

**IN THE COURT OF SH. SIDHARTH SHARMA
ADDITIONAL SESSIONS JUDGE-02 (FTC) , NEW DELHI DISTRICT
PATIALA HOUSE COURTS, NEW DELHI**

Sessions Case No. 143/2013

STATE

Vs.

MS. MADHURI GUPTA

D/o Sh. Chander Bhan Gupta

R/o C-7, New Krishna Park, Vikaspuri, New Delhi.

.....Accused

FIR No. 21/2010

U/s 3/4/5 Office Secret Act r/w 409/120 IPC

PS Special Cell

Date of institution of the case : 24.12.2010

Date when the case reserved for judgment : 17.05.2018

Date of announcement of judgment : 18.05.2010

J U D G M E N T

1. Accused Ms. Madhuri Gupta has been chargesheeted and produced before this court for facing trial for offences under Sections 3/4/5 Office Secret Act (hereinafter referred as 'Act') r/w 409/120-B IPC.

2. Briefly stated facts of this case as per final police report (chargesheet) are that accused Ms. Madhuri Gupta was posted as Second Secretary (Press & Information), High Commission of India, Islamabad. Ministry of External Affairs (MEA) had received an information that accused had been maintaining unauthorized contacts with Pakistani Intelligence Officials and passing on sensitive official information personally as well as through electronic means from her computer at office and residence. She was called to New Delhi and when asked, accused admitted to have passed on sensitive official information to Pakistani Intelligence Agencies. During interrogation, it was revealed that accused had come in contact with the officials of Pakistani Intelligence Agencies named Mubshar Raza Rana and Jamshed through one Javed Rashid, a journalist of Jang Newspaper of Pakistan. It is further alleged that a request was made to HCI, Islamabad to immediately take possession of computers used by her, in her office and residence. A written complaint dated 22.04.2010 Ex.PW1/A was made to police of Special Cell, by the PW1 Sh. Ashok Tomar, the then Addl. Secretary (Admn.) MEA, New Delhi, on which present case was registered. Accused was arrested, her personal search Ex.PW27/C was conducted and disclosure statements Ex.PW27/E and Ex.PW27/F were recorded.

3. Final police report further states that during interrogation, it was

revealed that Mubshar Raza Rana had created an e-mail 'atlastrao@gmail.com' for accused and asked her to send information at 'raorea@gmail.com' which was being used by Mubshar Raza Rana. It was stated that accused changed the password of the said email and thereafter starting sending information from the above created email to the said email.

4. During interrogation, accused disclosed the password of her said email as '20021957'. After using the said password, the email 'atlastrao@gmail.com' was opened and total 19 mails were found in the inbox folder and 54 mails were found in sent box folder.

5. It is further stated in the final police report that during interrogation, accused also disclosed that Mubshar Raza Rana was also having another email i.e. 'sultanarao@gmail.com' and she also used to send information on the said email from her email account 'atlastrao@gmail.com'. She further disclosed that she used to send the information from her residential computer and her Blackberry mobile phone having number 00923028516591. She further disclosed that she was maintaining other following emails :-

madsmiles@gmail.com
ssinformation.islamabad@gmail.com,
madhuri.gupta@mobilink.blackberry.com,
madhuri7@yahoo.com,
madhurigupta7@yahoo.com, and

6. Accused also disclosed that in the month of March 2010, Mubshar Raza Rana informed her that 310 “Hydro Electric Power Projects” were proposed to be installed in J&K till 2020 and Mubshar Raza Rana directed the accused to arrange the ‘Planning Report’ or ‘Annual Plan of J&K 2010’. Accordingly, accused visited the Jammu & Kashmir in this regard.

7. During investigation, all e-mails along with attachments of inbox and sent box folders were downloaded and print of all the documents were taken. Though during investigation, several other CDs, floppies, etc. were analyzed, yet nothing incriminating was found.

8. It is further stated in the final police report that vide letter dated 25.05.2010, Sh. R.K. Tyagi, JS/CNV & Chief Vigilance Officer furnished the opinion on the documents seized from the accused as follows:

- i). Yes, several of the recovered documents/ e-mails are **classified as secret** and several other documents/ e-mails contained information which is of a classified nature.
- ii). Yes, the information contained in the documents/ e-mails, if disclosed to any unauthorized person, can be prejudicial to

the safety, security and interest of the State.

- iii). Yes, the information contained in the documents/ e-mails can be directly or indirectly useful to an enemy country.
- iv). Yes, the information contained in the documents/ e-mails is connected with **security and defence matters** of the country both directly and indirectly.
- v). The to and fro e-mail accounts which emerged in the documents/ e-mails are not official e-mail accounts of the staff/ officers posted with this Ministry or with Indian High Commission, Islamabad.

9. It is stated that accused was posted at HCI as Attache. As the Urdu Translator, the duties assigned to her including monitoring of the Urdu Media, preparation of the daily Urdu Media summary and translation of Urdu News Articles. There were no change in her duties after accused was promoted as Second Secretary. It was alleged that since accused used to prepare summaries of the Urdu News articles for official use, hence the summaries prepared by her became the properties of Government. Thus, she could not communicate the same to any unauthorized person.

10. It is further stated that Ministry of External Affairs confirmed the

above e-mails i.e. atlastrao@gmail.com, raorea@gmail.com and sultanrao@gmail.com were not the official e-mail account of any of the official working there.

11. It was stated that accused had also sent the summaries prepared by her besides other documents, thus accused is also liable for the offence punishable under Section 409 IPC.

12. It was alleged that motive to passover the secret information was that accused had fallen in love with Jamshed @ Jim which can be understood from the contents of mail dated 03.10.2009 (page no. 1 of Sent Mail Folder) which Ms. Madhuri Gupta sent to Mubshar Raza Rana from her e-mail account atlastrao@gmail.com to the e-mail account sultanarao@gmail.com i.e. of Mubshar Raza Rana. The contents are being reproduced below :

Dear Sultana,

I know that you tried your best and I shall always remember your kindness but its final goodbye to all of you because Jim has also said his final goodbye to me. He has a lot of complaints against me- that he is under a lot of pressure but I am doing nothing for him; that I do what I want, that I don't listen to him; I have changed and I am bewaffa, and so on. I have done my best for him and for his sake but he treats me like a dog. He has no consideration for me nor does he make any effort to understand my position. Till we are married and till I am in the present job I have to behave and live accordingly but Jim has strong objection to my socializing with any Pakistani. Why does he have such poor opinion about his own people? In any job that I

take up this attitude of Jim will be a big hurdle. I am not used to just sitting at home in purdah. After marriage he will neither socialize himself nor let me socialize with anyone.

So it is better that we part our ways. He told me to find my own way and Inshallah I will find my own way.

Please convey my thanks and goodbye to your senior doctors. Tell Jim ki Pakistani ko aazma ke dekh liya.

I shall find some way to return your SIM cards.

Please do not try to contact me otherwise I shall be happy to leave this place for ever within a week. Jim has already said that he would be very happy if I left today instead of tomorrow. He asked me to leave him alone and I am happy to do at least one thing that he wants me to do.

Regards

Javeria”

13. After completing the investigation, chargesheet was filed against accused Ms. Madhuri Gupta for the offence punishable under Sections 3/4/5 of the Official Secret Act and Section 409/120-B IPC. Case was committed to the court of Sessions and was assigned to this court.

14. My learned predecessor heard arguments on charge at length and passed detailed order on charge dated 07.01.2012 observing therein that he found sufficient material on record to make a prima-facie case against the accused for offence punishable **u/s 120-B IPC, u/s 3(1)(c) of office Secret Act** attracting maximum punishment for a period of three years r/w 120-B

IPC and u/s 5 of the Office Secret Act and framed the charge accordingly to which she pleaded not guilty and claimed trial.

15. The said order on charge was challenged by the State before Hon'ble Delhi High Court by preferring a criminal revision petition bearing no. CrI. Rev. P. 255/2012 which was allowed vide order dated 22.01.2016, wherein the impugned order on charge dated 07.01.2012 was set-aside to the extent that accused shall be charged for the offence punishable under **first part of Section 3(1) of Official Secret Act** attracting maximum punishment upto a period of 14 years and accordingly, amended charge was framed on 10.03.2016 to which she pleaded not guilty and claimed trial.

16. In order to prove its case, the prosecution has examined 27 witnesses, which are as follows:-

- i). **PW1 is Sh. Ashok Tomar**, Spl. Secretary, MEA, New Delhi.
He made a complaint Ex.PW1/A to the police on 22.04.10.
He also handed over the articles to police allegedly seized from residence and office of accused in Islamabad.
- ii). **PW2 is Sh. T.S. Triumurti**, Joint Secretary, MEA, New Delhi.
He is witness to Print outs being taken from various folders

by the police and signed the seizure memos of the same.

- iii). **PW3 Sh. Rajesh Kumar Sharma** is witness to print out being taken out by Ms. Rajni Verma and employee of MEA, in his office, (Formal in nature).
- iv). **PW4 Ms. Gaitri Kumar**, Joint Secretary, MEA, New Delhi is the witness to print outs being taken out from various folders by police and signed the seizure memos of the same.
- v). **PW5 is Ms. Rajni Verma**, Private Secretary MEA, New Delhi. On 28.4.2010, she took out print out of her e-mail allegedly sent to her on 27.4.10 by the accused being a friend of her (formal in nature).
- vi). **PW6 Sh. R.K. Tyagi** is the then J.S./CNV Division MEA, New Delhi. He is one of the star witnesses of prosecution and is witness to handing over of computers and other documents to police which were alleged to have been seized from the residence and office of accused. He also gave the opinion on the documents Ex.PW6/L regarding the nature of the documents allegedly retrieved from the accused's e-mail

accounts.

- vii). **PW7 Sh. J. Juneja**, Second Secretary – MEA, New Delhi is the witness, formal in nature. He was on courier duty/Bag duty. He took diplomatic bags to and fro from Islamabad to New Delhi between 03.04.2010 to 07.04.2010.
- viii). **PW8 Sh. Janardan Singh**, First Secretary (CSO) High Commission of India, Islamabad (Pakistan) is also one of the star witnesses of the prosecution. He carried out searches of residence and office of accused and seized computers, other electronics articles and documents etc. on 22.04.2010 and 23.04.2010 from the residence as well as office of the accused and took the same to New Delhi on 24.04.2010. He also conducted second search of residence of accused on 18.05.2010 on direction from Dy. H.C.I., Islamabad (Pakistan).
- ix). **PW9 is Sh. Rahul Kulshrestha**, the then Deputy High Commissioner of India, Islamabad, Pakistan. On the directions of H.C.I., he conducted search and seized

computers, other electronics articles and documents etc. on 22.04.2010 and 23.04.2010 from the residence as well as office of the accused and sent the same to MEA at New Delhi through PW8 Janardan Singh.

- x). **PW10 Sh. Sharat Sabharwal**, High Commission of India, Islamabad (Pakistan) is a witness, formal in nature. On the instructions of MEA, New Delhi, he directed PW8 and PW9 to seize computers and other articles/documents from the residence and office of the accused on 22.04.2010, 23.04.2010 and on 18.05.2010.
- xi). **PW11 Dr. Champa Sharma** is friend of accused whom accused visited in March 2010 in Rajouri and Jammu in J&K.
- xii). **PW12 Sh. Prem Kapoor** is running a Travel Agency and used to provide vehicles to MEA New Delhi to carry diplomatic bags to and fro from MEA New Delhi to IGI Airport, New Delhi as and when directed by MEA.
- xiii). **PW13 Dr. Prem Lata Maheshwari** is a friend of accused and both of them visited Rajouri & Jammu (J&K) in March

2010 to their common friend PW11 Dr. Champa Sharma.

- xiv). **PW14 Sh. Virender Kumar**, Dy. Secretary, Ministry of Defence. Sena Bhawan, New Delhi issued the authorization U/s 13(3) O.S. Act after putting up the file before the Competent Authority i.e. President of India, to make a complaint in this respect before the court of competent jurisdiction.
- xv). **PW15 ASI M. Baxla** is the MHC(M) P.S. Spl. Cell, who produced register Nos. 19 & 21 of P.S. Spl. Cell regarding depositing of articles by Inspector Pankaj Sood in malkhana.
- xvi). **PW16 HC Ravinder** is the witness to seizure of computers and other articles, handed over at MEA by PW1 Sh. Ashok Tomar to PW27 Inspector Pankaj Sood (I.O.) on 24.04.2010 and also deposited the same with FSL Rohini on 06.05.2010 on the instructions of PW27 Inspector Pankaj Sood (I.O.).
- xvii). **PW17 SI Harbir Singh** P.S. Spl. Cell is a formal witness. He took Rukka from PW27 Inspector Pankaj Sood (I.O.) to P.S. Spl. Cell, Lodhi Colony on 22.04.2010 to get a case

registered and handed over the formal FIR alongwith the Rukka to Inspector Pankaj Sood (I.O.).

xviii). **PW18 ASI Ved Prakash** is the Duty Officer, who registered the FIR Ex.PW18/A on the basis of Rukka, brought by PW17 SI Harbir Singh and proved the same before this Hon'ble Court.

xix). **PW19 Taranit Singh Sandhu** is the then J.S. (AD/CMV) MEA New Delhi. He put up the papers for according sanction for prosecution U/s 197 Cr.P.C. before the competent authority and after taking sanction from competent authority, informed the investigating agency vide his letter dated 15.07.2010 Ex.PW19/A.

xx). **PW20 Sh. Gopal Bagley**, the then Director Indo-Pak Relations is one of the star witnesses of the prosecution. He gave his opinion about the nature of the documents allegedly downloaded from e-mail accounts of the accused.

xxi). **PW21 Sh. Krishan Lal** deposed to have gone to Sunderbani Distt. Rajouri (J&K) and recorded statements of two formal

witnesses PW11 Dr. Champa Sharma and her husband Dr. Khem Raj Sharma.

xxii). **PW22 Sh. J.L. Chugh**, the then Director (Judicial) MHA New Delhi is a witness, formal in nature. On receipt of letter Ex.PW22/A from police he had put the file before competent authority to accord sanction U/s 188 Cr.P.C. and issued orders Ex.PW22/B to this effect after getting sanction from the competent authority.

xxiii). **PW23 Inspector Sandeep Malhotra**, then then Inspector/Electronic Data Process, Spl. Cell, Rohini, Delhi deposed to have taken printouts from the e-mail accounts of the accused in presence of PW2 T.S. Trimurti & PW4 Ms. Gaitri Kumar and handed over the same to Inspector Pankaj Sood and also issued and proved certificate U/s 65B of Evidence Act Ex.PW23/A.

xxiv). **PW24 Sh. Shibesh Singh** DCP (Legal) preferred a complaint U/s 13(3) O.S. Act, 1923 and proved his complaint Ex.PW24/A.

xxv). **PW25 Narayan Singh** is servant/chowkidar of accused at her residence at Krishna Park in Delhi during the period of her posting in Islamabad.

xxvi). **PW26 Dr. Virender Singh**, Asstt. Director FSL Rohini examined five hard discs and Black Berry Mobile sent by the I.O. and prepared his report Ex.PW26/A and gave the same to the police.

xxvii). **PW27 Insp. Pankaj Sood** is the I.O. of this case, who conducted the investigation of the present case and put up the charge sheet before this Hon'ble Court after completion of investigation.

17. After closure of prosecution evidence, statement u/s 313 Cr.PC of accused was recorded wherein she denied the incriminating evidence put to her and stated that she is innocent and has been falsely implicated in this case by the officials of HCI at Islamabad and MEA, with whom she was having strained and/or frosty relations in connivance with the police officials of Delhi.

18. In defence evidence, accused examined DW1 Sh. Arun Kumar Chatterjee, Joint Secretary (PSP) & Chief Passport Officer, MEA.

19. I have heard final arguments from Sh. Irfan Ahmed, Addl. Public Prosecutor for State and from Sh. Joginder Singh Dahiya Advocate for accused.

20. Ld. Special Public Prosecutor has argued that prosecution has successfully proved its case against the accused. It is stated that prosecution witnesses have fully supported the case and have substantiated the allegations against the accused. He states that charge **u/s 3(1)(c) of office Secret Act** attracting maximum punishment for a period of **fourteen years** r/w **120-B IPC** and **u/s 5 of the Office Secret Act** are duly proved against the accused. He stated that since certain informations pertain to work of defence and factory, thus accused is liable to be convicted for offence u/s 3(1) (c) part 1.

21. Ld. Special Public Prosecutor has relied upon the sensitive information passed on by the accused to her handlers through her e-mail account atlastrao@gmail.com and printouts of said e-mails, found in the 'inbox' and 'sent mail' folders of her e-mail account were taken, which have been proved by **PW4 Smt. Gaitri Kumar, Joint Secretary**, posted at President Secretariat. PW4 has categorically proved said e-mails of 'inbox' folder as **Ex.PW4/A (collectively)** and e-mails of 'sent mail' folder as

Ex.PW4/B (collectively). Accused send mails from her Blackberry phone to her handlers and send copies thereof to this e-mail account, so actually mails in 'inbox' folder are also sent mails. Ld. Special Public Prosecutor has described the said e-mails are as follows : -

22. Sent Mails Ex.PW4/B (collectively) :

- i). Sent mail dated 10.10.2009 : It is an attachment titling “The India Mind Set vis-à-vis Pakistan”. The most relevant contents are at Para-3 i.e. “it was Indira Gandhi who hatched the conspiracy of Bangladesh. Everyone knows that Mukti Bahini was raised and trained by R&AW and the Indian Army.”
- ii). Sent mail dated 28.10.2009 : It is an attachment titling “New Kashmir Policy”. In the last para at page 39, it is mentioned that “SS was briefed about the new Kashmir Policy during his recent visit and was instructed to discourage as much as possible the renewals of passports and continuation of Indian Citizenship of persons from Valley married in Pak side of Kashmir. Such persons should be encouraged to obtain Pak citizenship. This measure is being taken not only in view of its future impacts on the new Kashmir Policy but also China has started a new VISA policy for Kashmiris holding Indian Passport.” (SS is Sarad Sabharwal, the then High Commissioner).
- iii). Sent mail dated 29.10.2009 : It is an attachment titling 'Indian PM's visit to Kashmir'. In para-3 it has been mentioned that “India has another route to Leh & Laddakh via Himachal Pradesh across the Lahul Spiti pass. Tibetan refugees have been settled close to the route to act as informers against any unusual activity in the area.”
- iv). Sent mail dated 31.10.2009 : It is a Fortnightly Report which

accused sent to MEA and she had diverted the amended copy of the same with her comments to her handlers. In para-3, it is mentioned that “one of the officer on deputation in National Security Council Secretariat is Sujan R. Chinoy, who is an old Chaina Hand and has worked with FS when she was Joint Secretary (East Asia).”

- v). Sent mail dated 12.12.2009 : It is an attachment and in para-1 & 2, accused is disclosing the profile of a senior diplomat posted in High Commission.
- vi). Sent mail dated 23.12.2009 : It is an attachment and in para-1, it is mentioned that “there appear to be a well planned effort on the India side to spoil relation with Pakistan because of US pressure to resume talks on Kashmir. It is under this plan that HC and DHC sent long protest notes to Pak FO in the last week.”
- vii). Sent mail dated 11.01.2010 : In the same above attachment, in para-2 of page no. 160, it has been mentioned that “The entire Pakistani nation was falling victim to crisis of water, electricity and food. All these issues of the Pakistani nation were linked to the liberation movement of Kashmir. The issues confronting Pakistan would be resolved only with the freedom of Kashmir.”
- viii). Sent mail dated 01.03.2010 : It is an attachment titling ‘Feb01.doc’. In para-1 it has been mentioned that “six new bullet-proof buses arrived on Feb. 26 for use by the Indian High Commission. All drivers for these buses would be brought from India and would be drawn from the Para-Military forces.” In the same above attachment, in para-7, it is mentioned that “in a surprising move, India did not blame Pakistan or the ISI for the suicide and bomb attack in Kabul, which targeted the residential complex where mostly Indian lived. It may be mentioned that out of the 09 Indian killed in the attack, 02 were Indian Army Officers, 01 was a constable of the Indo-Tibetan Border Police while the 01 so-called staff members of the Indian Mission was an undercover R&AW agent. The 05 could also be undercover agents working with various projects in civilian positions. The names of the dead

have not been announced widely although a special flight was sent to pick up the dead bodies and the injured. This does not mean that India is not collecting evidence and it will present the evidence to US as soon as possible.”

- ix). Sent mail dated 05.03.2010 : It is an attachment titling 'March05.doc' and in para-7, it has been mentioned that “Separately, a team arrived from New Delhi in the cover of an audit team. It comprised of US (Pak) Balasubramanian, 02 persons from computer cell of the MEA and others from the IB. It was learned from an extremely reliable source that there has been something wrong in the issuance of VISA to some Pak Nationals and the team spends all its time in the VISA Section. The IB has got some leads in the Hadley case and believed that some of his Pakistani accomplices also visited India. They are here to verify this information and to pin point the names of these accomplices. The team will return back to New Delhi on March 08.”
- x). Sent mail dated 17.03.2010 : In the same above attachment, in the last para Madhuri Gupta disclosing the detail of New Departures and Arrivals at the Indian High Commission.
- xi). Sent mail dated 22.03.2010 : The contents of the e-mail suggest that the handlers of Ms. Madhuri Gupta directed her to arrange the Publication on Water and Power Projects in J&K and the Annual Plan for 2009-2010 of the Govt. of J&K and Ms. Madhuri Gupta assured her handlers that she will try to arrange the same.
- xii). Sent mail dated 26.03.2010 : It is an attachment titling 'March 23.doc' and paras 7 & 8 it has been mentioned that “it is recommended that the proposal to reduce troops in J & K should be reviewed and should be put on hold for the time being. It is also recommended that patrolling along Jammu border should be intensified and a strict vigil should be kept in Jammu for strangers.”
- xiii). Sent mail dated 27.03.2010 : It is attachment in which Ms. Madhuri Gupta provided the information about all the staff/ diplomats including their addresses, telephone numbers, e-

mail addresses, etc.

- xiv). Sent mail dated 05.04.2010 : It is an attachment in which Ms. Madhuri Gupta disclosing her secret visit to Jammu for arranging Publication on Water and Power Projects in J&K and the Annual Plan for 2009-10 of the Govt. of J&K. It is pertinent to mention that Ms. Madhuri Gupta took the leave from High Commission on false grounds.

23. **INBOX folder mails Ex.PW4/A (collectively) :**

- i). Inbox mail dated 01.02.2010 : The contents of this e-mail are related to Indian stand on Taliban and pressure mounted by US to allow Pakistan a greater role in Afghanistan.
- ii). Inbox mail dated 11.01.2010 : The contents of this e-mail are related to internal security of High Commission at Islamabad, Pakistan. This e-mail was actually sent by Ms. Madhuri Gupta through her blackberry mobile phone and copy of the same was sent to her e-mail and hence 'Inbox' folder reflects this mail.
- iii). Inbox mail dated 22.12.2009 : The contents of this e-mail are also related to internal security of High Commission at Islamabad, Pakistan. This mail was actually sent by Ms. Madhuri Gupta through her blackberry mobile phone and copy of the same was sent to her e-mail and hence 'inbox' folder reflects this mail.

24. On the other hand, learned defence counsel has argued that information in question do not pertain to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code. Ld.

Defence counsel argued that in the present case, prosecution has bitterly failed to bring on record any evidence that the accused had divulged any information relating to any of the above noted category at all, therefore, the case of the accused does not come within the four corners of Part (1) of Section 3 of O.S. Act, which is punishable with imprisonment upto 14 years. The prosecution has led the evidence relating to the information, documents or notes which the accused allegedly communicated to her handlers. If the allegations against the accused and the evidence led by the prosecution are assumed to be correct, even then the case of accused does not come within the ambit of Part-1 of Section 3 of O.S. Act.

25. Ld. defence counsel further argued that with respect to charge under Part-II of Section 3 of O.S. Act is concerned in which the maximum punishment is imprisonment upto three years, the prosecution has bitterly failed to bring home that charge too. There is no evidence on record to suggest that the accused had communicated any information or document which could be termed as prejudicial to the safety or interests of the State or could affect the sovereignty and integrity of the country or the security of the State or friendly relations with foreign states. He further argued that allegations against the accused are vague and general in nature and all the information allegedly passed over to PIA (Pakistan Intelligence Agencies)

officials, are neither secret nor sensitive which could be termed as against the interest of the country because the same were already in the public domain at large. The accused made no wrongful communication of information to affect the safety, security and sovereignty of the State.

26. Ld. defence counsel further argued that so far as the charge u/s 5 of O.S. Act is concerned, the same is also not made out against the accused. The accused was neither in possession or control of any secret official code or password, document or information relating to a prohibited place and/ or which was likely to affect the security, integrity and sovereignty of the country nor she passed on any such information to the officials of PIA. This fact had been endorsed by Smt. Parneet Kaur, the then State Minister for External Affairs, in reply to a query in the Parliament that the accused was neither in possession or control of any secret/ sensitive information nor she passed on any such information to the officials of PIA. Therefore, no offence U/s 5 of O.S. Act is attracted against the accused.

27. Ld. defence counsel submitted that in view of his submissions, no offence under Part II of Section 3 and Section 5 of O.S. Act is made out against the accused at all, who has been falsely implicated and made a scape goat at the instance of some senior officials of MEA.

28. With respect to charge u/s 120-B IPC, learned defence counsel submitted that to make out a case of criminal conspiracy it needs at least two or more persons to agree to do or not to do an illegal act or act which is not illegal, by illegal means. But in the present case, the prosecution has bitterly failed to charge or interrogate even any other person with whom the accused had allegedly entered into criminal conspiracy. The prosecution has failed even to establish the identity of those persons who were allegedly part of conspiracy and even there is no evidence on record to suggest that whether the persons like Mubshar Raza Rana, Jamshed or Javed Rashid were at all in existence or not, or a fiction of mind of the prosecuting agency. The Hon'ble Apex Court in the certain judgments has held that a single person cannot be charged with an offence of criminal conspiracy. Reliance can be placed on the following judgment reported as **AIR 1967 SC 1326, Fakhruddin Vs. State of M.P.** wherein all accused persons were acquitted of the charge of conspiracy, holding that one out of them can not be held guilty. The offence of conspiracy cannot survive the acquittal of alleged conspirators. One accused can not be convicted unless there be proof that he had conspired with person or persons other than co-accused. The law is very clear on this aspect and therefore, accused in the present case cannot be held guilty u/s 120-B IPC.

29. I have gone through the entire record, carefully perused the

testimony of witnesses and considered the submissions addressed by Id. Special Public Prosecutor Sh. Irfan Ahmed and by learned defence counsel Sh. Joginder Singh Dahiya. Id. Special Public Prosecutor strongly relied upon the e-mail dated March 22, 2010 wherein accused assured to arrange a confidential publication on Water and Power Projects in J & K and contended that it relates to the official code of 310 Hydro Projects to be installed in J & K. I have perused the said e-mail wherein accused assured her handlers to provide copy of publication on Water and Power Projects in J & K and the Annual Plan for 2009-2010 of Govt. of J & K provided the publication is not restricted. Accused suggested that the said publication could be arranged through some friend or better option was if she herself went to Jammu to collect the said publication. Except that she had not communicated any other information to her handlers. I am unable to understand how this information relates to the official code of 310 Hydro Projects. At the most, in the said e-mail accused had agreed to provide the said publication if it was not a restricted publication.

30. In this context, learned Special Public Prosecutor also drew my attention towards e-mail dated April 5, 2010 wherein accused had visited Jammu in order to get the copy of said publication. This document only establishes that accused had made efforts to get the copy of said document

but failed to get it. Thus, no document was passed over by her to her handlers. To my mind, said e-mail is not helpful to the prosecution to establish a case against the accused attracting fourteen years of imprisonment.

31. Learned Special Public Prosecutor strongly relied upon the e-mail dated March-26, 2010 wherein the recommendations of R.K. Sharma regarding the reduction of troops in J&K had been communicated by the accused to her handlers. Perusal of the said document reveals that the recommendation was based on the reports published in PAK media. It was recommended that the proposal to reduce troops in J&K should be reviewed and should be put on hold for the time being and further recommended that patrolling along Jammu border should be intensified and a strict vigil should be kept in Jammu for strangers. First, the said recommendations were based on reports of Pak media. Second, it was merely a recommendation to the government that to review its decision about the reduction of troops in J& K. The said recommendation was not of Indian Forces. Had this recommendation made by the Military, then it would cover within the four corner of first para of Section 3(1) of the 'Act'.

32. Learned Special Public Prosecutor strongly relied upon the e-mail dated March 27, 2010 wherein accused had sent the directory of HCI

containing the official contact numbers, e-mails, addresses, etc. It is nowhere case of the prosecution that it was a secret directory. If it was official, it means copy of it must be available with the officials of Pakistan. Though accused had no business to send the copy of directory to her handlers, yet to my mind said communication does not relate to any work of defence. At the most, it relates to the security of officials working there.

33. Learned Special Public Prosecutor also relied upon the e-mail dated October-31, 2009 and contended that it relates to work of defence as it contains the information about the officers working in National Security Council Secretariat. I have perused the said document wherein new Finance Secretary directed the HCI to focus on Urdu media. It further contained that one of the officers on deputation in National Security Council secretariat is Sujan R. Chinoy, who is an old China hand and has worked with FS when she was Joint Secretary (East Asia). Sujan Chinoy is also the son of an Indian Police Service Officer and having served in Beijing and then in Shanghai, is an expert at turning information into intelligence. Mere fact that it relates to profile of officer posted at National Security Council does not show that it relates to any work of defence of the country.

34. Now coming to the information which were based on the news items

published in Pak media.

35. Learned Special Public Prosecutor relied upon the e-mail dated October-28, 2009 stating that it pertains to the defence of country as the said document contains the information that Pakistan could use nuclear weapon against India. I have perused the said document. In fact said document is the translation of reports published in Pak media. As per said document, Chief Editor Nawa-i-Waqt Majeed Nizami addressed a media workshop of its weekly Jarar together with Amir Jud Hafiz Muhammad Saeed and said that he would not go to India till the liberation of Kashmir. He further said that nuclear weapons were not decoration pieces. If India attacked, there would be no harm in using them against India. India was conspiring to render Pakistan barren by constructing 62 dams, and Pakistan should not hesitate to destroy these dams by firing missiles on them. He further said that he appreciated the efforts of Hafiz Muhammad Saeed and his organization for the Kashmir cause, and was with him on this issue. Since the said speech was made in the workshop, thus was in public domain. Moreover, it was the personal views of Chief Editor of a newspaper and based on assumption and presumption that if India attacks there will be no harm to use nuclear weapon. To my mind, it does not relate to any work of defence.

36. Learned Special Public Prosecutor strongly relied upon the e-mail dated October 29, 2009 and contended that it relates to the security and defence of nation as it contains the secret route to Leh & Ladakh via Himachal Pradesh across the Lahul Spiti pass. I have perused the said document. On reading of the document, it reveals that this document is nothing but the translation of news items published in Pak media especially in Urdu newspapers. It further reveals after the visit of Hon'ble Prime Minister of India to Kashmir, High Commissioner of Islamabad directed his staff to search Pak media especially editorial and comments or reaction of Pak media on the visit of Indian Prime Minister to Kashmir. As a reaction to Hon'ble Prime Minister's visit to Kashmir, it was published in Pak media that his speech (P.M.'s) reconfirms that the govt. of India has started implementing its new secret Kashmir policy. Sonia Gandhi accompanying him is another indication of the new secret policy. It is reiterated that all talk of desire to hold talks with Pakistan on all issues including Kashmir is a bluff and once he leaves Kashmir, he will start singing the same old song that holding of talks is conditional to Pakistan dismantling the infrastructures of terrorism on its soil. Another newspaper said that India has another route to Leh & Ladakh via Himachal Pradesh across the Lahul Spiti pass. Tibetan refugees have been settled close to this route to act as informers against any unusual activity in

the area. Since the said document is based on the news items published in Pak media, I am of the view the same were in public domain and does not relates to any work of defence of the country.

37. Learned Special Public Prosecutor relied upon the e-mail dated December 12, 2009 and vehemently contended that it relates to official code, which attracts maximum punishment for fourteen years imprisonment. I have perused the said document. As per said document SS i.e. HCI has organized a Qawwali Evening, which was criticized by Pak media as it was organized when a day before twin bomb blast occurred in Lahore. About the said criticism a strongly worded coded message was sent by OSD to FS Rao. I am unable to understand how this information relates to the disclosure of official code. It was further contended that this document contained the information of Mr. Janardan Singh in place of SM. I am unable to understand how this information relates to any work of defence of India.

38. Learned Special Public Prosecutor relied upon the e-mail dated December 23, 2009 and fortnightly report dated December 16-31, 2009 relates to the affairs of Government of India relating to the defence of country. He relied upon contents of para-1. I have gone through the same. It states that there appears to be a well planned effort on the Indian side to spoil relations

with Pakistan because of US pressure to resume talks on Kashmir. It is under this plan that HC and DHC had sent long protest notes to Pak in the last week. It may relate to the affairs of Government of India, but it does not either relate to any work of defence or affairs of Government of India relating to its forces.

39. Learned Special Public Prosecutor strongly relied upon the e-mail dated January 11, 2010 and strenuously contended that para 5 relates to affairs of Indian Army of Government of India and also relates to the work of defence. I have perused the said document including para 5 and I am of the view that said document is based on the reports published in Pak media. So far para 5 is concerned it relates to the reaction of Pak Air Chief Marshall Rao Qamar Suleman to the statement of Indian Army Chief. To counter the statement of Indian Army Chief, Pak Air Chief Marshall stated that desire of peace should not be construed as weakness and Pakistan was completely capable of safeguarding its national security. No one should have any doubts about Pakistan's capability and resolve to counter challenges faced by its national security. Similarly, former DIG ISI Lt. Gen Hamid Gul said that India should not forget that Pakistan not only had nuclear weapons but also the biggest weapon of Jihad and further stated that statement made by Indian Army Chief made it clear that democracy in India was weakening. Pakistan also had the capability to hit Israel together with India. It was not possible to

establish peace in the region without resolving the Kashmir issue, and if it was not resolved through dialogue, a big war with India could take place over it. To my mind, said para contains only the reaction of officers of Pak forces, which was published in Pak media. It has nothing to do with any work of defence of India. Such type of reactions are general in nature. Moreover, the said statement relates to the capability of Pak forces and not the weakness of Indian forces. It only shows that after the statement made by Indian Army Chief, Pak forces became perturbed.

40. Now coming to the e-mails found in the INBOX folder of the accused.

41. Learned Special Public Prosecutor relied upon the e-mail dated February 1, 2010 and contended that it relates to the work of defence. I have perused the said document. In the said document, accused had conveyed the information of meeting which HCI had held with ambassadors of Western and NATO countries to know their view about the Afghanistan for the conference to be held in London on Afghanistan. To my mind said information does not relate to any work of defence in any manner. In the said document R.K. Sharma of HCI had also opined that in case so called moderate Taliban joined the Afghanistan government, India would face difficulties with respect to its ongoing projects in Afghanistan because Pak establishment would have good

relations with whichever Taliban faction came into power. The provision of even unarmed drones to Pakistan would increase militant infiltration in Kashmir because Pakistan would use them to air-drop militants while it would be difficult for radars to catch drones on their screens. To my mind, this is only an opinion of a civilian officer based on the political condition of Pakistan and does not pertain to any work of defence of the country. At last Mr. R.K. Sharma recommended to speed up its projects in Afghanistan and complete as many as possible before American troops start leaving in 2011. Again, this information had no concern with any work of defence in India.

42. Learned Special Public Prosecutor further relied upon the e-mail dated January 11, 2010 and strenuously contended that the information divulged therein relates to work of defence. I have perused the said document. As per the said document, staff posted at HCI was directed not to bring pen-drive, floppy, CD or any wireless device which may connect with the official computer and also directed not to connect their mobile phones with official computer. It further divulged the information about the 3 suitcases containing monitoring system and that some new wireless network was being set up inside the building to ensure that no unauthorized person inside gets access to this network accidentally while using the personal wireless device. No doubt the divulged information relates to the security system of HIC, but to my mind,

it has no relation with any work of defence of India.

43. Learned Special Public Prosecutor relied upon the e-mail dated December 22, 2009 and contended that it relates to the defence of country. I have perused the said document. Para-1 of the said document relates to the proposal of increasing the height of HCI and its fortification and installation of some more safety devices. To my mind, said information relates to the safety and security of HCI and has no relation with any work of defence. Para 7 relates to the background of wife of R.K. Sharma, Dy. HCI and Para 8 relates to the brother of one Monika Gokhale, who was in Indian Army and presently was posted in MI (Military Intelligence). No doubt the information may be sensitive but I am unable to understand how it relates to any work of defence.

44. It is seen that PW20 Sh. Gopal Bagley, the then Director Indo-Pak Relations, who gave his opinion about the nature of the documents allegedly downloaded from e-mail accounts of the accused. This witness has nothing to do with the defence and has admitted in the cross-examination that he was never connected to the defence forces. He has given opinion that the information passed on by the accused is the work of defence in his opinion but he has not given any reasons as to how information constitutes to be the work of defence. The prosecution has not examined any other witness from the

armed forces or any other person dealing with the defence forces to establish that the information passed on by the accused related to the work of defence. Therefore, mere opinion of PW20 Sh. Gopal Bagley which is without any backing from the armed forces, in my opinion, cannot prove that the information passed on by the accused was related to the work of defence.

45. PW14 Sh. Virender Kumar, Dy. Secretary, Ministry of Defence has duly accorded the authorization under Section 13 of Official Secrets Act vide order of authorization Ex.PW14/A.

46. PW19 Sh. Taranjit Singh Sandhu, Ambassador, Embassy of India at Washington DC proved the sanction u/s 197 Cr.PC against the accused vide his letter dated 15.07.2010 Ex.PW19/A.

47. PW22 Sh. J.L. Chugh, Joint Secretary (Retired) Ministry of Home Affairs proved the sanction order dated 26.07.2010 u/s 188 Cr.PC issued by him against the accused.

48. PW24 Sh. Shibesh Singh, DCP (Legal Cell), PHQ, Delhi has proved the complaint Ex.PW24/A in the present case.

49. In order to bring home the act of accused within the first part of

Section 3(1) of the Act, prosecution has relied upon the letter dated May 25, 2010 wherein query no. (iv) was raised as follows :

(iv). Whether the information contained in the documents/ e-mails can be directly or indirectly connected with defence of the country.

50. Above query was responded as follows :

(iv). Yes, the information contained in the documents/ e-mails is connected with security and defence matters of the country both directly and indirectly. Details pertaining to security arrangement of HCI and its officials were divulged to Pakistani officials, directly putting into danger the security of HCI and its officials, including senior diplomats and Armed Forces functionaries and their family members.

51. E-mails of Ms. Madhuri Gupta contains information on steps being taken or contemplated by GOI and the views and assessment of GOI or its senior officials, on sensitive and strategic issues such as terrorism, Kashmir and India's engagement in Afghanistan. These matters and the information pertaining to them in her e-mails are directly related to India's security and defence, and undermine interest of the country in these areas.

52. At the cost of repetition, it is clarified that to bring an act of a person attracting maximum punishment for a period of fourteen years, prosecution has to show that the offence is committed in relation to :

(a). any work of defence,

- (b). arsenal, naval, military or air force establishment; or
- (c). station, mine, minefield, factory, dockyard, camp, ship; or
- (d). aircraft; or
- (e). otherwise in relation to the naval, military or air force affairs of Government; or
- (f). in relation to any secret official code.

53. As already stated that work of defence used in Section 3(1) is in physical form or structure and not in abstract form. Thus, the information which was allegedly divulged by the accused must be related to any work of defence which was in existence at that time and not in the abstract form. As already discussed, none of the information allegedly divulged by the accused pertained to any work of defence of the country. Similarly, the information allegedly divulged by the accused do not pertain to naval, military, or air force affairs of the Government. Mere fact that in some e-mails there is reference to terrorism, policy relating to Afghanistan, statement of Pak Air Chief Marshall, profile of some army men etc. does not prove that it relates to the naval, military or air force affairs of the Government of India. Probably, this could be the reason that investigating officer has not deemed it appropriate either to seek comment from the Ministry of Defence or Indian Armed Forces. If any of the divulged information pertained to any work of defence or to the naval, military or air force, affairs of Government, investigating agency should seek comments/ opinion from Ministry of Defence and the concerned Armed Force

but investigating agency had not done so.

54. Thus, in the present case, during trial it has been proved by the prosecution that accused was working with the HCI at Islamabad and was responsible for monitoring of the Urdu Media, preparing of the daily Urdu Media summary and translation of Urdu News Articles. It is also seen that from the various electronic gadgets including laptops and Blakberry mobile phone which has been purchased in the name of the accused contained e-mails sent to the various ISI handlers which has already been discussed above. It is further seen that electronic devices even without sealing were always in exclusive possession of the accused as without the password which was within the special knowledge of the accused, information could not have been accessed. **PW26 Dr. Virender Singh**, FSL Expert who examined five hard discs and Black Berry Mobile phone, proved his report Ex.PW26/A and categorically stated that there is no tampering with the Blackberry mobile phone as well as other hard disc sent for FSL examination. The Ex.PW4/A (collectively) and Ex.PW4/B (collectively) contained various sensitive and secret information which the accused came into possession/ knowledge while working as Second Secretary with HCI. Said secret classified documents/ information was within the knowledge of the accused as it was only her password which could have opened the e-mail accounts and only upon her

disclosure made to the officers of MEA and on their direction electronic devices were checked, printouts were taken and were sent to FSL examination. Contents of the said printouts shared with the PIA handlers have been proved by the prosecution beyond reasonable doubt as the same were in exclusive knowledge and possession of the electronic device seized from the accused. It is necessary for the prosecution to prove that any particular information shared by the accused with the agencies of enemy country Pakistan actually caused any prejudice to the safety and interest to the nation.

55. The testimony of of **PW8 Sh. Janardan Singh**, First Secretary (CSO), HCI, Islamabad and **PW9 Sh. Rahul Kulshrestha**, the then Deputy High Commissioner of India, Islamabad, have proved on record the search and seizure of electronic devices from the house of the accused at Islamabad. In this regard, learned defence counsel has raised plea that said devices were not sealed but understandably, search and seizure in enemy country was done in secrecy by officers of HCI, Islamabad and the alleged seized devices were sent India by shipment and nothing could have been done by the officers which raises suspicion on the police/ custom officers of the enemy country. There is no reason for the HCI officers who have deposed regarding search and seizure after there were intelligence inputs that accused was indulging into passing secret information the handlers of enemy country. The argument

of learned defence counsel is misconceived that there was nothing sensitive or classified in respect of the information passed on by the accused. Therefore, the e-mails Ex.PW4/A (colly) and Ex.PW4/B (colly) passed on by the accused are categorically sensitive information which could have been useful to the enemy country which were strategically very important for the foreign policy of the country and its secrecy was of utmost important In one of the e-mail, accused is also promising for collecting information regarding Hydro Electric Power Projects in J&K which could have proved useful to the enemy country during war and destruction thereof by the enemy country during war could have proved serious crisis to the country. It is seen that accused was unable to give such information but her intention of passing on such information and her going to Jammu after giving false excuse of attending marriage points out her intention of helping the enemy country. She had been giving information regarding various postings of officers of defence, MEA and HCI as well as their family particulars which could have caused danger to the life and security to said officers and their family.

56. Therefore, in view of the above discussion, I am of the considered opinion that prosecution has not been able to prove the charge under first part of Section 3(1)(c) of Office Secret Act attracting maximum punishment for a period of 14 years and accordingly, accused Ms. Madhuri Gupta is acquitted

of the said charge. However, as discussed above, the conduct of the accused in passing on sensitive/secret information in the light of documents proved on record and evidence lead by the prosecution categorically proves the charge under second part of Section 3(1)(c) of the Office Secret Act, punishable upto a period of 3 period as well as under Section 5 of the Office Secret Act r/w Section 120-B IPC against the accused and accordingly, accused Ms. Madhuri Gupta is held guilty and is **convicted for offence u/s 3(1)(c) Part-1 (punishable upto a period of 3 years imprisonment) of Office Secret Act & u/s 5 of Office Secret Act r/w 120-B IPC.**

57. Let arguments on the quantum of sentence be heard on 19.05.2018 at 02:00 p.m.

**Announced in the open Court
today on 18th May, 2018**

**(SIDHARTH SHARMA)
ASJ-02/FTC/New Delhi District
PHC/New Delhi**