dinesh Chandra Sharma at the instance of D.V. Malhotra the said plea is fallacious as accused being Director of A-Plus Securities provided him a job and when realized that police has come he tried to efface the evidence by putting white fluid on the relevant entries and also on the revenue stamp and the said fact has been duly corroborated from the report of GEQD. Accused Anoop Singh was part of the conspiracy and when he came to know that investigation of the matter is taken up, he tried to efface evidence by putting whitener upon the name of the accused and also torn the revenue stamps where Dinesh Chand Sharma appended his signature and that is why the signature of DC Sharma could not be sent for forensic examination. The agreement between Star Estates Management Ltd and A-Plus Securities has been duly proved by way of evidence. It has also come to the fore that Dinesh Chandra Sharma after dismissal contacted P.P. Batra and P.P. Batra through D.V. Malhotra got him appointed with A-Plus Securities at a salary double the usual remuneration. Dinesh Chandra Sharma had no experience of field officer and despite this fact he was provided double the salary. The fact of applying white fluid upon his name on the seized registers and writing a fictitious name Ram Karan has been proved through GEQD report. In defence, accused could not produce the said Ram Karan to prove the said interpolation. Revenue stamps were torn which prevented detection of specimen signatures of Dinesh Chandra Sharma from analysis and same was the handy work of Anoop Singh while he came to know that police investigation is going on and he may be caught. But the evidence produced by prosecution belied his sham defence. He joined the conspiracy may be at a later stage but his responsibility remains the same as of the other conspirators as timing to join conspiracy is hardly a reason to discount his involvement how so ever small it may be.

69. EVALUATION OF THE CONTENTIONS OF BOTH SIDES IN THE LIGHT OF LEGAL PROVISIONS AND PRECEDENTS

To understand the facts in a proper perspective, it is important to have a look into the functioning of our judicial system. Our judicial system comprises of four important stake holders i.e. Courts presided over by

Judges, the lawyers, the litigants and the Court staff consisting of the Reader, Stenographer, Ahlmad (Record Keeper) & the Peon. The Court is the quintessential part of this system where all the stake holders work with their defined rights and duties. To have professionalism amongst the stake holders they have to essentially observe the rules as provided by Delhi High Court Rules for conducting day to day business. As per the rules, the Court staff is not supposed to interact through mobiles and telephones with the lawyers, litigants, pairokars and pairvi officers. The rules provide ample rights to the litigants to seek redressal of their grievances through inspection applications, CA applications, next date of hearing etc. The rules prohibit personal interaction of the Court staff with the litigants or pairvi officers through telephone, mobile during and after Court hours. If a litigant or a pairvi officer has to seek some information he can either himself or through his counsel file an appropriate application for the same and same is invariably allowed subject to just exceptions.

It is important to understand the relationship of the accused persons amongst each other in this case before adverting to the factual matrix of the case. Sushil Ansal, Gopal Ansal & H.S. Panwar were amongst the 16 accused persons of the main Uphaar case investigated by CBI. P.P. Batra is admittedly a pairvi officer of Sushil Ansal and Gopal Ansal as he was working as a stenographer in the legal department of their company which is M/s Ansal Properties & Industries Ltd. Accused Dinesh Chandra Sharma is a government official working as a Ahlmad in the court of Ld. ASJ where the trial of the main Uphaar case was pending. D.V. Malhotra was General Manager of Star Estates Management Ltd which is defacto owned by Ansal Brothers as they were the owner of majority stake holder of the shares of said company. Anoop Singh Kariyat was the Chairman of A-Plus Securities and Training Institute.

Since the Charge has been framed under Section 120-B of Indian Penal Code against the accused persons, I would like to advert to the law of conspiracy, its definition, essential features, ingredients to the offence and case law.

***Section 120-A IPC** defines Criminal Conspiracy which reads as under: - **120-A**. Definition of Criminal Conspiracy- When two or* *more persons agree to do, or cause to be done-*

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation:- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

It is clear from the above noted definition of "criminal conspiracy" that the three essential elements of offence of conspiracy are: - (a) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished; (b) a plan or scheme embodying means to accomplish that object; (c) an agreement or understanding between two or more of the accused persons whereby they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means. Thus, the gist of offence of criminal conspiracy is an agreement to break the law.

Under Section 120-A of the Indian Penal Code when two or more persons agree to do, or cause to be done, (a) an illegal act; or (b) an act, which is not illegal by illegal means, such agreement is designated a criminal conspiracy. The essence of offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration. The gist of offence of conspiracy is an agreement to break the law. Conspiracy is hatched in secrecy and as such direct evidence is seldom available. So, in case of criminal conspiracy, the court has to infer certain facts and circumstances. In considering the conspiracy, it is not always possible to give affirmative evidence about the date of formation of conspiracy, about the persons who took part in the formation of conspiracy, about the object which the conspirators set before themselves as the object of conspiracy and about the manner in which the object of conspiracy was to be carried out. All this is necessarily a matter of inference. Agreement of conspiracy can be proved either by direct evidence or by circumstantial evidence or by both. It is not necessary that there should be express proof of the agreement, far from the acts and conduct of the parties, the agreement can be inferred.

Proof of a criminal conspiracy by direct evidence is not easy to get and probably for this reason Section 10 of the Indian Evidence Act was enacted. It reads as under:-

> ***"10. Things said or done by conspirator in reference to common design :-***
> *Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."*
>
> *It has been held by the Honble Supreme Court in* ***Mohammad Usman Mohammad Hassan Maniyar Vs. State of Maharashtra, AIR 1981 SC 1062****, that for an offence u/s. 120-B IPC, the prosecution need not necessarily prove that the perpetrator expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implications. Further, it has been held by the Honble Supreme court in* ***Ram Narayan Poply Vs. Central Bureau of Investigation, AIR 2003, SC 2748*** *that, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a situation, criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120-B read with the proviso to sub section (2) of Section 120-A, then in that event mere proof of an agreement between the accused for commission of such a crime alone*

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is enough to bring about a conviction under Section 120-B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfillment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established, the act would fall within the trapping of the provisions contained in Section 120-B. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of conspiracy is seldom available; offence of conspiracy can be proved by either direct or substantial evidence. It is not always possible to give affirmative evidence about date of formation of criminal conspiracy, about the persons who took part in formation of conspiracy, about the object, which the objectors set before themselves as the object of conspiracy and about the manner in which the object of conspiracy is to be carried out; all this is necessarily a matter of inference.

It has been held by the ***Hon'ble Supreme Court*** *in* ***Firozuddin Basheeruddin versus State of Kerala, 2001 (4) Recent Criminal Report 20****, that the criminal conspiracy can be proved by circumstantial evidence and even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy. It is also held that conspiracy is hatched in private or in secrecy. It is rarely possible to establish conspiracy by direct evidence and usually both the existence of the conspiracy and its object has to be inferred from the circumstances and conduct of the accused. When two or more persons agree to commit crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by such persons to carry out their common purposes, a crime is committed by each and every one who joins in the agreement. A criminal conspiracy is a partnership in crime and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible thereof. It was held by the* ***Hon'ble Supreme Court*** *in* ***State of H.P. Vs. Krishan Lal Pradhan, AIR 1987 SC 773*** *that every one of the conspirators need not* *take active part in the commission of each and every one of the conspiratorial acts.*

This section came for interpretation before **Hon'ble Supreme Court** *in* **Shiva Narayana v. State of Maharashtra, AIR 1980 Supreme Court 449** *wherein it was held that under the principle contained in Section 10 of the Evidence Act, once a conspiracy to commit an illegal act is proved, act of one of the conspirator becomes the act of the other.*

The consolidated case law as on date has been succinctly summarized by the Division Bench of our Honble High Court of Delhi in a celebrated judgment by his lordship Hon'ble Mr. Justice Pradeep Nandrajog, while writing for the Bench in **Rakesh Kumar & Ors. Versus State, 2009 (163) DLT 658,** *as under: -*

"......134. After survey of the case law on the point, following legal principles pertaining to the law of conspiracy can be conveniently culled out:-
A. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy. (See the decision of Supreme Court reported as ***State v. Nalini, (1999) 5 SCC 253).***
B. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co- participators in the main object of the conspiracy. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or

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purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role. (See the decisions of Supreme Court reported as ***Yash Pal Mittal v. State of Punjab, AIR 1977 Supreme Court 2433*** *and* ***State v. Nalini,*** *(Supra)]*

C. It is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement, which is the graham of the crime of conspiracy.

D. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts, and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy. Since a conspiracy is generally hatched in secrecy, it would quite often happen that there is no evidence of any express agreement between the conspirators to do or cause to be done the illegal act. For an offence under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act; the agreement may be proved by necessary implication. The offence can be only proved largely from the inference drawn from acts or illegal omission committed by the conspirators in pursuance of a common design. The prosecution will also more often rely upon circumstantial evidence. It is not necessary to prove actual meeting of conspirators. Nor it is necessary to prove the

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actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design is sufficient. Surrounding circumstances and antecedent and subsequent conduct of accused persons constitute relevant material to prove charge of conspiracy. (See the decisions of Supreme Court reported as ***Shivnarayan Laxminarayan Joshi v. State of Maharashtra, AIR 1980 Supreme Court 439; Mohammad Usman Mohammad Hussain Maniyar v. State of Maharashtra, AIR 1981 Supreme Court 1062;*** *and* ***Kehar Singh v. State AIR 1988 Supreme Court 1883)***

E. A conspiracy is a continuing offence and continues to subsist and committed wherever one of the conspirators does an act or series of acts. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity. A crime is complete as soon as the agreement is made, but it is not a thing of the moment. It does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry into effect the design. Its continuance is a threat to the society against which it was aimed at and would be dealt with as soon as that jurisdiction can properly claim the power to do so. The conspiracy designed or agreed abroad will have the same effect as in India, when part of the acts, pursuant to the agreement are agreed to be finalized or done, attempted or even frustrated and vice versa.

F. Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the coconspirators. In short, the section can be analysed as follows:-

(1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he Crl.A.19, 51, 121, 139, 144 & 65/2007 Page 81 of 183 entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator

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*and not in his favour. (See the decision of Supreme Court reported as **Sardar Sardul Singh v. State of Maharashtra, AIR 1957 Supreme Court 747.)***

*Here it is pertinent to refer to a classic judgment of three Hon'ble Judges Bench of the Honble Supreme Court in **Bhagwan Swarup v. State of Maharashtra, AIR 1965 SC 682** (known as 2nd Caveeshar case) in which his lordship Honble Mr. Justice Subba Rao, had already spoken for the bench analysed the ingredients of Section 10 as culled out above in the judgment of our Honble High Court in Rakesh Kumar (supra), which amounts to repetition, if quoted again.*

It would be profitable to draw reliance from yet another judgment of the Hon'ble Supreme Court of the same strength (Three Hon'ble Judges) in Nalini case (supra) relied upon by the defence, which reads It is not that immediately the object of conspiracy is achieved, Section 10 becomes inapplicable. For example principle like that of res gestae as contained in Section 6 of the Evidence Act will continue to apply. (Para 582). Therefore, the res gestae i.e. the acts, circumstances and the statements that are incidental to the principal fact of a litigated matter and are admissible in evidence in view of their relevant association with that fact, cannot be ignored since the same become relevant in view of Section 6 of the Indian Evidence Act, 1872.

70. ABETMENT AND CONSPIRACY CRIMINAL CONSPIRACY – INGREDIENTS AND CHARACTERISTICS

a. TWO OR MORE PERSONS

The offence of Criminal Conspiracy cannot be committed by one person because it is impossible to conspire with oneself. The Hon'ble Supreme Court in ***Topan Das v. State of Bombay, AIR 1956 SC 33***, held that "*it is an established rule of the law that only one person cannot conspire and that there should be at least two persons for the same, and can never be held guilty of criminal conspiracy since one cannot conspire with oneself.*"

b. MERE AGREEMENT TO COMMIT A CONSPIRACY IS A PUNISHABLE OFFENCE

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The Hon'ble Supreme Court in ***Nazir Khan & Ors. vs. State of Delhi (Criminal Appeal No. 734 of 2003)*** held that:

"As noted above, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a situation, criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120B read with the proviso to Sub-section (2) of Section 120A, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions, in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfillment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirement sand ingredients are established, the act would fall within the trapping of the provisions contained in Section 120B"

In ***State of Andhra Pradesh vs Subbaiah 1961 (2) SCJ 69***, the Apex Court held that *"Conspiracy to commit an offence is itself an offence and a person can be separately charged with respect to such a conspiracy"*

c. MEETING OF MINDS

Essential to constitute Criminal Conspiracy is meeting of minds of the perpetrators, both or all the perpetrators must be in consonance with each other to commit an illegal act or a legal act by illegal means. Unless all the perpetrators have a common intention and understanding, offence of Criminal Conspiracy cannot be constituted. The Hon'ble Delhi High Court in ***LK Advani vs CBI (1997) Cri.L.J. 2559****, held that mere presence of a few assumed entries and loose sheets cannot entertain the offence of conspiracy, the court acquitted the accused for the offence of criminal conspiracy and further explained that* ***to establish conspiracy there shall be evidence of acting on a common intention to carry out an illegal act.***

ABETMENT – INGREDIENTS AND CHARACTERISTICS

d. ABETMENT BY INSTIGATION

Instigation need not be in any specified manner, in law the Courts consider any form of instigation as long as the

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*offence has been committed and if the offender has same knowledge and intention as the person abetting. The Hon'ble Supreme Court in **Arjun Singh v. State of Himachal Pradesh AIR 2009 SC 1568** held that:*

*"Law does not require instigation to be in a particular form or that it should only be in words. **The instigation may be by conduct.** Whether there was instigation or not is a question to be decided on the facts of each case. **It is not necessary in law for the prosecution to prove that the actual operative cause in the mind of the person abetting was instigation and nothing else, so long as there was instigation and the offence has been committed or the offence would have been committed if the person committing the act had the same knowledge and intention as the abettor. The instigation must be with reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation."***

e. *ABETMENT BY CONSPIRACY*

Unlike the offence of Criminal Conspiracy u/s 120A of IPC, to constitute the offence of Abetment by Conspiracy, it is necessary that an act or illegal omission is committed by the Abettor in pursuance of the conspiracy.

DIFFERENCE BETWEEN ABETMENT BY CONSPIRACY (S. 107 IPC) AND CRIMINAL CONSPIRACY (S. 120A IPC)

*The Hon'ble Supreme Court in **Pramatha Nath Talukdar v. Saroj Ranjan Sarkar AIR 1962 SC 876** held that:*

"...The gist of the offence of criminal conspiracy is in the agreement to do an illegal act or an act which is not illegal by illegal means. When the agreement is to commit an offence, the agreement itself becomes the offence of criminal conspiracy. Where, however, the agreement is to do an illegal act which is not an offence or an act which is not illegal by illegal means, some act besides the agreement is necessary. Therefore, the distinction between the offence of abetment by conspiracy and the offence of criminal conspiracy, so far as the agreement to commit an offence is concerned, lies in this. For abetment by conspiracy mere agreement is not enough. An act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing conspired for. But in the offence of criminal conspiracy the very agreement or plot is an act in itself and is the gist of the offence."

"Put very briefly, the distinction between the offence of abetment under the second Clause of Section 107 and

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that of criminal conspiracy Under Section 120-A is this. In the former offence a mere combination of persons or agreement between them is not enough. An act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing conspired for; in the latter offence the mere agreement is enough, if the agreement is to commit an offence."

In ***Noor Mohammad Mohd. Yusuf Momin v. State of Maharashtra (1970) 1 SCC 696,*** the Hon'ble Supreme Court held that:

"So far as Section 34 Indian Penal Code is concerned, it embodies the principle of joint liability in the doing of a criminal act, the essence of that liability being the existence of a common intention. Participation in the commission of the offence in furtherance of the common intention invites its application. Section 109 Indian Penal Code on the other hand may be attracted even if the abettor is not present when the offence abetted is committed, provided that he has instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission. Turning to the charge Under Section 120-B Indian Penal Code criminal conspiracy was made a substantive offence in 1913 by the introduction of Chapter V-A in the Penal Code, 1860. Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done, an illegal act or an act which is not illegal, by illegal means. It differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by Section 107 Indian Penal Code......"

ABETMENT BY AIDING

To constitute the offence of Abetment, it is not necessary that a person has to act in pursuance to abetting, an omission of an act could also constitute abetment as held in the case of ***Tuck v. Robson****, [1970] 1 WLR 741*. In the foregoing case, a publican (the person who manages a pub or a bar), by not making any effort to make his customers leave the premises after the pub was closed, was said to have aided the crime of abetment of consumption of liquor after the hours in which it was permitted.

SECTION 109 OF IPC WHEN APPLICABLE?

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The Hon'ble Supreme Court in ***Somasundaram vs State (2020) 7 SCC 722*** *held that:*

> *"Explanation II to Section 108 of the Indian Penal Code makes it clear that the offence of abetment would be committed irrespective of whether the act abetted is committed or not or whether the effect which would constitute the offence is caused or not. Illustrations(a) and (b) are clear that the person who abets, as declared in law, cannot extricate himself from criminal liability for the offence of abetment on the ground that the act which was abetted was not done or that the offence which was actually abetted was not committed. Section 109 of the Indian Penal Code contemplates, on the other hand, the situation that there is abetment and the act abetted is committed, and what is furthermore, it is committed as a result of the abetment. Should these ingredients be present and if there is no express provision under the Indian Penal Code for the punishment of the act of such abetment, the person renders himself liable for being punished with the punishment for that offence which stands committed in consequence of the abetment by the Accused."*
>
> *"In order to attract Section 109 of the Indian Penal Code, the act abetted must be committed in consequence of the abetment. Sections 115 and 116 of the Indian Penal Code deal with punishments for abetment of offences when the offence is not committed in consequence of the abetment and where no express provision is made in the Indian Penal Code for the punishment of such abetment."*

IN A CASE WHERE THERE ARE MORE THAN TWO ACCUSED PERSONS, CAN THE OTHER CO-ACCUSED BE CONVICTED UNDER SECTION 109, WHEREIN, CRIMINAL CONSPIRACY (SECTION 120A) BETWEEN AT LEAST TWO ACCUSED IS PROVED AND THE ABETMENT BY OTHER ACCUSED PERSONS IS ALSO PROVED?

The Hon'ble Supreme Court in ***Somasundaram vs State (Supra)*** convicted the other accused persons therein under section 109 of the IPC, when the criminal conspiracy against the main accused was proved. The relevant extract from the judgment is as follows:

> *"As far as A3, A5, A6 and A8 are concerned, they stand convicted Under Section 365 read with Section 109. Abetting is to be understood in the context of their acting on the conspiracy which stood proved against A1 and A2. No doubt, abetting also takes place when there is*

instigation or intentional aiding. The role of A3 looms large. It is clear that he organised the whole thing and it commenced with the search for an appropriate house where the victim could be confined after the abduction. His role along with his men in carrying out the crime culminating in the cremation under fictitious name of the abducted person is clear."

NECESSARY THAT ALL THE CONSPIRATORS MUST BE IN LEAGUE/CONCERT WITH EACH OTHER TO INVOKE SECTION 107 AND 109 OF IPC?

The Hon'ble Supreme Court in ***Somasundaram vs State (Supra)*** held that:

> *"Also, as we have noticed, under Explanation V to Section 108 of the Indian Penal Code for the offence of abetment by conspiracy to be committed, the principal player, meaning a person who commits the act which results in the offence being committed (as in the case of murder by poisoning) need not be in league with the abettor. All that is required is that the abettor also engages in the conspiracy which must be understood as meaning participate in the concert between two or more others even if he may not have seen or known, by face or otherwise, one or more persons who are privy to the conspiracy. Thus, based on their involvement constituting abetment, a person or any number of persons without even knowing the identity of all the principal participants to the conspiracy, can be prosecuted with the aid of Section 107 read with Section 108 of the Indian Penal Code."*

From the given facts, it is apparent that accused Dinesh Chandra Sharma was having the lawful custody of the file of main Uphaar case and during his custody the fact of missing/ obliterating/ tampering/ defacing came to the notice of Ld. SPP. Although the said documents were proved in the main Uphaar case through resorting to secondary evidence but the fact remains that the trial process was fiddled with an objective to obfuscate it to secure acquittal. It is pertinent to note that torn/ obliterated/ tampered/ defaced documents were important to fasten the criminal liability on Sushil Ansal, Gopal Ansal and H.S. Panwar in the main Uphaar case. These documents had the material to establish the fact of management of day to day affairs by holding key meetings and issuing cheques of the Uphaar cinema by Sushil Ansal and Gopal Ansal. These documents would have exposed the lies of the accused regarding their defence that they relinquished from the management in the year 1988. Also, some documents could have shown negligence/ recklessness/ fabrication by accused H.S. Panwar during the course of his duties as he was responsible for the inspection of the Uphaar cinema regarding fire safety measures. Further, these documents had the material to unearth the nexus between Sushil Ansal, Gopal Ansal and H.S. Panwar. Except these persons, no other person could have been directly affected by these documents. The precision with which the selective documents which were in the nature of incriminating evidence qua Sushil Ansal, Gopal Ansal and H.S. Panwar were torn or effaced from the record rules out the possibility of any other person as same can only be the handy work of the person who had the custody of the file as same was done with meticulously planning and after due deliberations. The plea of joint entrustment is apparently erroneous as entrustment was exclusive with the Ahlmad and same was never denied by Dinesh Chandra Sharma. It is noteworthy that the documents were found missing in the year 2003 while the case was not being tried on day to day as day to day trial was ordered from July, 2007. The missing of documents from the custody of Dinesh Chandra Sharma is part of single conspiracy which ensued upon taking his charge as Ahlmad of the Court. If the alleged missing/ obliterating/ tampering/ defacing of documents is handy work of some other person as projected by the accused then how Dinesh Chandra Sharma managed to relocate some documents later on, which fact remains unexplained throughout. Further, why no document pertaining to other accused persons who were facing trial in main Uphaar case was found missing.

It is noteworthy that P.P. Batra who happened to be the stenographer of the M/s Ansal Properties & Industries Ltd and admittedly doing pairvi for the Gopal Ansal and Sushil Ansal used to meet Dinesh Chandra Sharma on regular basis and used to talk him on mobile phone. The traffic of the calls from the mobile numbers of both persons indicate that their talk was not formal regarding the pairvi of the case only. The exchange of calls at the relevant time gives the inference that they were in constant touch for some serious discussion and not for routine information regarding the case. Apparently, a conspiracy was hatched to destroy the

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evidence that too the crucial documents by selectively tearing/ tampering and defacing from the record at the time when they were about to be produced in evidence. It is evident that the said overt act was done after Dinesh Chandra Sharma assumed the charge of Ahlmad and the file and the documents came in his custody. It is noteworthy that PW8 Mr. Sunil Kumar Nautiyal in his testimony specifically deposed that after the incident of destruction of evidence came to the spot light the then Ld. ASJ called him and Sh.Gajraj Singh, the previous Ahlmad for clarifications and during their visit to Court, Dinesh Chandra Sharma used to avoid eye contact and left the Court till such time they were there leaving the conduct of the accused Dinesh Chandra Sharma very suspect and conspicuous. The conspiracy is hedged in secrecy and executed in darkness as such looking for any direct evidence would be a futile exercise. The very fact that Sushil Ansal opposed the plea of Ld. SPP for leading secondary evidence qua destructed documents as per Ex. PW 2/A further make his conduct suspicious and is a relevant circumstance in the chain of circumstances. If at all he had no role to play in the alleged destruction of documents from the judicial file then he should not have opposed the reception of secondary evidence to show his bonafides. P.P. Batra acted as a connected link and continued to be in touch with Dinesh Chandra Sharma through telephone, mobile and landline for protecting his masters Sushil Ansal and Gopal Ansal. Since to protect his masters, documents related to H.S. Panwar were also required to be destructed as such documents indicting him were also destructed through Dinesh Chandra Sharma. The *quid pro quo* to Dinesh Chandra Sharma for the desired work remained shrouded in secrecy until the police detected him doing job with A-Plus Securities. Although the police could not find any tangible property / money, however, the job to the accused after his dismissal explains everything that same was part of rehabilitation plan pursuant to conspiracy or in other words, the price for the work which Dinesh Chandra Sharma has done for accused persons. As such these facts demonstrate that accused Sushil Ansal, Gopal Ansal and H.S. Panwar were directly benefited by the said act of destruction of the documents. The very fact of providing job to accused Dinesh Chandra Sharma with A-Plus Securities through use of influence of D.V. Malhotra of Star Estates

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Management Ltd through P.P. Batra was done to prevent Dinesh Chandra Sharma from disclosing anything about the conspiracy to anyone and to keep the said conspiracy under the wraps. It was done to ensure the secrecy of the conspiracy as other accused persons apprehended that if Dinesh Chandra Sharma would work any where else he might spill the beans. Also, double amount was paid to him as monthly salary for the said purpose. Merely because the secondary evidence was allowed to be led / adduced by the Court and trial ended in conviction is no ground to believe that accused persons have not benefited from the said act of destruction of evidence. Their criminal plot / conspiracy to destruct the evidence was achieved at a crucial time knowing well its repercussions on the outcome of the ongoing trial. Accused persons did their best to sabotage the trial knowing fully well that in the court of law it is the evidence which is required for the legal process and if they become successful in effacing the evidence that can help them in securing their acquittal. As such accused Sushil Ansal, Gopal Ansal, H.S. Panwar and P.P. Batra were participant in the conspiracy and also, committed abetment through their involvement in the entire conspiracy. The involvement has to be inferred from the conduct of the accused persons. Unfortunately for them and fortunately for the judicial system, our legal process is so robust and strong which is immune from such nefarious attacks and which can respond to such situations with resilience. Although time and the swift trial is the cost which is paid by the system. To say that P.P. Batra had nothing to achieve / benefit from the said act of destruction of evidence is without any substance as it is not necessary that a co-conspirator must get some tangible and palpable benefits. Certainly he received benefits in a form which did not get noticed by the police but the said argument in his favour is fallacious. Infact, he is the connecting bridge through which this entire destruction of evidence took place. He organized the whole thing right from beginning till end i.e. from destruction of documents till providing job to Dinesh Chandra Sharma. He was successful in giving effect to the conspiracy through use of his tactics including bribe/ rehabilitation in the form of future job for high salary etc. to allure a government official to commit breach of trust in such a important case which is being followed by people of the country considering its seriousness and effect. The future employment which was detected after the arrest of accused Dinesh Chandra Sharma provide *raison d'etre* for his involvement in this criminal act. Not only he was given job but salary doubled the existing wages which gives the clear inference that it was not mere rehabilitation but a reward for the work done by him to the Ansal Brothers and H.S. Panwar. No defence whatsoever has been put forth by the accused Dinesh Chandra Sharma except making an unholy attempt to shift the criminal liability on his predecessors and colleagues. But the documents and the trustworthiness and credence of the testimony of PW4 and PW8 belies his defence. The departmental enquiry against him also indicts him for "high carelessness and negligence". However, this case is on independent footing where evidence has been considered to expose the hollowness of his defence and to impute culpability. So far as the role of D.V. Malhotra and Anoop Singh Karayat is concerned they came into picture after the act of destruction of evidence and dismissal of the accused as after his dismissal through P.P. Batra on the instruction of D.V. Malhotra who was General Manager, Star Estates Management Ltd got job with A-Plus Securities where Anoop Singh with the Director. It is important to note that no background check of accused Dinesh Chandra Sharma was conducted by A-Plus Securities and no explanation was offered as to why his candidature was accepted for the job for double the salary as per the existing norms, obviously to give effect to the conspiracy. This indicate that D.V. Malhotra and Anoop Singh Karayat acted on the later part of the conspiracy which was to the extent of providing job to Dinesh Chandra Sharma for the work he has done for the Ansal Brothers. A-Plus Securities and Training Institute was providing security cover and allied services to Star Estates Management Ltd Mark Z2 which is a sister concern of M/s Ansal Properties & Industries Ltd sharing the same registered office i.e. 115, Ansal Bhawan, 16, K.G. Marg, New Delhi and M/s Ansal Properties & Industries Ltd holds 98% share in the Star Estates Management Ltd as per annual return Ex.PW31/D dated 24.09.2005. By providing job to accused Dinesh Chandra Sharma, these two persons became part of the conspiracy as conspiracy was not extinguished upon the destruction of documents but it continued till the time the destructor received his part of the

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consideration. Here also, P.P. Batra acted as a connected link as earlier he got the work done for his masters through Dinesh Chandra Sharma and now he is getting the work of Dinesh Chandra Sharma done through D.V. Malhotra and Anoop Singh Karayat. D.V. Malhotra is the General Manager of Star Estates Management Ltd which is subsidiary of M/s Ansal Properties & Industries Ltd as such Ansal's have full control over him and A-Plus Securities was providing man power to the Star Estates Management Ltd as such employment there to Dinesh Chandra Sharma would not have been any problem as evidence indicated that D.V. Malhotra used to send salary of Dinesh Chandra Sharma to A-Plus Securities which makes it amply clear that money was flowing from Ansal to Dinesh Chandra Sharma on monthly basis in the garb of salary. These facts taken in totality prove the unity of object and purpose of the conspirators by adopting different roles and plurality of means. The entire gamut of circumstances show existence of an implied agreement between the conspirators and their combination persisted until the completion of its performance which in the present case was providing a job to Dinesh Chandra Sharma for double of remuneration.

> Section 409 IPC :
> *"409 Criminal breach of trust by public servant or by banker, merchant or agent.*
> *Whoever, being in any manner entrusted with property or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property shall be punished with [imprisonment for life] or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."*
>
> **Section 120-A IPC** *defines Criminal Conspiracy which reads as under: - 120-A. Definition of Criminal Conspiracy- When two or more persons agree to do, or cause to be done,-*
> *(1) an illegal act, or*
> *(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties*

to such agreement in pursuance thereof.
Explanation:- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Section 109 IPC :
"109, Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment- Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence. Explanation -An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of abetment, when it is committed in consequence of the instigation, or in the pursuance of the conspiracy or with the aid which constitutes the abetment.

Section 201 IPC
"201, Causing disappearance of evidence of offence, or giving false information to screen offender.
Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment or with that intention gives any information respecting the offence which he knows or believes to be false; if a capital offence -shall if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; if punishable with imprisonment for life- and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; if punishable with less than ten years' imprisonment -and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one fourth part of the longest term of the imprisonment provided for the offence of with fine, or with both.

For proving the guilt under section 409 IPC, prosecution has to establish that accused was entrusted with property or with any dominion or power over it and with respect to property so entrusted there was commission of criminal breach of trust which would consist of any positive

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act like misappropriation, conversion, use or even the disposal of the property in violation of mandate of law prescribing the mode in which the entrustment is to be discharged.

> In ***Jaikrishnadas Manohardas Desai v. State of Bombay*** it was held as follows : (AIR p. 891, para 4)
> "[T]o establish a charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. Conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him or over which he has dominion, even when a duty to account is imposed upon him, but where he is unable to account or renders an explanation for his failure to account which is untrue, an inference of misappropriation with dishonest intent may readily be made. "

However, for proving section 109 IPC, following has to be proved :-

(a) abetment of an offence, either by instigation, conspiracy or aiding;

(b) the commission of the act abetted, in consequence of abetment;

(c) there must not be any express provision in the IPC for the punishment of such abetment;

A cumulative reading of the evidence on record indicate circumstances which are inferential to suggest a conspiracy prior in time of the actual commission of offence. The conspiracy was succeeded by actual commission of offence in the form of destruction of documents. The conspiracy was a continuing one and it did not extinguished immediately upon destruction of documents but subsisted till the employment of the accused Dinesh Chandra Sharma with A-Plus Securities. During the subsistence of conspiracy, each conspirator committed act or series of acts to give effect to the desired objective. The evidence on record is largely inferential in the form of circumstances as it is impossible to obtain direct evidence to establish criminal conspiracy. The circumstances can be

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inferred from the role, act and conduct of the accused persons involved in the alleged conspiracy. The quintessence of the criminal conspiracy is the agreement which has to be proved through inferences drawn from the circumstantial evidence in the light of testimony of the witnesses and the evidence on record.

It is important to note that the documents which are tampered with by the accused persons formed the basis of their conviction in the main Uphaar case as such they were most critical documents for the trial of main Uphaar case to establish the role, position of the accused persons namely Sushil Ansal, Gopal Ansal and H.S. Panwar. The accused persons were conveniently taking advantage of the missing documents during the trial of main Uphaar case as they challenged the motion of secondary evidence by the prosecution and in their statement under section 313 Cr.P.C refused to admit those documents on the premise that they were marked documents. So much so when the said documents were exhibited by the Court following the due procedure they challenged the said order. These facts taken in totality show that how important was these documents which were effaced from the record to secure their acquittal and put a stumbling block in the trial by preventing the Court in rendering judgment. This is a very important circumstance against accused persons namely Sushil Ansal and Gopal Ansal.

The trigger to this conspiracy was the order passed by Hon'ble High Court of Delhi on 04.04.2002 wherein directions were passed to take up the matter of main Uphaar case ten times in a month and conclude the trial by 15.12.2002. the tampering was detected in July which makes it plain that when the accused persons got convinced that trial would proceed in a speedy way they hatched a conspiracy to remove the most crucial documents to escape punishment.

The following circumstances are proved :-

(i) Motive;

(ii) Entrustment;

(iii) Nexus;

(iv) Tampering;

(v) Employment of Dinesh Chandra Sharma after dismissal from the job

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with A-Plus Securities;

It is noteworthy that conspiracy of the accused persons was subsisting till the matter attained finality by the judgment of Hon'ble Supreme Court of India as accused persons were hoping to assail the trial Court verdict on technical reasons whereby secondary evidence was allowed to be led for recording conviction. To say that, conspiracy ended immediately after destruction of documents from the judicial file is fallacious and during the subsistence of conspiracy Dinesh Chandra Sharma was given employment with A-Plus Securities by Ansal Brothers at the instance of P.P. Batra through D.V. Malhotra to keep conspiracy a secret.

All accused persons agreed to break the law by destruction of evidence through Dinesh Chandra Sharma so as to prevent legal consequences coming in the way of Sushil Ansal, Gopal Ansal and H.S. Panwar in the main Uphaar case on the basis of said evidence. Sushil Ansal, Gopal Ansal and H.S. Panwar through P.P. Batra abetted Dinesh Chandra Sharma to commit destruction of evidence and thereby committed offence of criminal conspiracy under section 120B. Although D.V. Malhotra and Anoop Singh joined the conspiracy at the later part while the conspiracy was still subsisting for providing job to Dinesh Chandra Sharma after his dismissal, they also became member of this conspiracy having equal responsibilities. Therefore, they committed criminal conspiracy with other accused persons under section 120B on the principle agency as a rule of liability and joined responsibility.

The evidence so adduced by the prosecution proves the fact that documents which were found Torn/Obliterated/Defaced/ Mutilated :-

(A) Sushil Ansal was the Chairman of M/s Ansal Properties & Industries Ltd. And controlled the day to day functioning of Uphaar Cinema, Green Park, New Delhi through cheque no. 955725 dated 26.06.1995 of Rs. 50 Lakhs signed by him in the capacity of one of the authorized signatory of Green Park Theaters & Association Pvt. Ltd and Ansal Theaters & Clubhotels Pvt. Ltd;

(B) Gopal Ansal was the authorized signatory of Greeen Park Theaters and Association Pvt. Ltd actively involved in day to day functioning of Uphaar Cinema through documents i.e.

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Cheque no. 805578 dated 30.11.2006 of Rs. 1,50,000/-;

Cheque no. 805590 dated 20.02.1997 of Rs. 2,96,550/-;

Cheque no.183618 dated 23.05.1996 of Rs. 9,711/- as an authorized signatory of Green Park Theaters & Association Pvt. Ltd and Ansal Theaters & Club Hotels Pvt. Ltd ;

(C) Gopal Ansal attended several meetings under the capacity of Managing Director of Uphaar Cinema;

(D) Correspondence page no. 123 (half torn) of letter dated 28.11.1996 D84;

(E) The relevant page no. 379 of register i.e. occurrence book D-89;

(F) The page no. 95 to 104 (missing) and page no. 109 to 116 (ink sprinkled) of occurrence book register D-91;

(G) Casual Leave Register for missing page no. 50 D-92;

(H) Seizure Memo dated 18.07.1997 (half torn) D-20.

The prosecution case conclusively proved the destruction of aforesaid documents by accused persons by way of conspiracy. Accused persons committed offence under section 409 IPC read with section 120B IPC as they under a conspiracy got destructed the documents through Court Ahlmad Dinesh Chandra Sharma. Accused persons committed offence under section 201 IPC read with section 120B IPC as they under a conspiracy committed disappearance of evidence. So far as the import of section 109 IPC is concerned, since the conspiracy is proved which is having close association with the abetment, the said offence stood covered in the offence of conspiracy.

CONCLUSION

A devastating fire took place in Uphaar cinema on June 13, 1997 where several human lives were the victim and the accused persons of said crime namely Sushil Ansal, Gopal Ansal and H.S. Panwar (since deceased) in conspiracy with other accused persons while facing trial in said case destructed critical documents which were capable of proving their complicity in the said crime, making this time the justice dispensation system as victim. They tampered/obliterated/torn/defaced some hand picked documents of the said case through a meticulous planning in order to escape punishment by scuttling trial process and as such fiddled with our

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judicial system with great impunity. The manner in which process of law was subjected to desecration by accused persons is no less than defiling the justice administration system. The high handedness of the accused persons for securing benefit in the trial sans documents by any means demonstrate the scant regard which they have for the justice delivery system which is the bedrock of our democracy. The brazen attitude of the accused persons is reflective from their conduct as after destruction of evidence they vehemently opposed the prosecution plea for adducing secondary evidence. They left no stone unturned to prevent advent of secondary evidence. Accused Gopal Ansal, Sushil Ansal, H.S. Panwar (since deceased) with P.P. Batra, Dinesh Chandra Sharma attacked on the very purity and sanctity of the justice system. Their misconception that they will get away with their nefarious design from punishment has been exposed to the world at large.

From the foregoing discussion and after detailed anatomy of evidence presented during trial and for the reasoning cited above, I am of the considered opinion that guilt of the accused persons namely Sushil Ansal, Gopal Ansal, P.P. Batra, Anoop Singh and Dinesh Chandra Sharma has been proved beyond any reasonable doubt for the offence under section 120B IPC and section 409/120B and section 201/120B IPC.

All accused persons namely Sushil Ansal, Gopal Ansal, P.P. Batra, Anoop Singh and Dinesh Chandra Sharma are convicted for the offence of criminal conspiracy under section 120B IPC.

All accused persons namely Sushil Ansal, Gopal Ansal, P.P. Batra, Anoop Singh and Dinesh Chandra Sharma are further convicted for the offence of criminal conspiracy to commit criminal breach of trust by a government official of the entrusted property for offence under section 409/120B IPC.

All accused persons namely Sushil Ansal, Gopal Ansal, P.P. Batra, Anoop Singh and Dinesh Chandra Sharma are further convicted for criminal conspiracy for causing disappearance of evidence under section 201/120B IPC.

But for the directions of Hon'ble High Court of Delhi for expeditious trial, this case would not be concluded today as accused persons made every attempt to procrastinate the trial.

Announced in the open court
on 08.10.2021

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(Dr. Pankaj Sharma)
CMM/ND/Patiala House Courts
New Delhi/08.10.2021