* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 16th March, 2017
Decided on: 5th September, 2017

\+ **CRL.A. 134/2016**

OM PRAKASH ..... Appellant
Represented by: Mr. Devashish Maharishi, for Mr. Avadh Kaushik, Adv.

versus

CENTRAL BUREAU OF INVESTIGATION (CBI)..... Respondent
Represented by: Mr. Nikhil Goel, Spl. PP with Mr. Ashutosh Ghade, Mr. Annirudha Deshmukh, Advs.

\+ **CRL.A. 150/2016**

S K AGARWAL ..... Appellant
Represented by: Mr. R.N. Mittal, Sr. Adv. with Mr. Puneet Mittal, Mr. Amitej Kr. Nagar, Ms. Vasudha Bajaj, Advocates.

versus

CBI ..... Respondent
Represented by: Mr. Nikhil Goel, Spl. PP with Mr. Ashutosh Ghade, Mr. Annirudha Deshmukh, Advs.

\+ **CRL.A. 259/2016**

CHANDRESHWAR MANJHI ..... Appellant
Represented by: Mr. P.N. Dhar, Adv.

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent

Represented by: Mr. Nikhil Goel, Spl. PP with Mr. Ashutosh Ghade, Mr. Annirudha Deshmukh, Advs.

\+ **CRL.A. 280/2016**

JEET RAM SHARMA ..... Appellant

Represented by: Mr. Nishit Kush, Mr. Shyam S. Sharma, Mr. Sanjeev Kumar Baliyan, Advs.

versus

CBI ..... Respondent

Represented by: Mr. Nikhil Goel, Spl. PP with Mr. Ashutosh Ghade, Mr. Annirudha Deshmukh, Advs.

\+ **CRL.A. 151/2016**

OM PRAKASH ..... Appellant

Represented by: Mr. Nagendra Rai, Sr. Adv. with Mr. Ashish Verma, Advocate.

versus

CBI ..... Respondent

Represented by: Mr. Nikhil Goel, Spl. PP with Mr. Ashutosh Ghade, Mr. Annirudha Deshmukh, Advs.

\+ **CRL.A. 240/2016**

YESUDANAM ..... Appellant

Represented by: Ms. Kajal Chandra, Ms. Swati Sinha, Ms. Prerna Chopra, Advocates.

versus

THE STATE REPRESENTED BY: CBI ..... Respondent

Represented by: Mr. Nikhil Goel, Spl. PP with Mr. Ashutosh Ghade, Mr. Annirudha Deshmukh, Advs.

+ **CRL.A. 241/2016**

B M GHOSH ..... Appellant
Represented by: Ms. Kajal Chandra, Ms. Swati Sinha, Ms. Prerna Chopra, Advocates.

versus

THE STATE REPRESENTED BY: CBI ..... Respondent
Represented by: Mr. Nikhil Goel, Spl. PP with Mr. Ashutosh Ghade, Mr. Annirudha Deshmukh, Advs.

+ **CRL.A. 269/2016**

OM PRAKASH NARANG ..... Appellant
Represented by: Ms. Sunita Arora, Advocate.

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent
Represented by: Mr. Nikhil Goel, Spl. PP with Mr. Ashutosh Ghade, Mr. Annirudha Deshmukh, Advs.

+ **CRL.A. 297/2016**

J P SHARMA ..... Appellant
Represented by: Mr. Sunil K. Choudhary, Mr. B.L. Sharma, Advs.

versus

THE STATE (CBI) ..... Respondent
Represented by: Mr. Nikhil Goel, Spl. PP with Mr. Ashutosh Ghade, Mr. Annirudha Deshmukh, Advs.

+ **CRL.A. 323/2016**

Y P SHARMA ..... Appellant

Represented by: Mr. Pramod Kumar Dubey, Mr. Amit Singh Rathore and Mr. Akshay Sehgal, Mr. Anurag Andley, Advocates.

versus

CBI ..... Respondent

Represented by: Mr. Nikhil Goel, Spl. PP with Mr. Ashutosh Ghade, Mr. Annirudha Deshmukh, Advs.

+ **CRL.A. 342/2016**

SHIV SAGAR NAIK ..... Appellant

Represented by: Ms. Kajal Chandra, Ms. Swati Sinha, Ms. Prerna Chopra, Advocates.

versus

THE STATE REPRESENTED BY: CBI ..... Respondent

Represented by: Mr. Nikhil Goel, Spl. PP with Mr. Ashutosh Ghade, Mr. Annirudha Deshmukh, Advs.

+ **CRL.A. 347/2016**

HAYAT SINGH ..... Appellant

Represented by: Ms. Kajal Chandra, Ms. Swati Sinha, Ms. Prerna Chopra, Advocates.

versus

THE STATE REPRESENTED BY: CBI ..... Respondent

Represented by: Mr. Nikhil Goel, Spl. PP with Mr. Ashutosh Ghade, Mr. Annirudha Deshmukh, Advs.

+ CRL.A. 396/2016

JAI KUMAR SINGHAL ..... Appellant
Represented by: Mr. Anunaya Mehta, Advocate.

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent
Represented by: Mr. Nikhil Goel, Spl. PP with Mr. Ashutosh Ghade, Mr. Annirudha Deshmukh, Advs.

+ CRL.A. 847/2016

NATHA RAM SUMAN ..... Appellant
Represented by: Ms. Kajal Chandra, Ms. Swati Sinha, Ms. Prerna Chopra, Advocates.

versus

STATE (CBI) ..... Respondent
Represented by: Mr. Nikhil Goel, Spl. PP with Mr. Ashutosh Ghade, Mr. Annirudha Deshmukh, Advs.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Gist of prosecution case which led to the conviction of the appellants initiated on the complaint dated 5th February, 2001 by M.E. Haque, Secretary & Vigilance Officer (PW-24) is that officials of CWC deviated from the normal procedure and issued cheques in the name of individuals which they were not supposed to and failed to do pre-audit of bills. The complaint was based on special audit which was conducted by an internal division of Controller of Accounts on the basis of a pseudonymous complaint received by the Controller of Accounts, Ministry of Water Resources alleging that

fraudulent payments have been made to officials by the accounts office, DDO/CWC. One of the main irregularities was wrong drawl of pay and allowances to the tune of ₹23,67,951/- during July, 1999 to March, 2000.

2. The alleged fraudulent transactions can be categorized into three categories:

> "i) Transactions where cheques issued earlier in the names of individuals were cancelled and fresh consolidated cheques were issued by the pay & Accounting Officer (A-17) in the name of DDO-I (A-2) without following the procedure and the money withdrawn through these cheques was misappropriated. - As per the procedure, once a cheque issued in the name of an individual is cancelled, it could be validated/ made afresh in the name /category of the earlier beneficiary and not in the name/ category of different person/category. However in the present case fresh cheques were made in the name of different persons and in some cases in the name of DDO for the purpose of wrongful withdrawal and misappropriation of government funds.
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> ii) Transactions where cheques were issued on the basis of false and forged bills. - There are transactions where cheques have been issued against the bills (LTC, medical, etc.) claimed by Shiv Sagar Naik (A-7), Jeet Ram Sharma (A-9), B.M. Ghosh (A-10) and Hayat Singh (A-15) which are forged, fabricated and/or not showing the correct designation of the person claiming them and are not supported by sanction order. The concerned official i.e. Natha Ram Suman (A-16), Chandreshwar Manjhi (A-2) have passed these bills by intentionally ignoring the above and thus facilitating wrongful withdrawal of money.
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> iii) Transactions where cheques were issued without any bill. - There are the transaction where the cheques have been fraudulently issued in the name of different officials and other private persons in the absence of any bill or authorization for the same. Consequentially, in order to prevent the fraud from being detected, there are no entries made in the relevant records."

3. Before dealing with theevidence on record and rival contentions raised in the appeals separately it would be relevant to decide legal issues which are common to most of the appeals.

4. CONSPIRACY

4.1. Learned counsels for the appellants challenging their conviction submit that they performed their duties as assigned to them in the ordinary course of nature. In case during the procedure followed one or two appellants over-stepped their duties or misappropriated the amount, all the appellants cannot be held liable for the offences they are convicted for with the aid of Section 120B IPC. The Court is required to see whether there is legal evidence to show that there was meeting of minds between the accused and the accused acted in furtherance of the common object of the conspiracy. Learned counsel for the CBI rebutting the contention submits that once the prosecution is able to establish prima facie facts which lead to an inference that the appellants acted with a common object then by virtue of Section 10 of the Indian Evidence Act, the acts of one would be attributable to others who shared the common object.

4.2. Supreme Court in the decision reported as *(1999) 5 SCC 253 State v. Nalini* while discussing the concept of conspiracy observed in sub para 7 of para 583:

> *"7. A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has*

to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".

4.3. Apex Court in the decision reported as *(2004) 11 SCC 585 Esher Singh v. State of A.P.,* reiterating the principle laid down in *(1980) 2 SCC 665 V.C. Shukla v. State (Delhi Admn.)* with respect to onus on the prosecution to prove the alleged conspiracy held:

"38. It was held that the expression "in reference to their common intention" in Section 10 is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of" in the English law; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Anything said, done or written is a relevant fact only

"... 'as against each of the persons believed to be 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'. ... 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 entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour." (AIR p. 687, para 8)

We are aware of the fact that direct independent evidence of criminal conspiracy may not ordinarily and is generally not available and its existence invariably is a matter of inference except as rare exceptions. The inferences are normally deduced from acts of parties in pursuance of a purpose in common between the conspirators. This Court in V.C. Shukla v. State (Delhi Admn.) [(1980) 2 SCC 665 : 1980 SCC (Cri) 561] held that to prove criminal conspiracy there must be evidence, direct or circumstantial, to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied on for the purposes of drawing an inference should be prior in point of time than the

actual commission of the offence in furtherance of the alleged conspiracy."

4.4. Explaining the theory of agency as envisaged under Section 10 of the Indian Evidence Act, 1872 applicable to the law of conspiracy Supreme Court in the decision reported as *(2001) 1 SCC 378 Saju v. State of Kerala,* observed:

"8. In a criminal case the onus lies on the prosecution to prove affirmatively that the accused was directly and personally connected with the acts or omissions attributable to the crime committed by him. It is a settled position of law that act or action of one of the accused cannot be used as evidence against another. However, an exception has been carved out under Section 10 of the Evidence Act in the case of conspiracy. To attract the applicability of Section 10 of the Evidence Act, the court must have reasonable ground to believe that two or more persons had conspired together for committing an offence. It is only then that the evidence of action or statement made by one of the accused could be used as evidence against the other. This Court in Kehar Singh v. State (Delhi Admn.) [(1988) 3 SCC 609 : 1988 SCC (Cri) 711 : AIR 1988 SC 1883] has held: (SCC pp. 649-51, para 45)

"Section 120-A provides for the definition of criminal conspiracy and it speaks of that when two or more persons agree to do or cause to be done an act which is an illegal act and Section 120-B provides for the punishment for a criminal conspiracy and it is interesting to note that in order to prove a conspiracy it has always been felt that it was not easy to get direct evidence. It appears that considering this experience about the proof of conspiracy that Section 10 of the Indian Evidence Act was enacted. Section 10 reads:

'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 be 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.'

This section mainly could be divided into two: the first part talks of where there is reasonable ground to believe that two or more persons have conspired to commit an offence or an actionable wrong, and it is only when this condition precedent is satisfied that the subsequent part of the section comes into operation and it is material to note that this part of the section talks of reasonable grounds to believe that two or more persons have conspired together and this evidently has reference to Section 120-A where it is provided 'when two or more persons agree to do, or cause to be done'. This further has been safeguarded by providing a proviso that no agreement except an agreement to commit an offence shall amount to criminal conspiracy. It will be therefore necessary that a prima facie case of conspiracy has to be established for application of Section 10. The second part of section talks of anything said, done or written by any one of such persons in reference to the common intention after the time when such intention was first entertained by any one of them is relevant fact against each of the persons believed to be so conspiring as well for the purpose for proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it. It is clear that this second part permits the use of evidence which otherwise could not be used against the accused person. It is well settled that act or action of one of the accused could not be used as evidence against the other. But an exception has been carved out in Section 10 in cases of conspiracy. The second part operates only when the first part of the section is clearly established i.e. there must be reasonable ground to believe that two or more persons have conspired together in the light of the language of Section 120-A. It is only then the evidence of action or statements made by one of the accused could be used as evidence against the other. In Sardar Sardul Singh Caveeshar v. State of Maharashtra [AIR 1965 SC 682 : (1964) 2 SCR 378 :

(1965) 1 Cri LJ 608 sub nom Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra] Subba Rao, J. (as he then was) analysed the provision of Section 10 and made the following observations: (SCR pp. 389-91)

'This section, as the opening words indicate, will come into play only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, that is to say, there should be a prima facie evidence that a person was a party to the conspiracy before his acts can be used against his co-conspirators. Once such a reasonable ground exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was entertained, is relevant against the others, not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it. The evidentiary value of the said acts limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them. The expression "in reference to their common intention" is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of" in the English law; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Another important limitation implicit in the language is indicated by the expressed scope of its relevancy. Anything so said, done or written is a relevant fact only "as against each of the persons believed to be 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 can only be used for the purpose of proving the existence of the conspiracy or that the other person was a party to it. It cannot be used in favour of the other party or for the purpose of showing that such a person was not a party to the conspiracy. 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 entered the conspiracy or after he left it; (5) it can only be used against a co-conspirator and not in his favour.' "

It was further held: (SCC pp. 734-35, paras 278-80)

"278. From an analysis of the section, it will be seen that Section 10 will come into play only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence. There should be, in other words, a prima facie evidence that the person was a party to the conspiracy before his acts can be used against his co-conspirator. Once such prima facie evidence exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was first entertained, is relevant against the others. It is relevant not only for the purpose of proving the existence of conspiracy, but also for proving that the other person was a party to it. It is true that the observations of Subba Rao, J., in Sardul Singh Caveeshar v. State of Maharashtra [AIR 1965 SC 682 : (1964) 2 SCR 378 : (1965) 1 Cri LJ 608 sub nom Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra] lend support to the contention that the admissibility of evidence as between co-conspirators would be (sic more) liberal than in English law. The learned Judge said: (SCR p. 390)

'The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them. The expression "in reference to their common intention" is very comprehensive

and it appears to have been designedly used to give it a wider scope than the words "in furtherance of" in English law; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it.'

279. But, with respect, the above observations that the words of Section 10 have been designedly used to give a wider scope than the concept of conspiracy in English law, may not be accurate. This particular aspect of the law has been considered by the Privy Council in Mirza Akbar v. King Emperor [AIR 1940 PC 176 : 41 Cri LJ 871 : 67 IA 336] AIR at p. 180, where Lord Wright said that there is no difference in principle in Indian law in view of Section 10 of the Evidence Act.

280. The decision of the Privy Council in Mirza Akbar case [AIR 1940 PC 176 : 41 Cri LJ 871 : 67 IA 336] has been referred to with approval in Sardul Singh Caveeshar v. State of Bombay [AIR 1957 SC 747, 760 : 1958 SCR 161 : 1957 Cri LJ 1325] where Jagannadhadas, J., said: (SCR p. 193)

'The limits of the admissibility of evidence in conspiracy cases under Section 10 of the Evidence Act have been authoritatively laid down by the Privy Council in Mirza Akbar v. King Emperor [AIR 1940 PC 176 : 41 Cri LJ 871 : 67 IA 336] . In that case, their Lordships of the Privy Council held that Section 10 of the Evidence Act must be construed in accordance with the principle that the thing done, written or spoken, was something done in carrying out the conspiracy and was receivable as a step in the proof of the conspiracy. They notice that evidence receivable under Section 10 of the Evidence Act of "anything said, done, or written, by any one of such persons" (i.e. conspirators) must be "in reference to their common intention". But their Lordships held that in the context (notwithstanding the amplitude of the above phrase) the words therein are not capable of being widely construed having regard to the well-known principle above enunciated.' "

4.5. Supreme Court in the decision reported as *(2005) 12 SCC 631* *K.R. Purushothaman v. State of Kerala* drawing the distinction between suspicion and legal proof held that even in the case of conspiracy though inference is required to be drawn but the same should be based on circumstances giving rise to conclusion or irresistible inference. It was held:

> *"14. Suspicion cannot take the place of legal proof and prosecution would be required to prove each and every circumstance in the chain of circumstances so as to complete the chain. It is true that in most of the cases, it is not possible to prove the agreement between the conspirators by direct evidence but the same can be inferred from the circumstances giving rise to conclusive or irresistible inference of an agreement between two or more persons to commit an offence. It is held in Noor Mohd. Mohd. Yusuf Momin v. State of Maharashtra [(1970) 1 SCC 696 : 1970 SCC (Cri) 274 : AIR 1971 SC 885] , that: (SCC pp. 699-700, para 7)*
>
> *"[I]n most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material."*

4.6. From the decisions noted above, the following principles can be culled out to be applied while fastening the liability of an accused with the aid of Section 120B IPC:

a) The prosecution has to lead prima facie evidence to show that there is a reasonable ground for the Court to believe that two or more persons are members of a conspiracy.

b) The onus lie on the prosecution to prove affirmatively either by direct or circumstantial evidence that the accused was connected with the acts or omissions attributable to the crime committed.

c) The foundational fact of a prima facie involvement of the accused having been established showing meeting of minds between the accused to commit the offence, then Section 10 of the Evidence Act is attracted, whereby anything said, done or written by any one of them in reference to their common intention will be evidence against the other.

5. LEGAL POSITION ON EVIDENCE OF BANK RECORDS

5.1. One of the contentions of the learned counsels for the appellants in the present appeals is the manner in which evidence has been led by the prosecution in respect of the bank accounts. In the present case only few witnesses of the bank have appeared and deposed about the bank opening form and the statement of accounts. Rest of the evidence has been exhibited by the hand-writing expert PW-51 who has proved the hand-writing of the various accused on the documents i.e. pay-in-slips/ cheques and the investigating officer PW-54 who has exhibited major portion of the documents relating to banks in the form of statement of accounts and pay-in-slips etc.

5.2. Learned counsel for the CBI referring to the decision of the Supreme Court in *(2003) 8 SCC 752 R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple & Anr*. contends that an objection as to the admissibility of the evidence or mode of proof thereof can be taken when it is tendered and not subsequently. The documents having been tendered in evidence and no objection having been taken, now in the present appeals the appellants cannot turn around and contend that the documents have not been proved and thus

the same cannot be read in evidence against them. In the alternate referring to Section 4 of the Bankers' Book Evidence Act and Section 34 of the Indian Evidence Act, learned counsel contends that certified copies of the entries in the Bankers' book are per se admissible in evidence and no formal proof of the same are required. Since certified copies of the documents relating to the bank accounts have been exhibited by the prosecution, the evidence led on this count is admissible in evidence.

5.3. Learned counsel for Jai Kumar Singhal rebutting the arguments of learned counsel for the CBI contends that Section 34 of the Indian Evidence Act does not relate to the proof of documents. It provides only for the relevancy of the books of accounts including those maintained in an electronic form and not the admissibility. The decision in *R.V.E. Venkatachala Gounder (supra)* relied upon by learned counsel for the CBI has no application to the facts of the present case because the said case dealt with proof of documents in civil matters. Mere non-objection to the mode of proof would not permit a document to be read in evidence if it is inadmissible. Relying upon the decision of the Supreme Court reported as *(2009) 9 SCC 221 Malay Kumar Gangulay Vs. Dr. Sukumar Mukherjee & Ors.* it is contended that in a criminal trial a document becomes inadmissible in evidence unless the author thereof is examined, and the contents of the documents cannot be held to have been proved unless the author is examined and subjected to cross-examination in a Court of law. It is also contended that Section 2A of the Bankers' Book Evidence Act is para materia Section 65B of the Indian

Evidence Act and in view of the decision of the Supreme Court in *(2014) 10 SCC 473 Anvar P.V. Vs. P.K. Basheer & Ors.* a computer generated document would be admissible only when accompanied by a certificate otherwise the same would be inadmissible in law.

5.4. Learned counsel for the appellants Yesudanam, B.M. Ghosh, Shiv Sagar Naik, Hayat Singh and N.R. Suman relying upon the decision in *(1967) 1 SCR 898 Chandradhar Goswami & Ors. Vs. The Gauhati Bank Ltd.* contends that original entries alone would not be sufficient to charge any person with liabilities under Section 34 of the Indian Evidence Act. When the entries are not admitted, if the prosecution relies upon such entries it is the duty of the prosecution to produce evidence in support of the entries. Reliance is also placed on the decisions reported as *AIR 1999 Kerala 279 Arakkan Narayanan Vs. M/s. Indian Handloom Traders & Ors.* and *AIR 1972 Gujarat 208 Shubhkaran Rameshwarlal Agarwal vs. Durgaprasad Private Ltd.*.

5.5. Before adverting to the rival contentions it would be apt to note Section 34 of the Indian Evidence Act and the relevant provisions of Bankers' Book Evidence Act. Section 34 of the Indian Evidence Act reads as under:

> *"34. [Entries in books of account including those maintained in an electronic form] when relevant.—[Entries in books of accounts including those maintained in an electronic form], regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability."*

5.6. A bare perusal of Section 34 of the Indian Evidence Act reveals that it does not provide for the admissibility or the mode of proof of the

statement of account but its relevancy. Further the mode to prove a relevant fact is governed by Part II Chapters III to VI of the Indian Evidence Act.

5.7. Sections 2(8), 2A and Section 4 of the Bankers' Book Evidence Act, 1891 (in short 'the Act') read as under:

"2. Definitions. In this Act, unless there is something repugnant in the subject or context,

(8) "certified copy" means when the books of a bank,—

(a) are maintained in written form, a copy of any entry in such books together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business and that such book is still in the custody of the bank, and where the copy was obtained by a mechanical or other process which in itself ensured the accuracy of the copy, a further certificate to that effect, but where the book from which such copy was prepared has been destroyed in the usual course of the bank's business after the date on which the copy had been so prepared, a further certificate to that effect, each such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title; and

(b) consist of printouts of data stored in a floppy, disc, tape or any other electro-magnetic data storage device, a printout of such entry or a copy of such printout together with such statements certified in accordance with the provisions of section 2A.

[(c) a printout of any entry in the books of a bank stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism obtained by a mechanical or other process which in itself

ensures the accuracy of such printout as a copy of such entry and such printout contains the certificate in accordance with the provisions of section 2A.]

2A. Conditions in the printout.—A printout of entry or a copy of printout referred to in sub-section (8) of section 2 shall be accompanied by the following, namely:

(a) a certificate to the effect that it is a printout of such entry or a copy of such printout by the principal accountant or branch manager; and

(b) a certificate by a person in-charge of computer system containing a brief description of the computer system and the particulars of—

(A) the safeguards adopted by the system to ensure that data is entered or any other operation performed only by authorised persons;

(B) the safeguards adopted to prevent and detect unauthorised change of data;

(C) the safeguards available to retrieve data that is lost due to systemic failure or any other reasons;

(D) the manner in which data is transferred from the system to removable media like floppies, discs, tapes or other electro-magnetic data storage devices;

(E) the mode of verification in order to ensure that data has been accurately transferred to such removable media;

(F) the mode of identification of such data storage devices;

(G) the arrangements for the storage and custody of such storage devices;

(H) the safeguards to prevent and detect any tampering with the system; and

(I) any other factor which will vouch for the integrity and accuracy of the system.

(c) a further certificate from the person in-charge of the computer system to the effect that to the best of his knowledge and belief, such computer system operated properly at the

material time, he was provided with all the relevant data and the printout in question represents correctly, or is appropriately derived from, the relevant data.

4. Mode of proof of entries in bankers' books.—Subject to the provisions of this Act, a certified copy of any entry in a bankers' books shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise."

5.8. As noted above, Section 4 of the Act which provides for a certified copy of the entry in the Bankers' books to be received as prima facie evidence of existence of such entry in all legal proceedings is subject to other provisions of the Act which include Section 2A. Section 2A of the Act, inter alia, provides that print-out of the entry or a copy of the print-out is required to be accompanied by a certificate to the affect that it is a print-out of such entry by the principal accountant or a Branch Manager and a certificate by in-charge of the computer system containing a brief description of the computer system and the particulars. Further Section 2(8)(c) of the Act also provides that the print-out of an entry in the book of an account should ensure the accuracy of such print-out and contain the certificate in accordance with provisions of Section 2A of the Act. Thus, a computer print-out of the entries in the book which does not contain certificate as provided under Section 2A of the Act would not be a certified copy within the meaning of Section 2(8) of the Act and would not be then admissible as the original entry itself under Section 4 of the Act.

5.9. Section 65B of the Indian Evidence Act which is *para materia* Section 2A of the Act came up consideration before the Supreme Court in the decision *Anvar P.V. (supra)* wherein it was held that a computer generated document would be admissible only when accompanied by a certificate under Section 65B Indian Evidence Act and in the absence thereof it would be inadmissible. The three Judge Bench of the Supreme Court in *Anvar P.V. (supra)* over-ruling its earlier decision in *(2005) 11 SCC 600 State (NCT of Delhi) Vs. Navjot Sandhu* held:

> *"14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2).*
>
> *17. Only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45-A—opinion of Examiner of Electronic Evidence.*
>
> *18. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements*

under Section 65-B of the Evidence Act are not complied with, as the law now stands in India.

20. Proof of electronic record is a special provision introduced by the IT Act amending various provisions under the Evidence Act. The very caption of Section 65-A of the Evidence Act, read with Sections 59 and 65-B is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the procedure prescribed under Section 65-B of the Evidence Act. That is a complete code in itself. Being a special law, the general law under Sections 63 and 65 has to yield.

22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65-A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case [State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] , does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.'""

5.10. This Court in the decision reported as *2015 SCC Online Del 13647 Kundan Singh Vs. State* held that the decision in *Anvar P.V. (supra)* did not hold that the said certificate cannot be produced in exercise of

powers of the Trial Court under Section 311 Cr.P.C. or at the appellate stage under Section 391 Cr.P.C. It was held that Evidence Act is a procedural law and in view of the pronouncement in *Anvar P.V. (supra)* partly overruling *Navjot Sandhu (supra)*, the prosecution may be entitled to invoke the aforementioned provisions, when justified and required.

5.11. Legal position on the point is thus well settled that is if the document is otherwise inadmissible for want of a certificate or any other requirement of law, it being exhibited in the course of trial does not make the document admissible in law and though an objection as to the mode of proof can be waived off and should be taken at the first instance, however the objection as to the admissibility of a document which goes to the root of the matter can be taken at any stage. Supreme Court in the decision reported as *R.V.E. Venkatachala Gounder (supra)* held:

> *"20. The learned counsel for the defendant-respondent has relied on Roman Catholic Mission v. State of Madras [AIR 1966 SC 1457] in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging*

the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court."

5.12. In *Malay Kumar Ganguly (supra)* relied upon by learned counsel for the appellants, Supreme Court while dealing with a claim under the

Consumer Protection Act, 1986 observed the nature of evidence required for the purposes of criminal proceedings and before the National Consumer Disputes Redressal Commission (NCDRC). It is in this context that the Supreme Court noted that in a criminal proceeding subject to the shifting of burden depending upon the Statute and/or the decisions of the Supreme Court, the right of an accused is protected in terms of Article 21 of the Constitution of India and that ordinarily if a party to a action does not object to a document being taken on record and the same is marked as an exhibit, he is estopped and precluded from questioning the admissibility thereof at a later stage. However the documents become inadmissible in evidence unless the author thereof is examined as the contents thereof cannot be held to be proved unless he is examined and subjected to cross-examination in a Court of law and a document which is otherwise inadmissible cannot be taken in evidence only because no objection to the admissibility thereof was taken. In respect of the proceedings before the NCDRC Supreme Court relying upon *R.V.E. Venkatachala Gounder (supra*) held that the documents thereof were admissible as no objection to the admissibility was taken and that provisions of Evidence Act were not applicable to the proceedings before the Commission and it is to merely comply with the principles of natural justice, save and except the ones laid down under Sub-Section 4 of Section 13 of the Consumer Protection Act, 1986. As noted above, Supreme Court in *Malay Kumar Ganguly* relied upon the decision in *R.V.E. Venkatachala Gounder (supra*).

5.13. After the arguments were heard in the appeals, Supreme Court rendered its decision reported as *2017 SCC Online SC 765* *Sonu @ Amar Vs. State of Haryana* in respect of the mode of proof dealing with an offence wherein the appellants were guilty of abduction and murder. It was held that from the judgments of the Supreme Court in *Anvar P.V. (supra)*, *Navjot Sandhu (supra)* and *R.V.E. Venkatachala Gounder (supra)* it is clear that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. It has been held:

> *"32. It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the Trial Court without a certificate as required by Section 65B (4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies. The learned Senior Counsel for the State referred to statements under Section 161 of the Cr. P.C 1973 as an example of documents falling under the said category of*

inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65 B (4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof.

33. Another point which remains to be considered is whether the accused is competent to waive his right to mode of proof. Mr. Luthra's submission is that such a waiver is permissible in civil cases and not in criminal cases. He relies upon a judgment of the Privy Council in Chainchal Singh's case in support of the proposition. The Privy Council held that the accused was not competent to waive his right. Chainchal Singh's case may have no application to the case in hand at all. In that case, the issue was under Section 33 of the Evidence Act, and was whether evidence recorded in an earlier judicial proceeding could be read into, or not. The question was whether the statements made by a witness in an earlier judicial proceeding can be considered relevant for proving the truth or facts stated in a subsequent judicial proceeding. Section 33 of the Evidence Act allows for this inter alia where the witness is incapable of getting evidence in the subsequent proceeding. In Chainchal Singh, the accused had not objected to the evidence being read into in the subsequent proceeding. In this context, the Privy Council held that in a civil case, a party can waive proof but in a criminal case, strict proof ought to be given that the witness is incapable of giving evidence. Moreover, the judge must be satisfied that the witness cannot give evidence. Chainchal Singh also held that:

> *"In a civil case a party can, if he chooses, waive the proof, but in a criminal case strict proof ought to be given that the witness is incapable of giving evidence".*

34. The witness, who had deposed earlier, did not appear in the subsequent proceeding on the ground that he was unable to move from his house because of tuberculosis, as deposed by the process server. There was no medical evidence in this regard. The Court observed that the question of whether or not he was

incapable of giving evidence must be proved in this context, and in the proof of such a fact it was a condition that statements given in an earlier proceeding can be taken as proved in a subsequent proceeding. Chainchal Singh's case therefore, does not lay down a general proposition that an accused cannot waive an objection of mode of proof in a criminal case. In the present case, there is a clear failure to object to the mode of proof of the CDRs and the case is therefore covered by the test in R.V.E Venkatachala Gounder.

35. We proceed to deal with the submission of Mr. Luthra that the ratio of the judgment of the Bombay High Court in Shaikh Farid's case is not applicable to the facts of this case. It was held in Shaikh Farid's case as under:

> *"6. In civil cases mode of proof can be waived by the person against whom it is sought to be used. Admission thereof or failure to raise objection to their tendering in evidence amount to such waiver. No such waiver from the accused was permissible in criminal cases till the enactment of the present Code of Criminal Procedure in 1973. The accused was supposed to be a silent spectator at the trial, being under no obligation to open his mouth till the occasion to record his statement under section 342 (present S. 313) of the Code arose. Even then he was not bound to answer and explain the circumstances put to him as being appearing against him. In the case of Chainchal Singh v. Emperor AIR 1946 PC 1 it was held by the Privy Council that the accused was not competent to waive his right and the obligation of the prosecution to prove the documents on which the prosecution relied. Resultantly, the prosecution was driven to examine witnesses even when the accused was not interested in challenging the facts sought to be proved though them. The inconvenience and the delay was avoidable.*
>
> *7. Section 294 of the Code is introduced to dispense with this avoidable waste of time and facilitate removal of such obstruction in the speedy trial. The accused is now enabled to waive the said right and save the time. This is a new*

provision having no corresponding provision in the repealed Code of Criminal Procedure. It requires the prosecutor or the accused, as the case may be, to admit or deny the genuineness of the document sought to be relied against him at the outset in writing. On his admitting or indicating no dispute as to the genuineness, the Court is authorised to dispense with its formal proof thereof. In fact after indication of no dispute as to the genuineness, proof of documents is reduced to a sheer empty formality. The section is obviously aimed at undoing the judicial view by legislative process.

8. The preceding Section 293 of the Code also dispenses with the proof of certain documents. It corresponds with Section 510 of the repealed Code of Criminal Procedure. It enumerates the category of documents, proof of which is not necessary unless the Court itself thinks it necessary. Section 294 makes dispensation of formal proof dependent on the accused or the prosecutor, not disputing the genuineness of the documents sought to be used against them. Such contemplated dispensation is not restricted to any class or category of documents as under section 293, in which ordinarily authenticity is dependent more on the mechanical process involved than on the knowledge, observation or the skill of the author rendering oral evidence just formal. Nor it is made dependent on the relative importance of the document or probative value thereof. The documents being primary or secondary or substantive or corroborative, is not relevant for attracting Sec. 294 of the Code. Not disputing its genuineness is the only solitary test therefor.

9. Now the post-mortem report is also a document as any other document. Primary evidence of such a document is the report itself. It is a contemporaneous record, prepared in the prescribed form, of what the doctor has noticed in the course of post-mortem of the dead body, while investigation the cause of the death. It being relevant, it can be proved by producing the same. But production is only a step towards proof of it. It can be received in evidence only on the

establishment of its authenticity by the mode of its proof as provided under sections 67 to 71 of the Evidence Act. Section 294(1) of the Code enables the accused also, to waive this mode of proof, by admitting it or raising no dispute as to its genuineness when called upon to do so under sub-section (1). Sub-section (3) enables the Court to read it in evidence without requiring the same to be proved in accordance with the Evidence Act. There is nothing in Section 294 to justify exclusion of it, from the purview of "documents" covered thereby. The mode of proof of it also is liable to be waived as of any other document."

36. Section 294 of the Cr. P.C 1973 provides a procedure for filing documents in a Court by the prosecution or the accused. The documents have to be included in a list and the other side shall be given an opportunity to admit or deny the genuineness of each document. In case the genuineness is not disputed, such document shall be read in evidence without formal proof in accordance with the Evidence Act. The judgment in Shaikh Farid's case is not applicable to the facts of this case and so, is not relevant."

5.14. From the conjoint reading of the provisions of Evidence Act and as held in the various decisions of the Supreme Court noted above, it is evident that mode of proof of a document is distinct from standard of proof. The mode of proof of a document which is governed by Section 63 to 65 and 65B Indian Evidence Act in case of electronic evidence remains the same whether it is a civil or a criminal proceeding and can be waived off unless the document is per-se inadmissible in evidence as then the objection before the Appellate Court would be to the admissibility of the document and not to the mode of proof of the document. Having not objected to the mode of proof of an admissible document during the trial, the party is, whether in civil or criminal proceeding, is estopped from challenging the

mode of proof thereon. The concept of mode of proof of a document cannot be confused with standard of a proof which is proof beyond reasonable doubt in a criminal proceeding whereas by way of preponderance of probability in civil proceeding. The mode of proof required in proceedings before the NCDRC or any other quasi judicial authority or disciplinary proceedings cannot be equated with the mode of proof required in a civil proceeding and a criminal proceeding for the reason the latter two are covered by the Indian Evidence Act whereas the earlier proceedings are not covered by the strict rules of Evidence Act. Thus if a document is admissible in evidence and no objection to the mode of proof is taken thereof at the stage of tendering the same in trial, the party is estopped to challenge the same before the Appellate Court or thereafter, however if the document is per-se inadmissible then even if marked as an exhibit the same cannot be read in evidence.

5.15. The Supreme Court while noting the distinction between mode of proof and standard of proof observed in the decision reported as *(1975) 4 SCC 769 Razik Ram v. Jaswant Singh Chouhan* :

> *"15. Before considering as to whether the charges of corrupt practice were established, it is important to remember the standard of proof required in such cases. It is well settled that a charge of corrupt practice is substantially akin to a criminal charge. The commission of a corrupt practice entails serious penal consequences. It not only vitiates the election of the candidate concerned but also disqualifies him from taking part in elections for a considerably long time. Thus, the trial of an election petition being in the nature of an accusation, bearing the indelible stamp of quasi-criminal action, the standard of proof is the same as in a criminal trial. Just as in a criminal*

case, so in an election petition, the respondent against whom the charge of corrupt practice is levelled, is presumed to be innocent unless proved guilty. A grave and heavy onus therefore, rests on the accuser to establish each and every ingredient of the charge by clear, unequivocal and unimpeachable evidence beyond reasonable doubt. It is true that there is no difference between the general rules of evidence in civil and criminal cases, and the definition of "proved" in Section 3 of the Evidence Act does not draw a distinction between civil and criminal cases. Nor does this definition insist on perfect proof because absolute certainty amounting to demonstration is rarely to be had in the affairs of life. Nevertheless, the standard of measuring proof prescribed by the definition, is that of a person of prudence and practical good sense. "Proof" means the effect of the evidence adduced in the case. Judged by the standard of prudent man, in the light of the nature of onus cast by law, the probative effect of evidence in civil and criminal proceedings is markedly different. The same evidence which may be sufficient to regard a fact as proved in a civil suit, may be considered insufficient for a conviction in a criminal action. While in the former, a mere preponderance of probability may constitute an adequate basis of decision, in the latter a far higher degree of assurance and judicial certitude is requisite for a conviction. The same is largely true about proof of a charge of corrupt practice, which cannot be established by mere balance of probabilities, and, if, after giving due consideration and effect to the totality of the evidence and circumstances of the case, the mind of the Court is left rocking with reasonable doubt — not being the doubt of a timid, fickle or vacillating mind — as to the veracity of the charge, it must hold the same as not proved."

5.16. As noted above Section 34 of the Indian Evidence Act is in two parts while its first part provides for the relevancy of the entry as evidence, the second part is in the negative providing that such statement alone is not sufficient for charging a person with a liability, thus providing for its evidentiary value. Supreme Court in the decision reported as

(1998) 3 SCC 410 Central Bureau of Investigation Vs. V.C. Shukla dealing with Section 34 of Indian Evidence Act held:

> *"17. From a plain reading of the section it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence to charge any person with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for charging a person with a liability. It will, therefore, be necessary for us to first ascertain whether the entries in the documents, with which we are concerned, fulfil the requirements of the above section so as to be admissible in evidence and if this question is answered in the affirmative then only its probative value need be assessed."*

5.17. Further Section 4 of the Banker's Book Evidence Act came up for consideration before the Supreme Court in *(1967) 1 SCR 898 Chandradhar Goswami & Ors. Vs. Gauhati Bank Limited* and it was held:

> *"6. …… It will be clear that Section 4 gives a special privilege to banks and allows certified copies of their accounts to be produced by them and those certified copies become prima facie evidence of the existence of the original entries in the accounts and are admitted as evidence of matters, transactions and accounts therein, but such admission is only where, and to the same extent as, the original entry itself would be admissible by law and not further or otherwise. Original entries alone under Section 34 of the Evidence Act would not be sufficient to charge any person with liability and as such copies produced under Section 4 of the Bankers' Books*

Evidence Act obviously cannot charge any person with liability. Therefore, where the entries are not admitted it is the duty of the bank if it relies on such entries to charge any person with liability, to produce evidence in support of the entries to show that the money was advanced as indicated therein and thereafter the entries would be of use as corroborative evidence. But no person can be charged with liability on the basis of mere entries whether the entries produced are the original entries or copies under Section 4 of the Banker's Books Evidence Act. "

5.18. A conjoint reading of Section 34 of the Indian Evidence Act, Sections 2(8), 2A and 4 of the Banker's Book Evidence Act and the various pronouncements of the Supreme Court lead to the conclusion that firstly, the prosecution is required to lead admissible evidence to prove the entries in the books of accounts and after having led admissible evidence link the same with other evidence on record to prove the guilt of the accused beyond reasonable doubt. Thus, in case the statements of accounts exhibited on record are accompanied by certificate as envisaged under Section 2A of the Bankers' Books Evidence Act, the statements of accounts would be admissible in evidence. An objection as to the person exhibiting the said statements of account i.e. an objection to the mode of proof and not admissibility, has to be taken at the time of exhibition of the documents. Therefore if certified copies of the statements of accounts have been exhibited as per the requirement of Section 2A of the Act, the statement of account would be admissible and in case no objection to the witness proving the same is taken at the time when the document is exhibited, the document would be validly read in evidence. However, if the statements of accounts have been

exhibited without the necessary certificate as contemplated under Section 2A of the Act, the same being inadmissible in evidence, even in the absence of an objection taken as to the mode of proof during trial, this Court cannot read the same in evidence even though marked as an exhibit.

6. OPINION OF HANDWRITING EXPERT

6.1. Besides the issues discussed above learned counsels for the appellants also contend that the appellants cannot be convicted merely on the report of the hand-writing expert and that since the specimen/ admitted handwriting of the appellants were not taken pursuant to the directions of the Magistrate, the opinion rendered on the said handwriting cannot be read in evidence. It is contended that most of the documents of the prosecution have been proved by the handwriting expert which is impermissible in law.

6.2. It is trite law that unlike the science of finger printing which is quite accurate, science of matching the handwriting is not an exact science and thus opinion of an expert in handwriting must be received with great caution and before a conviction is based, there should be other cogent and convincing evidence proved by the prosecution to base a conviction thereon. In the decision reported as *(1977) 2 SCC 2010 Magan Bihari Lal Vs. State of Punjab* Supreme Court following its earlier decision in *AIR 1957 SC 381 Ram Chander Vs. State of U.P.* held that it is unsafe to treat opinion of the handwriting expert as sufficient basis for conviction though it may be relied upon when supported by other items of internal and external evidence. It was held:

"7. ....It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in Ram Chandra v. State of U.P. [AIR 1957 SC 381 : 1957 Cri LJ 559] that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in Ishwari Prasad Mishra v. Md. Isa [AIR 1963 SC 1728 : (1963) 3 SCR 722] that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in Shashi Kumar Banerjee v. Subodh Kumar Banerjee [AIR 1964 SC 529] where it was pointed out by this Court that experts evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in Fakhruddin v. State of M.P. [AIR 1967 SC 1326 : (1967) 2 SCJ 885 : 1967 Cri LJ 1197] and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial. It is interesting to note that the same view is also echoed in the judgments of English and American courts. Vide Gurney v. Langlands [1822 5 B and Ald 330] and Matter of Alfred Foster's Will[34 Mich 21] . The Supreme Court of Michigan pointed out in the last-mentioned case:

"Every one knows how very unsafe it is to rely upon any one's opinion concerning the niceties of penmanship — Opinions are necessarily received, and may be valuable, but at best this kind of evidence is a necessary evil."

We need not subscribe to the extreme view expressed by the Supreme Court of Michigan, but there can be no doubt that this type of evidence, being opinion evidence is by its very nature, weak and infirm and cannot of itself from the basis for a conviction. We must, therefore, try to see whether, in the present case, there is, apart from the evidence of the handwriting expert B. Lal, any other evidence connecting the appellant with the offence.'""

6.3. Thus, opinion of a handwriting expert is only to identify the handwriting of an individual on the document which is only a piece of evidence in the entire chain of evidences required to prove the incriminating circumstance.

6.4. The issue whether the evidence of the opinion of the handwriting expert based on the specimen handwriting/ signatures obtained from a person accused of having committed an offence during the course of investigation of a crime by the investigating officer without permission of the Court came up for consideration before the three Judge Bench of this Court in the decision reported as *191 (2012) DLT 225 (FB) Sapan Haldar & Anr. Vs. State*. The three Judge Bench of this Court held that an investigating officer during investigation cannot obtain a handwriting sample or a signature sample from a person accused of having committed an offence after June 23, 2006 when Act No.25 of 2005 was notified and Section 311A inserted in the Code of Criminal Procedure, 1973. Prior to June 23, 2006 even a Magistrate could not direct a person accused to give specimen signatures or handwriting samples. Even if the Magistrate directed, the said evidence was held to be inadmissible as per the decision of the Supreme Court in *AIR 1980 SC 791 State of U.P. Vs. Ram Babu*

Mishra. The full Bench however carved out a distinction and held that Section 4 of the Identification of Prisoners Act, 1920 would not be applicable where the person is accused of an offence punishable with death or imprisonment for life because the said provision specifies a prerequisite i.e. that the person concerned is accused of having committed an offence which is punishable with the sentence to undergo rigorous imprisonment for a term of one year or upwards.

6.5. In the present case the appellants were charged and tried for offence punishable under Section 409 IPC vide order dated 29th April, 2008 by the learned Special Judge which provides for sentence of imprisonment of life as well. Hence in view of the exception laid down by the full Bench in *Sapan Haldar (supra)* the objection of learned counsels for the appellants that the specimen handwriting/ signatures of the appellant having been taken without the prior permission of the Court concerned, the opinion of the handwriting expert thereon is inadmissible in evidence is liable to be rejected.

7. EXPLANATION RENDERED BY ACCUSED UNDER SECTION 313 CR.P.C.

7.1. One of the contentions raised by learned counsel for the appellants is that they have been convicted solely on the basis of the explanation rendered by them in their statement under Section 313 Cr.P.C. which is impermissible. It is contended that the prosecution has to stand on its own legs and cannot use the answers to the question put to the accused in his statement under Section 313 Cr.P.C. to convict the accused.

7.2. Section 313 Cr.P.C. provides as under:

"313. Power to examine the accused.

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case: Provided that in a summons- case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub- section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed."

7.3. Supreme Court in the decision reported as *(2013) 5 SCC 753 Khairuddin Vs. State of W.B*. explaining the evidentiary value of the statement under Section 313 Cr.P.C. of the accused held:

"14. That brings us to the cases of three other appellants viz. Monglu, Hafijuddin and Motilal Motin. None of them admittedly was named in the FIR, which was lodged by PW 1 Budhu Md. who was present on the spot and claims to have witnessed the occurrence. Absence of the names of these three appellants from the FIR which gave details of the incident and named several others who were allegedly participating in the occurrence assumes importance and would require a cautious approach towards the evidence. That is because omission of the

names of those who are alleged to have participated in the commission of the crime would be a significant circumstance which cannot be lightly ignored. Possible false implication by subsequent deliberations and consultations to cast the net wider and accuse even those who may not have been actually present on the spot, cannot be ruled out. No explanation is in any case coming forth from the witnesses for the omission of the names of these appellant-accused. Having said that, we cannot ignore the fact that out of these three appellants, appellant Monglu Md. has in his statement under Section 313 CrPC answered Question 14, as under:

> *"I am also a pattadar. A few days (4/5) before I had sown 'tisi' in my lands. On the day of the occurrence I heard that the gang of Akalu was ploughing our land. Then Isa Haque, myself, Hafij, Kusrat and Tamij went. We asked them not to do so. There began fighting. I was assaulted on my finger. Darbaru, Betu and Sudhu were ploughing. Kusrat (my elder brother) had a great fight with Darbaru. Then I also hit Darbaru. Then I fled away."*

The above shows that appellant Monglu Md. was present on the spot at the time of the occurrence according to his own admission. Not only that, he had according to his own statement, participated in the incident and even assaulted the deceased Dabaru, before fleeing from the spot.

15. That the statement of an accused made under Section 313 CrPC can be taken into consideration is not in dispute; not only because of what Section 313(4) of the Code provides but also because of the law laid down by this Court in several pronouncements. We may in this regard refer to the decision of this Court in Sanatan Naskar v. State of W.B. [(2010) 8 SCC 249 : (2010) 3 SCC (Cri) 814] where this Court observed: (SCC pp. 258-59, paras 21-24)

> *"21. The answers by an accused under Section 313 CrPC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. ...*
>
> *22. As already noticed, the object of recording the statement of the accused under Section 313 CrPC is to put*

all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. ... Once such a statement is recorded, the next question that has to be considered by the court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence.

23. The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313(4) CrPC explicitly provide that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into or trial for any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.

24. Another important caution that courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 CrPC as it cannot be regarded as a substantive piece of evidence."

To the same effect is the decision of this Court in Ashok Kumar v. State of Haryana[(2010) 12 SCC 350 : (2011) 1 SCC (Cri) 266] .

16. Reference may also be made to the decision of this Court in Brajendrasinghv. State of M.P. [(2012) 4 SCC 289 : (2012) 2 SCC (Cri) 409] where this Court said: (SCC p. 297, para 15)

> *"15. It is a settled principle of law that the statement of an accused under Section 313 CrPC can be used as evidence against the accused, insofar as it supports the case of the prosecution. Equally true is that the statement under Section 313 CrPC simpliciter normally cannot be made the basis for conviction of the accused. But where the statement of the accused under Section 313 CrPC is in line with the case of the prosecution, then certainly the heavy onus of proof on the prosecution is, to some extent, reduced."*

17. Time now to examine whether Monglu's participation in the crime is proved by the prosecution evidence adduced at the trial. PW 4 Samsul has in his deposition specifically stated that Monglu was one of those who had assaulted deceased Darbaru. Similarly, PW 5 Monglu Md., an injured witness, has also implicated Appellant 16, and stated that "Darbaru was assaulted by Yusuf, Bhaka, Monglu and Jabbar. I also stated to the IO the fact regarding assault on Darbaru…". PW 6 Lal Khan is yet another injured witness who incriminates Appellant 16 Monglu. He stated, "At first Jabbar, Yusuf Amin and Monglu assaulted Darbaru with a dagger, ballam, etc. who sustained multiple injuries on his person and succumbed to such injuries…". PW 17 Bholu Md. is also an injured witness who corroborated the version given by the other eyewitnesses and stated "Sabdul, Khairuddin, Ishahaque, Nasiruddin, Monglu and others assaulted Darbaru severely".

18. It is evident from the above that Appellant 16 Monglu's presence on the spot and participation in the commission of the offence is proved by the evidence led by the prosecution and supported by his own statement recorded under Section 313 CrPC. That is not, however, true about the remaining two appellants, namely, Hafijuddin and Motilal who were neither named in the FIR nor is there any cogent evidence to suggest their complicity or participation in the commission of the offence. In the circumstances, therefore, while the appeal filed

by Monglu shall have to be dismissed, that filed by Hafijuddin and Motilal shall have to be allowed giving to the said two appellants also the benefit of doubt."

7.4. The Supreme Court in *(2014) 4 SCC 747 Ashok Debbarma Vs. State of Tripura* clearly laid down that the conviction cannot be based only on the statement under Section 313 Cr.P.C. as the same is not substantiative evidence and it can only be taken as a piece of evidence to lend credence to the case of the prosecution. It was held:

"23. The learned counsel appearing for the accused has raised the question that incriminating questions were not put to the accused while he was examined under Section 313 CrPC. The object of Section 313 CrPC is to empower the court to examine the accused after evidence of the prosecution has been taken so that the accused is given an opportunity to explain the circumstances which may tend to incriminate him. The object of questioning an accused person by the court is to give him an opportunity of explaining the circumstances that appear against him in the evidence. In the instant case, the accused was examined in the court on 23-4-2005 by the Additional Sessions Judge, West Tripura, Agartala, which, inter alia, reads as follows:

Question:	*It transpires from the evidence of PWs 10, 11 and 13 that they had recognised you amongst the extremists. Is it true?*
Answer:	*False.*
Question:	*It transpires from the evidence of the above witnesses that Dulal, Ajit, Saraswati and Hemender sustained severe bullet injuries by the firing of you and your associates. What do you have to say regarding this?*
Answer:	*Yes.*
Question:	*It is evident from the evidence of these*

witnesses and other information that on that night Sachindra Sarkar, Archana Garkar, Dipak Sarkar, Gautam Sarkar, Shashi Sarkar, Prosenjit Sarkar, Saraswati Biswas, Tulsi Biswas, Narayan Das, Mithu Das, Bitu Das, Khelan Sarkar, Sujit Sarkar, Bipul Sarkar and Chotan Sarkar were killed by the bullets of firearms and fire. What do you have to say regarding this?

Answer: *……. (blank).*

The second question put to the accused was that, from the deposition of PW 10, PW 11, PW 13, it had come out in evidence that it was due to the firing of the accused and his associates that Dulal, Ajit, Saraswati and Hemender had sustained severe bullet injuries, to which the answer given by the accused was "Yes". In other words he has admitted the fact that in the incident, Dulal, Ajit, Saraswati and Hemender had sustained severe bullet injuries by the firing of the accused and his associates. Further, for the question that from the evidence of those witnesses and other information, on that night, Sachindra Sarkar, Archana Garkar, Dipak Sarkar, Gautam Sarkar, etc. were killed by the bullets of firearms and fire, the accused kept silent.

24. We are of the view that, under Section 313 statement, if the accused admits that from the evidence of various witnesses, four persons sustained severe bullet injuries by the firing by the accused and his associates, that admission of guilt in Section 313 statement cannot be brushed aside. This Court in State of Maharashtrav. Sukhdev Singh [(1992) 3 SCC 700 : 1992 SCC (Cri) 705] held that since no oath is administered to the accused, the statement made by the accused under Section 313 CrPC will not be evidence stricto sensu and the accused, of course, shall not render himself liable to punishment merely on the basis of answers given while he was being examined under Section 313 CrPC. But, sub-section (4) says that the answers given by the accused in response to his examination under

Section 313 CrPC can be taken into consideration in such an inquiry or trial. This Court in Hate Singh Bhagat Singh [Hate Singh Bhagat Singh v. State of Madhya Bharat, AIR 1953 SC 468 : 1953 Cri LJ 1933] held that the answers given by the accused under Section 313 examination can be used for proving his guilt as much as the evidence given by the prosecution witness. In Narain Singh v. State of Punjab [(1964) 1 Cri LJ 730 : (1963) 3 SCR 678] this Court held that when the accused confesses to the commission of the offence with which he is charged, the court may rely upon the confession and proceed to convict him.

25. This Court in Mohan Singh v. Prem Singh [(2002) 10 SCC 236 : 2003 SCC (Cri) 1514] held that: (SCC p. 244, para 27)

> *"27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 CrPC cannot be made the sole basis of his conviction."*

In this connection, reference may also be made to the judgments of this Court in Devender Kumar Singla v. Baldev Krishan Singla [(2005) 9 SCC 15 : 2005 SCC (Cri) 1185] and Bishnu Prasad Sinha v. State of Assam [(2007) 11 SCC 467 : (2008) 1 SCC (Cri) 766] . The abovementioned decisions would indicate that the statement of the accused under Section 313 CrPC for the admission of his guilt or confession as such cannot be made the sole basis for finding the accused guilty, the reason being he is not making the statement on oath, but all the same the confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the prosecution."

7.5. The very purpose of recording statement under Section 313 Cr.P.C. is to put the incriminating circumstance against the accused to him and afford an opportunity to explain such incriminating circumstance. In case there is no incriminating circumstance against the accused, the

same cannot be put to him under Section 313 Cr.P.C. and an explanation sought. Where the prosecution has led no incriminating evidence against the accused, the Court is required to dispense with recording of the statement of the accused under Section 313 Cr.P.C. and acquit him. [See *1991 Crl.L.J. 3208 State Vs. Sheikh Kadher Sheik Budin*].

7.6. Under Section 30 of the Indian Evidence Act when two or more persons are jointly tried for the same offence confession made by one such person affecting the other, if proved, may be taken into consideration against such other person as well as the person who makes such confession. The phrase Court may take into consideration such confession has come up for consideration in various decisions and it has been held that in law the confession of a co-accused cannot be treated as a substantive evidence to convict, other than the maker of it on the evidentiary value of it alone. But if on the basis of the consideration of other evidence on record the Court is inclined to accept the other evidence, but not prepared to act on such evidence alone, the confession of a co-accused can be pressed into service to fortify its belief to act on it also. [See *(2003) 10 SCC 586 Govt. of NCT of Delhi Vs. Jaspal Singh*]. Similar phraseology has been used in Section 313(4) Cr.P.C. and it is trite law that no conviction can be based simplicitor on the statement of the accused under Section 313 Cr.P.C. as the same is not given on oath, however if on consideration of the material placed by the prosecution and duly proved the Court looks for an assurance, the statement of the accused under Section 313 Cr.P.C. can be pressed into service.

7.7. Thus, when there are some incriminating circumstances against the accused, confession of a co-accused and similarly the explanation of the accused under Section 313 Cr.P.C. can be taken into consideration as an additional circumstance.

8. **Crl.A. 323/2016 - Y.P. Sharma (A-1) v. CBI :**

8.1. Learned counsel for the appellant contends that the prosecution has not proved that any government/treasury cheque was either issued in the name of the appellant or he withdrew the said amount. Neither any pay-in-slip in the handwriting of the appellant nor statement of account of the appellant has been proved. The only evidence in respect of the first allegation against the appellant is the statement of B.V. Jagdish (PW-50), an employee in the CWC who deposed that the appellant deposited and withdrew the amount from the account of R.L. Kawale (A-5 since deceased) through bearer cheques. Thus, there is no evidence as to the role played by the appellant in the so called conspiracy nor is the appellant beneficiary of the amount deposited.

8.2. Second set of allegations of the prosecution against the appellant is that bank draft No.846597 mark X-12 (not exhibited) was prepared in the name of A.V. Reddy for ₹62,000/-. Learned counsel for the appellant submits that the learned Trial Court failed to note that this draft was subsequently cancelled and a cheque was issued in the name of R.L. Kawale for ₹62,000/-. Thus, the allegation of misappropriation against the appellant is not made out. The third allegation is based on the oral testimony of the witnesses that the

appellant withdrew the amount. Oral evidence of the witnesses is not supported by any documentary evidence hence cannot be relied upon to base the conviction. Further, no charge was framed on this count and hence the appellant cannot be convicted for the same.

8.3. It is further urged that questions have been put to the appellant in the statement recorded under Section 313 Cr.P.C. on the basis of charge sheet and not as per the evidence adduced by the prosecution. Thus the so-called incriminating facts cannot be used against the appellant. The appellant had no dominion over the property hence he cannot be convicted for offences punishable under Sections 403/409 IPC. Learned Trial Court without returning any finding as to how offences punishable under Sections 403/409 IPC were made out, convicted the appellant for the said offences. There is no evidence on record to show that the appellant acted in conspiracy with the other co-convicts. Sanction granted under Section 197 Cr.P.C. is vitiated as the same does not mention the offences for which it is granted and merely states that the sanction is granted for any other offence punishable. Reliance is placed on the decisions reported as (*1996) 1 SCC 478* *R. Balakrishna Pillai Vs. State of Kerala & Anr.* , (*2009) 8 SCC 617 State of M.P. Vs. Sheetla Sahai* and *1991 Crl.L.J 462 Harekrushna Patnaik Vs. State of Orissa.* Even if the conviction of the appellant is to be upheld, he has been awarded harsh sentence of imprisonment for seven years, thus, in the alternative he be released on the period already undergone.

8.4. As per the CBI there are 7 sets of allegations against the appellant as under:

"(i) Appellant deposited fraudulently issued CWC cheques in the account of R.L. Kawale, Director, CWC. Appellant had received the funds, so credited through two cheques and on six occasions in cash.

(ii) A bank draft in the name of A.V. Reddy in the sum of ₹62,000/- was issued, but it was not delivered to him. It is alleged that Appellant picked it up and thereafter got it converted in to a Govt. cheque in the name of R.L. Kawale (A-5), deposited the same in the bank account of A-5 and thereafter withdrew the same amount.

(iii) Appellant had deposited in his bank account huge amount of ₹1,15,000/-, ₹80,000/- and ₹60,000/- in the month of March 1999.

(iv) On 30.08.1999 Appellant deposited cash of ₹7,25,000/- and withdrew ₹8,45,000/-.

(v) Appellant had also received ₹20,000/- & ₹35,000/- through cheques from co-accused O.P. Narang.

(vi) Appellant had prepared six slips and initialled them for issuance of open cheque in favour of DDO-I in lieu of 21 A/c payee cheques.

(vii) Appellant had prepared fake pay arrears of ₹54,202/- and ₹74,874/- in the name of Om Prakash (A-11) and B.M. Ghosh (A-10) showing the designation as Dy. Director falsely."

8.5. Appellant has been convicted by the learned Trial Court for allegations No. (i), (ii) and (vi) and acquitted for allegations No. (iii), (iv), (v) and (viii). Learned counsel for the CBI prays that in addition to upholding the conviction for allegations No. (i), (ii) & (vi) Appellant is required to be convicted for allegations No.(v) and (vii) also though he does not press allegations No.(iii) and (iv).

8.6. Learned counsel for the CBI submits that appellant was posted as Professional Assistant in CWC during the relevant period and was a dealing hand who used to prepare the bills of the employees above the rank of Deputy Director. B.V. Jagdish (PW-50) the then LDC used to assist the appellant in the maintenance of Pay Bill Register (PBR) of the Deputy Directors. Besides relying on the testimony of B.V. Jagdish Kumar, learned counsel also relies on the evidence showing deposit of 8 CWC cheques in account No.42861 maintained at State Bank of India, R.K. Puram in the name of R.L. Kawale (A-5) since deceased and amount transferred to appellant in cash or by cheque in his account No.36903 State Bank of India, R.K. Puram. Learned counsel for the CBI also relies upon the statement of Ratan Lal (PW-16) Senior Accountant CWC who proved four cheques issued in the name of R.L. Kawale and B.S. Yadav (PW-29) P&AO who proved the counterfoil of the cheque. Learned counsel for the CBI further contends that the appellant prepared six slips and initialed them for issuance of open cheque in favour of DDO-I in lieu of 21 account paying cheques in the name of different persons and collected/ distributed the money to existing/ non-existing employees. Reliance is placed on the testimonies of Chander Shekhar (PW-47) S/o J.P. Sharma (A-6), Sunil Kumar (PW-42) running a chemist shop and Kamal Sharma (PW-40) nephew of J.P. Sharma (A-6). Learned counsel for the CBI further contends that the appellant in conspiracy with Om Prakash Narang (A-3) after depositing illegal cheques in the account of O.P. Narang transferred the amount of ₹20,000/- and ₹35,000/- respectively by two cheques to his account, as proved by

the evidence of Anil Kathuria (PW-4) Special Assistant, Allahabad Bank. In his statement under Section 313 Cr.P.C. the claim of the appellant was that these were private transactions without any further explanation.

8.7. *Evidence in respect of Allegation (i)*: It is the case of prosecution that eight cheques of CWC amounting to ₹5,12,857/- were deposited in the account No. 42861 in the name of R.L. Kawale (A-5) (since deceased) by appellant maintained at State Bank of India, R.K. Puram. Out of the eight cheques so deposited in the account of R.L. Kawale, three were deposited by B.V. Jagdish Kumar (PW-50). Further amount of six cheques was transferred from the account of R.L. Kawale to that of appellant and was withdrawn in cash which fact has also been proved by B.V. Jagdish Kumar who was then posted as LDC in the Account Section III of CWC Delhi and deposed that while working with appellant he had seen him signing and writing. He identified D-277 as a cheque issued by R.L. Kawale in favour of appellant which was signed by appellant on the back side at point 'A'. B.V. Jagdish further deposed that he encashed the aforesaid cheque from the State Bank of India, R.K. Puram by signing at point 'B' on the back side of the cheque Ex.PW-50/A and handed-over the said amount to appellant. He further identified cheques as D-274 to D-279 issued by R.L. Kawale from his account No. 42861 in favour of appellant and identified the signatures of appellant on the back side of the cheques at point 'A' and exhibited the cheques as Ex.PW-50/D-1 to D-5. Ratan Lal (PW-16), Senior Accountant CWC proved entries of four of the eight cheques i.e. cheque Nos. 242361,

4275474, 276267 and 277093 for a sum of ₹67,445/-, ₹59,548/-, ₹56,194/- and ₹51,480/- being the CWC cheques issued in the name of R.L. Kawale. B.S. Yadav (PW-29) the then Pay & Accounts Officer proved the counterfoil of cheque No. 274501 for a sum of ₹60,000/- and that it was issued in the name of R.L. Kawale. B.V. Jagdish Kumar also proved counter issuance of certain cheques by R.L. Kawale in favour of Y.P. Sharma vide Ex.PW-50/D-1 to PW-50/D-5 and Ex.PW-50/A withdrawn by appellant. The signatures of appellant on the back side of the cheques proving that he withdrew the cheques have been proved by the hand-writing expert PW-51. Appellant was posted as Professional Assistant and used to prepare bills of officers above the rank of Deputy Director. Thus deposit of amount by four cheques in the account of R.L. Kawale has been proved by the oral testimony of Ratan Lal coupled with documentary evidence which amount was withdrawn by appellant as proved by the testimony of B.V. Jagdish Kumar. The explanation rendered under Section 313 Cr.P.C. that the same was a private transaction cannot be accepted. As per Section 16(4) of the All India Service Conduct Rules 1968, every member of the service is required to intimate the Government in respect of transactions exceeding ₹15,000/- within a month of completion of transaction, which onus has not been discharged by the appellant. Contention of learned counsel for the appellant that only oral evidence was led deserves to be rejected in view of documentary evidence noted. Thus, the learned Additional Sessions Judge committed no error in coming to the conclusion that

allegation (i) has been proved beyond reasonable doubt by the prosecution against appellant.

8.8. *Evidence in respect of Allegation (ii)*: The second allegation against the appellant that a bank draft was prepared in the name of A.V. Reddy in the sum of ₹62,000/- but was not delivered to him, and that the appellant picked it up, got it converted into a Government cheque in the name of R.L. Kawale, deposited the same in the account of R.L. Kawale and thereafter withdrew the said amount stands proved by the testimony of B.S. Yadav (PW-29) the then Pay & Accounts Officer, CWC. B.S. Yadav deposed that he was conversant with the process of issuance of cheque in the P&AO office as well as issuance of fresh cheque after cancellation of the cheque already issued. He deposed that three categories of cheques were prepared i.e. a cheque issued in favour of private party/ individual, a cheque issued in favour of DDO for disbursement of pay and allowances of the staff and a cheque issued in favour of Department/ Government transaction. The entire transaction of the accounts is guided by Civil Accounts Manual issued by Controller General Accounts. He identified the notings mark 'XN' on the back side of the file noting 7/N vide which a demand draft No. 846597 dated 18th September, 1999 was issued in favour of A.V. Reddy received from CWC for cancellation and a fresh cheque was issued in favour of R.L.Kawale in lieu thereof. As per Page No. 67 of the file Ex.PW-23/A, a request was received by the DDO from the P&AO for issuance of the fresh cheque in the name of R.L. Kawale for ₹62,000/-. The said cheque was given to S.K. Aggarwal, Senior Accounts Officer (A-17) vide noting marked

as 'X-10'. He further deposed that as per register of demand draft Ex.PW-15/A at serial No. 536 vide cheque No. 242670 dated 17th September, 1999 bank draft bearing No. 846597 dated 18th September, 1999 was got issued from the bank in favour of A.V. Reddy payable at Nagpur and according to this register the said draft was received by appellant and he identified his signatures at 'X-11' and copy of the said bank draft in file Ex.PW-23/A at page 66 as 'X-12' for identification. Thus, from the evidence of B.S. Yadav (PW-29) the allegation that a bank draft in the name of A.V. Reddy for a sum of ₹62,000/- was got issued but not delivered to him and received by the appellant, later got cancelled and a cheque for the same amount prepared by S.K. Aggarwal (A-17) in the name of R.L. Kawale, and encashed stands proved beyond reasonable doubt.

8.9. *Evidence in respect of Allegation (v)*: The fifth allegation against appellant is that he in conspiracy with O.P. Narang (A-3) got transferred two cheques into his account for a sum of ₹20,000/- and ₹35,000/-. This fact stands proved by the testimony of Anil Kathuria (PW-4), Special Assistant posted at Tilak Nagar Branch of Allahabad Bank who proved the bank statement of the account of O.P. Narang (A-3) vide Ex.PW-4/5 which is certified under Section 2A of the Act. Vide Ex.PW-4/4 and 4/5 a debit entry in favour of appellant for a sum of ₹35,000/- clearing on 30th July, 1999 stands proved. This witness has not been cross-examined by appellant. Thus, the fifth allegation to the extent of transfer of ₹35,000/- from the account of O.P. Narang (A-3) to the account of the appellant is proved beyond reasonable doubt.

8.10. *Evidence in respect of Allegation (vi)*: The sixth allegation of the prosecution against the appellant is that six slips were prepared for issuance of open cheques in favour of DDO-I in lieu of 21 account payee cheques in the name of different persons. The amount of cheques were collected and distributed to various existing/ non-existing employees of CWC by making Acquittance Rolls. Despite the fact that it was not part of the duty of appellant to initiate cancellation and re-issuance process, however he performed the said function and signatures of appellant stand proved on the slips Ex.PW-26/L, Ex.PW-26/19, Ex.PW-26/N, Ex.PW-30/A-8, Ex.PW-30/A-12 and Ex.PW-30/A-14 by the opinion and deposition of the handwriting expert PW-51. In response to question No.25 in his statement under Section 313 Cr.P.C. the response of appellant is of denial and that the DDO under whom he was functioning as Professional Assistant had given him the number of certain cheques and had asked him to enter the cheques in the paper slips for claiming the fresh cheques in the name of DDO-I. Thus the sixth allegation against Y.P. Sharma also stands proved beyond reasonable doubt.

8.11. As regards allegation No.(vii) though the prosecution has proved beyond reasonable doubt this allegation qua C.Manjhi (A-2), B.M. Ghosh (A-10) and Om Prakash (A-11) as noted in Paras 9.16, 15.3 and 16.4 respectively, however the prosecution has led no evidence to prove the complicity of the appellant in these transactions. Hence the allegation No.(vii) is not proved against the appellant.

8.12. Though not argued by learned counsels for the parties however one more allegation proved against the appellant is in the respect of fake

bills of S.S. Naik (A-1) is that after money was deposited in the account of S.S. Naik, appellant withdrew ₹1,06,000/- from the account of Shiv Sagar Naik.

8.13. Learned counsel for CBI also relies on the deposition of Kamal Sharma PW-40 who deposed that his maternal uncle J.P. Sharma (A-6) had borrowed a loan in the name of Kamal Kumar Sharma for purchasing a car for himself. For this J.P. Sharma gave him two demand drafts for ₹87,379/- and ₹67,445/- in the month of July and October, 1999 respectively. He deposited both the drafts in his account bearing No.16103 in Syndicate Bank, Raj Nagar, Ghaziabad, U.P. He withdrew the aforesaid amount so deposited and paid over the same to his maternal uncle J.P. Sharma. Though in his examination-in-chief Kamal Sharma did not state anything as to whom he handed-over the draft but in his cross-examination on behalf of J.P. Sharma he clarified that he handed-over the amount to his maternal uncle J.P. Sharma who was accompanied by appellant and that they had come in a new Maruti car. The evidence of Kamal Kumar Sharma establishes the conspiracy between J.P. Sharma and appellant in respect of the withdrawal of the amount through the demand draft got prepared in the name of Kamal Sharma.

8.14. Learned counsel for the appellant has also taken an objection that though sanction for prosecution for the offences punishable under the Prevention of Corruption Act, 1988 has been taken under Section 19 of the Prevention of Corruption Act, however no sanction has been taken under Section 197 Cr.P.C. The sine qua non for requirement of sanction under Section 197 Cr.P.C. is that the public servant is

removable by the Government. No arguments have been addressed by learned counsel for the appellant to show that appellant is a public servant who is removable by the Government.

8.15. The complicity of the appellant with the other co-accused particularly Om Prakash Narang is also proved by the evidence of Sunil Kumar PW-42 who deposed that his brother runs a chemist shop. Om Prakash Narang used to visit their shops to purchase medicines and ask him about his bank accounts. He informed Om Prakash about his two bank accounts and exhibited the account opening form, specimen signature card and the statement of account vide Ex.PW-42/A to PW-42/C. He exhibited the specimen signature card and the account opening form of the bank account at State Bank of India, Vikas Puri as Ex.PW-8/3 and the statement of account as Ex.PW-42/D. Om Prakash Narang informed him that some cheques in the name of Sunil Kumar has been prepared in his office and he had to deposit those cheques in the account of Sunil Kumar to which he refused. After some time Om Prakash Narang along with the appellant came to his shop and stated that it was their departmental matter. On their assurance he agreed to deposit of the cheques and three cheques for a sum of ₹45,000/-, ₹62,000/- and ₹58,000/- were deposited in the account of Sunil Kumar and after some time Om Prakash came to his shop and demanded cash in lieu of the three cheques deposited which he paid. He also exhibited the pay-in-slips and the cheques vide Ex.PW-42/E collectively.

8.16. Though as discussed later while dealing with the appeals of C.Manjhi (A-2) and Om Prakash (A-11) one more allegation proved against the

appellant is in respect of the fraudulent withdrawal of a sum of ₹2,72,475/- sanctioned in favour of S.P. Garg (PW-32) based on a combined cheque for a sum of ₹4,25,875/- signed by the appellant, however since this allegation was not put to the parties and no arguments advanced by them on this count, this Court is refraining from considering this allegation against the appellant.

8.17. Contention of learned counsel for the appellant that since he had no dominion over the property, hence he could not be convicted for offences punishable under Section 403/409 IPC. From the discussion aforesaid it is evident that the appellant in conspiracy with other accused defalcated funds of the Government and misappropriated the same. Even if an accused holds dominion of a property for a short duration and misappropriates the same to his own use, ingredients of offene punishable under Section 403/409 IPC are attracted. Thus the contention of learned counsel on this count deserves to be rejected.

8.18. From the discussion aforesaid and the evidence led by the prosecution allegations No. (i), (ii), (v) and (vi) only stand proved against the appellant and thus his conviction from the offences punishable under Sections 13(1)(d) read with 13(2) PC Act and Sections 403, 120B read with 403/409 IPC is upheld.

9. **Crl.A. 259/2016 - Chandreshwar Manjhi v. CBI (A-2) :**

9.1. Learned counsel for the appellant at the outset submits that four charge-sheets were filed against the appellant on the complaint of M.E. Haque (PW-24), however the appellant has been acquitted in three charge-sheets i.e. CC No.65/2, 14/2011 and 18/2011 whereas

the learned Judge by the impugned judgment took a different view and convicted the appellant in the present chargesheet. It is contended that the appellant neither forged any document nor made any withdrawal nor were the cheques issued in his name. The only role attributed to him is that he forwarded the bills. Before the appellant initialled the bills and the cheques, they were scrutinized and verified at various levels. M.E. Haque admitted that whatever payment are made to any person was checked at four to five different levels in the hierarchy. M.E. Haque in his cross-examination admitted that GR-VI/TR-V was an important document with regard to disbursement and the same was not given with the complaint to the CBI.

9.2. Learned counsel further contends that the appellant neither benefited from the transactions nor was any claim passed in the name of the appellant. The bills and cheques were verified by the appellant which were processed as per the prevailing practices in the department. No evidence has been led by the prosecution to show that the appellant had mens rea to commit the offence which is an essential ingredient as proof of dishonest intention for a wrongful benefit or gain is essential to be proved. The appellant can at best be held to be negligent, for which he cannot be convicted. Reliance is placed on the decisions of the Supreme Court reported as *(1996) 10 SCC 193 C. Cenga Reddy and Ors. Vs. State of U.P., (2003) 9 SCC 700 R. Balakrishna Pillai Vs. State of Kerala and (2012) 9 SCC 512 CBI Vs. K. Naryan Rao*. Reliance is further placed on the decision of the Jharkhand High Court in Crl.M.P. No.506/2015 decided on 5th

February, 2016 titled as *Anoop Kumar Sain Gupta Vs. State of Jharkhand* wherein it was held that if the accused is not even aware that a particular person would be awarded work it cannot be said that the accused acted with an intention to confer pecuniary benefits to the said contractor. It is thus prayed that the appellant be acquitted. In the alternative it is submitted that the appellant has been awarded sentence of rigorous imprisonment for a period of five years whereas persons who have benefited and in whose name cheques had been issued have been awarded lesser sentence, thus the sentence of the appellant be reduced to the period already undergone.

9.3. Learned counsel for the CBI submits that the appellant was posted as DDO in the Accounts Section of CWC and drew a salary of ₹8723/- including various allowances such as DA, HRA, CCA, conveyance allowance etc., as is evident from the pay bill register (D-557) exhibited as Ex.PW-54/Z-11. The two allegations against the appellant of defalcating Government funds by forwarding fake bills supported by fake documents without being recorded in the bill register and signing and sending undated slips with no dispatch number along with outdated and old cheques for issuance of cheques in favour of DDO-I are proved by the evidence of B.S. Yadav (PW-29), R.C. Tully (PW-26), N.R. Meena (PW-30), B.V. Jagdish Kumar (PW-50) coupled with the report of the handwriting expert and the documents duly exhibited by the prosecution.

9.4. The two allegations against the appellant claimed to be proved by the prosecution and dealt by the Trial Court are:

"(i) Appellant worked as DDO-I in CWC, New Delhi during the relevant period, in pursuance of the criminal conspiracy in order to defalcate Govt. funds forwarded fake bills supported with fake documents to P&AO, CWC for passing of payment which were not recorded in the bill register. Appellant signed and sent seven undated and bearing no dispatch number slips along with 21 outdated/ old cheques to P & AO for issue of cheque in favour of DDO-I. Co-accused S.K. Agarwal issued 7 cheques in favour of DDO-I. The disbursement of payment against thereof was shown to different persons by the co-accused J.K. Singhal, A-4 (Cashier) in conspiracy with the appellant and Y.P. Sharma.

(ii) Appellant has forwarded fake pay arrears bill of ₹54,202/- and ₹74,874/- in the name of Om Prakash and B.M. Ghosh, showing their designation as Deputy Directors falsely and projecting their high basic pay ₹15,100/- and ₹14,400/- of Jan.96. As per PBR Record the basic pay of Shri Om Prakash D/M Gr.I was ₹6900/- in Jan. 2004 and basic pay of Shri B.M. Ghosh, EAD was ₹9,700/- as on August 1998."

9.5. Before dealing with the respective contentions it would be appropriate to note the testimonies of A.S. Gautam (PW-25) and B.S. Yadav (PW-29) who deposed about the procedure for preparation and issuance of cheques in the department.

9.6. Mr. A.S. Gautam who was a Senior Accounts Officer in P&AO of CWC with effect from April 2001 to August 2002 in his examination-in-chief deposed about the procedure for issuance of cheque in respect of any bill as under:

"Q. What was the procedure prescribed for issuance of cheque in respect of any bills that were passed?

Ans. The bills are submitted at the counter of P&AO by the DDO against which a token is issued to the DDO. The bill is then diaried at the counter of the P&AO and thereafter it is sent to the payment section. The bill is then scrutinized by the concerned accountant so as to see if it is in order i.e. whether it is made according to the Civil Accounts Manual. If the bill is in order, it is submitted to the Asstt. Accounts Officer who is the Section Incharge for payment. If it is not in order then it is returned back to the DDO. Thereafter, the Asstt. Accounts Officer is supposed to examine the bill in terms of Civil Accounts Manual, Receipt and Payments and GFR and on finding it in order, he signs on the pay order and the same is sent to the Sr. Accounts Officer for approval/ signature. The bill with the Pay Order sent back to the Asstt. Accounts Officer and then it is routed to the Accounts Officer for preparation of cheque which is sent to the cheque section. The cheque is prepared by the Cheque Clerk which is then put up before the Sr. Accounts Officer (not the one who earlier signed the pay order but the second one) for signatures. The cheque is then sent to the counter by the Cheque Clerk which is issued to the DDO concerned after retrieving the token issued."

9.7. B.S. Yadav proved the procedure of issuance of cheque in P& AO as well as issuance of fresh cheque after cancellation of cheque already issued in his deposition as under:

"I remained posted and functioning as Pay & Accounts Officer in Central Water Commission (CWC) in October, 2002 to November, 2005. I am well conversant with the procedure of issuance of cheque in P&AO as well as issuance of fresh cheque after cancellation of the cheque already issued. There are three categories of cheques i.e. (a) issue in favour of private party/ individual; (b) cheque is issued in favour of DDO for disbursement of pay and allowances of the staff and (c) cheque is issued in favour of department/ govt. transactions. The entire transaction of accounts has to be guided by Civil Account Manuals issued by controller General Accounts. Revalidation of time barred cheque according to manual was permissible at

the relevant time. After issuance of the cheque, the bank has to return paid cheque along with payment scroll to the P&AO of CWC for reconciliation purposes.

There are two types of DDOs i.e. first, local DDOs are required to submit the bill to P&AO. Bills received from local DDOs in P&AO are allotted token numbers in the cheque section and after that they are sent to the concerned payment section for pass and payment. The number of bills received in the payment section are again diarised in that section by the dealing clerk and handed over to the concerned Accountants. Outstation DDOs are empowered to issue cheques and cheques are issued to them by P&AO.

In LOP (List of payment) a detailed entry regarding the amount already paid has to be mentioned along with voucher number as well as cheque number. After that the said LOP has to be sent to compilation section of the P&AO for compilation of monthly accounts for its submission to Principal Accounts Office of concerned Ministry i.e. CWC. "

9.8. In respect of the first set of allegations prosecution examined R.C. Tully (PW-26) the then Personal Assistant at CWC who deposed that D-381 (Ex.PW-26/L) was a slip without any dispatch number containing a note for re-validation of certain cheques particulars whereof have been mentioned in the document which was duly signed by the appellant at point A and no other officer had endorsed the same. On the strength of slip D-381 S.K. Aggarwal (A-17) issued a fresh cheque No.018289 Ex.PW-26/O for a sum of ₹42,202/- in the name of DDO-I against seven cancelled cheques in the name of different persons. As per the requirement of Rule 2.1.1 of Civil Accounts Manual (CAM), the note for re-validation was required to be endorsed which was not endorsed to anyone and it was also a pre-requisite in terms of the P&AO being told as to in whose favour the

re-issued cheque is to be issued. D-381 besides not noting these relevant facts also did not note any dispatch number/ diary number from the concerned DDO. Further from the testimony of R.C. Tully it has been proved that separate Acquittance register was made for these 7 cheques and they were re-issued as one consolidated cheque in the name of the appellant. N.R. Meena (PW-30) also identified D-381 the requisition slip from the appellant identifying his signatures at point 'A' on the said document. N.R. Meena also identified the signature of S.K. Aggarwal (A-17) on the fresh cheque issued in favour of the appellant and also identified the signatures of S.K. Aggarwal (A-17) on the 7 cancelled cheques. Further from the deposition of R.C. Tully, B.S. Yadav and N.R. Meena it is evident that the cheque re-issued was without any entry in dispatch register in the name of the appellant and money was withdrawn by J.K. Singhal (A-4). The Acquittance register prepared for this amount was proved by R.C. Tully. The re-issued cheque bears the stamps paid off and received payment. The money so received was mentioned on a separate page of cash disbursement book Ex.PW-26/P(E) (D-516). The prosecution having proved the entire chain of transaction from cancellation of 7 cheques issued in the name of different persons to issuance of one cheque in the name of the appellant thereafter cash having been withdrawn, from the evidence of PW-26, PW-29, PW-30 and the hand-writing of the appellant having been proved by the opinion of hand-writing expert PW-51 also vide Ex.PW-51/B-1 & B-3, onus shifts to the appellant under Section 106 of the Evidence Act to show as to whose credit money has gone. Even though it was not

the duty of the appellant to prepare Acquittance Roll but that of J.K. Singhal (A-4), however in this particular case the Acquittance Roll has been prepared by the appellant as deposed to by the witnesses. In response to the circumstances put under Section 313 Cr.P.C. the reply of the appellant is, "it is incorrect". Thus, the appellant failed to discharge the onus to prove the facts especially within his knowledge. Even if the prosecution has not been able to prove as to who withdrew the bearer cheque in the name of the appellant, however the facts proved by the prosecution as noted above proves beyond reasonable doubt the complicity of the appellant in the offences alleged.

9.9. D-177 exhibited as Ex.PW-26/M was sent by the appellant without any dispatch number on the basis of which a fresh cheque No. 039426 Ex.PW-30/A was issued by S.K. Aggarwal (A-17) for a sum of ₹15,609/- in the name of the appellant against 1 cancelled cheque No. 278285 i.e. Ex.PW-30/A-7 for a sum of ₹15,609/-. N.R. Meena identified signatures and notes in the hand-writing of the appellant. The said cheque was again withdrawn in cash. Further R.C. Tully proved the requisition slip (Ex.PW-26/M) which contained the note for re-validation of the cheque issued earlier, not endorsed to anyone. Again in his statement under Section 313 Cr.P.C. no explanation was offered by the appellant when the circumstances were put to him.

9.10. On the basis of a requisition slip Ex.PW-26/N again without any dispatch number prepared by the appellant, S.K. Aggarwal (A-17) issued a fresh cheque No.018424 for a sum of ₹34,449/- vide Ex.PW-30/B in the name of the appellant in lieu of four cancelled cheques Ex.PW-30/A-4 to A-7 in the name of A.S.P. Sinha. The said fresh

cheque Ex.PW-30/B was encashed by the appellant through J.K. Singhal (A-4). The signatures of the appellant on the requisition slip No.4 have been duly identified by N.R. Meena. An Acquittance Roll was prepared in the name of R.P. Gupta, Chander Shekhar and Narender Kumar for ₹12,450/-, ₹11,340/- and ₹10,659/- totalling to ₹34,449/- as proved by R.C. Tully vide Ex.PW-26/F. R.C. Tully also identified the signatures of the appellant on Ex.PW-26/F and that the same was also signed by J.K. Singhal and the appellant released the said sum in three portions to three persons as noted above. Evidence of R.C. Tully and N.R. Meena is further corroborated by evidence of B.S. Yadav who deposed that vide note No.11N Ex.PW-23/A[19] four cheques were received for cancellation with the request to issue fresh cheque in favour of the appellant and he had issued a fresh cheque bearing No.018424 for ₹34,449/- in favour of the appellant. Chander Shekhar was examined as PW-47 who deposed that he was the son of accused J.P. Sharma and was selling food items on rehri. He deposed that J.P. Sharma was his father and employee in CWC. J.P. Sharma gave him 7-8 cheques to deposit in his own account. On the directions of his father he opened an account in Canara Bank, Shastri Nagar Branch, New Delhi. He exhibited the account opening form as Ex.PW-41/E the specimen signatures on cards as Ex.PW-41/F and the statement of account as Ex.PW-41/B. He deposed that four pay-in-slips for depositing the aforesaid cheques were filled up by his father which were Ex.PW-41/1 to 4 but he did not know in whose hand-writing the remaining pay-in-slips were filed. Even in response

to question No.9 on this aspect in his statement under Section 313 Cr.P.C. the explanation of the appellant is, "it is incorrect".

9.11. N.R. Meena proved that Ex.PW-30/A8 was a slip again without any dispatch number sent by the appellant on the basis of which S.K. Aggarwal (A-17) issued a fresh cheque No.018298 for a sum of ₹50,110/- vide Ex.PW-51/7 in lieu of one cancelled cheque bearing No.242509 dated 8th September, 1999 for a sum of ₹50,110/- Ex.PW-30/A-10 in the name of NWDA. The fresh cheque was encashed by the appellant through J.K. Singhal (A-4). The Acquittance Roll prepared in this regard has been proved by R.C. Tully vide Ex.PW-26/P2 in the name of V.S. Khatri for a sum of ₹50,110/- wherein signatures of the appellant have been identified vide Ex.PW-26/3. The Acquittance Roll was prepared by J.K. Singhal (A-4) and released by the appellant vide Ex.PW-26/B. Further N.R. Meena exhibited the requisition slip No.5 vide Ex.PW-30/A8 identifying signatures of the appellant thereon wherein one cheque for ₹50,110/- was cancelled and a fresh cheque bearing No.018298 Ex.PW-30/A9 for a sum of ₹50,110/- was prepared in favour of the appellant and withdrawn in cash. The cheque was issued by S.K. Aggarwal (A-17) and encashed by the appellant through J.K. Singhal (A-4) whose signatures have been proved by the hand-writing expert PW-51.

9.12. N.R. Meena also proved the requisition slip Ex.PW-30/A-11 which was again sent by the appellant without any dispatch number on the basis of which six cancelled cheques were issued as a fresh cheque No.018530 for a sum of ₹50,570/- in the name of different individuals. The fresh cheque was prepared by S.K. Aggarwal (A-17)

and encashed by the appellant through J.K. Singhal (A-4) whose hand-writing have been proved by the hand-writing expert PW-51 on the questioned documents. The evidence of N.R. Meena is further supported by deposition of B.V. Jagdish Kumar (PW-50) who proved that Ex.PW-30/A-11 was prepared by Y.P. Sharma on the request of the appellant to issue a fresh cheque in his name amounting to ₹50,570/-. The six cancelled cheques were in the name of H.C. Chaudhary, V.S.Rao, M. Ram, M.S. Baig (two cheques) and A.K. Bhatia. Further R.C. Tully proved that Acquittance Roll Ex.PW-26/P regarding disbursement of cash was in the name of V.S. Rao, Chander Shekhar, Narender Kumar and Om Prakash totalling to sum of ₹50,570/-. He identified the signatures of the appellant at point 'A' on Ex.PW-26/E and that the Acquittance Roll Ex.PW-26/P was prepared by J.K. Singhal and money released by the appellant to the aforesaid four persons vide Ex.PW-26/E. As noted above Chander Shekhar appeared as PW-47 who deposed that he was son of J.P. Sharma (A-6) and was running a rehri of fruits and that his father gave him 7 cheques to deposit which he deposited in his account. The evidence of these three witnesses i.e. R.C. Tully, N.R. Meena & B.V. Jagdish Kumar is further supported by evidence of B.S. Yadav who proved Ex.PW-23/A[19] noting that six cheques had been received for cancellation and a fresh cheque issued in favour of the appellant. He also identified that the fresh cheque was given to S.K. Aggarwal vide noting X-8. In response to questions No.5, 10 and 37 on this circumstance, the explanation of the appellant is, "it is incorrect".

9.13. N.R. Meena further proved that a requisition slip Ex.PW-30/A-15 was prepared by the appellant without any dispatch number and a fresh cheque was issued by S.K.Aggarwal (A-17) being No.018394 for a sum of ₹31,131/- in lieu of two cancelled cheques in the name of S.N. Chaudhary and H.S. Chaudhary. R.C. Tully proved the Acquittance Roll Ex.PW-26/P4 prepared by J.K. Singhal (A-4) and released by the appellant to two different persons namely Chander Shekhar and Naresh Kumar. As noted above Chander Shekhear is son of J.P. Sharma and not an employee of CWC. Again no explanation has been given by the appellant in response to the questions put on these circumstances under Section 313 Cr.P.C.

9.14. Further from the deposition of R.C. Tully (PW-26) the prosecution has also proved that Acquittance Roll Ex.PW-26/P3 was prepared for disbursement of ₹25,126/- to one Rakesh Kumar Gupta. The Acquittance Roll was filled and signed for withdrawal by the appellant despite the fact it was not the job of the appellant to deal with disbursement of amount and was the role of J.K. Singhal (A-4).

9.15. Thus, from the evidence adduced as noted above, the prosecution has been able to prove that bye-passing the procedure required to be adopted as per CAM, cheques issued already were cancelled and fresh cheques issued in the name of the appellant and disbursement of payment against the fresh cheque was shown to different persons by J.K. Singhal (A-4) the cashier in conspiracy with the appellant and S.K. Aggarwal (A-17).

9.16. In respect of the second allegation against the appellant is that he forwarded pay arrear bills of ₹54,202/- and ₹74,874/- in the name of

Om Prakash (A-11) and B.M. Ghosh (A-10) showing their designation as Deputy Directors falsely and projecting their basic pay higher than they received as ₹15,100/- and ₹14,400/- on January 19, 1996 respectively, prosecution examined PW-25 A.S. Gautam. As per the prosecution bill dated 19th February, 1992 being Bill No. P-1251/III being D-559 Ex.PW-51/11-14 was submitted and seized from S.K. Jindia the then AAO, P&AO, CWC, R.K. Puram vide seizure memo Ex.PW-54/J/11. Though cited as witness, S.K. Jindia could not be examined as he has shifted to London. The signatures of the appellant on the said bill D-559 have been proved by the opinion of the handwriting expert Ex.PW-51. As would be noted while dealing with Crl.A. 241/2016 of B.M. Ghosh (A-10) and Crl.A. 134/2016 Om Prakash (A-11) the prosecution has proved that they were not the Deputy Directors and thus the appellant falsely projecting their high basic pay than their entitlement facilitated them in getting fake bills cleared. Thus this allegation is proved beyond reasonable doubt against the appellant.

9.17. Further though not dealt by the learned Trial Court from the evidence on record the prosecution has proved the allegation against the appellant in respect of cancellation of draft issued in the name of A.V. Reddy and re-issuance of the same in the name of R.L. Kawale (deceased A-5). In this regard prosecution has recorded the evidence of B.V. Jagdish Kumar then immediate junior of Y.P. Sharma who deposed that he used to make entries in the pay bill register given to him by Y.P. Sharma and used to deposit the accounts payee Government cheques issued by P&AO. He deposed that three

cheques were deposited in the account of R.L. Kawale (deceased A-5) by him including a cheque for a sum of ₹62,000/- exhibited as Ex.PW-50/B-1. He also deposed that six hand-written paper slips pertaining to issue of open cheque in favour of the appellant were prepared. He identified the signatures of the appellant on the slips Ex.PW-26/L, PW-26/19, PW-26/N, PW-30/A-8, PW-30/A-11 & Ex.PW-30/A-14. He also identified the signatures of Y.P. Sharma (A-1) on the said slips. Further B.S. Yadav proved the files Ex.PW-23/A seized vide seizure memo also exhibited as Ex.PW-23/A. Page 67 of the file was a requisition by the appellant for cancellation of a draft issued in name of one A.V. Reddy and re-issuance of the same in the name of R.L. Kawale. The amount was received by Y.P. Sharma (A-1), whose explanation in respect of the amount received is that it was a private transaction between him and R.L. Kawale. In any case, the complicity of the appellant is proved by the evidence of B.V. Jagdish Kumar who identified the hand-written slips pursuant whereto cheques issued were prepared in favour of the appellant.

9.18. Prosecution has also sought to prove tampering with the Acquittance Roll. In this respect evidence of S.P. Garg (PW-32) is relevant who deposed that he had applied for GPF withdrawal of ₹3 lakhs on account of the marriage of his niece. ₹2,72,475/- was sanctioned in his favour on 22nd November, 2000 which fact was informed to him on 14th December, 2000, however the amount had already been withdrawn on 1st December, 2000. Since he did not receive any amount on account of sanction he did not know who had embezzled the money. He stated that he came to know about this fact when he

applied for cancellation of the withdrawal since the engagement of his niece was cancelled due to some problem. He deposed that on the Acquittance Roll Ex.PW-32/A signatures at point 'A' across the revenue stamp were not his and had been forged by someone. S.P. Garg further deposed that he met the senior officers and made a representation. Since the senior officers did not take any action he filed a writ petition before the High Court wherein the authority was directed to credit the amount back to his GPF. Evidence of P.K. Rooprai (PW-36) further shows that a combined cheque was prepared in the name of the appellant for a sum of ₹4,25,875/- which included amount to be disbursed to S.P. Garg and though the disbursement was in the name of S.P. Garg but the same was signed by Y.P.Sharma.

9.19. B.S. Yadav (PW-29) further deposed that 10 cheques Ex.P-1 to P-10 were forwarded for cancellation for a total sum of ₹87,379/- for which one cheque was required to be issued. From the counterfoil of the cheque book bearing serial No.241001 to 241100 (D-360) Ex.PW-29/A he proved that a fresh cheque bearing No.241009 for a sum of ₹87,379/- was issued in lieu of 10 cancelled cheques in favour of State Bank of India, R.K. Puram Branch vide Ex.P-11. As per the demand draft register Ex.PW-15/A vide entry at serial No.341 on page No.35 the said cheque No.241009 for ₹87,379/- was issued in the name of Kamal Sharma and as per record S.K. Aggarwal (A-17) received a demand draft on 16th July, 1999 by putting the signature. Though it is the claim of CBI that the said 10 cheques were sent for cancellation by the appellant, however PW-29 has not deposed about

the same and thus this circumstance does not prove the complicity in respect of the 10 cheques cancelled against the appellant.

9.20. A.S. Gautam (PW-25) who was posted and functioning as Senior Accounts Officer in the Pay and Accounts office of CWC with effect from April 2001 to August 2002 deposed that as a Senior Accounts Officer his duties in general were to process the bills submitted by the DDO by checking the same with the various accounts manuals and passing the same if found in order. His attention was drawn to the documents D-487 and D-488 which were two LTC bills in favour of Shiv Sagar and his family for a sum of ₹72,000/- and ₹54,000/- respectively. Further D-490 and D-490/2 were other LTC & TTA bills dated 17th May, 1999 and 1st December, 1999 for ₹15,000/- and ₹65,000/- respectively in favour of Hayat Singh and H. Singh and the family members along with the sanction order dated 29th November, 1999. He identified the documents and the signatures and stated that they were prepared in the ordinary course of business. His attention was further drawn to the document D-492, bill dated 30th November, 1999 for ₹57,000/- as transfer TA and ₹12,600/- paid as advance in favour of L. Ram along with the sanction order dated 26th November, 1999 in favour of L. Ram and his family members. As per the Government LTC Rules a Government employee is entitled to get one LTC in one block of four years and as noted within one year two LTC bills were passed in favour of one officer for the same destination. Documents D-487, D-488, D-490, D-490/2, D-489, D-492 were duly examined by the handwriting expert PW-51 and it was opined that the signatures on the bills belonged to the appellant.

9.21. Further B.S. Yadav PW-39 identified the cash books exhibited by him as Ex.PW-39/B and R.C. Tully (PW-26) identified the cash books exhibited by him as Ex.PW-26/H. B.S. Yadav also identified the challans vide Ex.PW-39/A-1 to A-27 bearing the signatures of the appellant whom he had seen writing and signing.

9.22. Prosecution also examined R.C. Tully (PW-26) who deposed about the medical bill No. M-1393/I in the name of J.R. Sharma running into four pages back to back vide D-562 which neither contained a sanction nor the designation of the person in whose favour it was cleared was mentioned. R.C. Tully further identified that against the claim of ₹1,25,785/- a bill for ₹80,325/- was prepared duly signed by the appellant whose signatures he identified at point 'A' on the bill format Ex.PW-26/A. Thus complicity of the appellant in preparing the false claim bill in the name of Smt. Bhagwati, mother of J.R. Sharma also stands proved beyond reasonable doubt.

9.23. From the evidence as noted above the prosecution has been able to prove beyond reasonable doubt that appellant committed offences punishable under Sections 13(1)(d) read with Section 13(2) of the PC Act and Section 120B read with Section 403/409 IPC.

10. **Om Prakash Narang Crl.A. 269/2016 (A-3) :**

10.1. Learned counsel for the appellant submits that as per the prosecution case, appellant had fraudulently deposited 11 cheques issued by Pay and Accounts Office (P&AO) amounting to ₹5,72,648/- in his bank accounts with State Bank of India and Punjab National Bank, R.K. Puram and Allahabad Bank, Tilak Nagar. However, only 5 cheques

have been proved by the prosecution to be issued in the name of appellant amounting to ₹2,72,475/-. I.S.U. Puram, Sr. Assistant, State Bank of India, R.K. Puram (Retired) (PW-33) stated in his testimony that the aforesaid amount of ₹2,72,475/- was credited to the account of B.K.Khullar. Thus, no pecuniary benefit was received by the appellant and the act, if any, of the appellant was only at the behest of his senior officers. Role of the appellant was only to prepare bills on the instructions of superior officers. Lastly, it is submitted that the appellant was sentenced to imprisonment for a period of seven years for offence punishable under Section 409 IPC. The sentence is too harsh. Appellant is not a previous convict and he be released on the period undergone.

10.2. Learned counsel for the CBI contends that the case of the prosecution against the appellant is that while working as UDC in the Accounts section of CWC, he maintained three bank accounts, one at State Bank of India, R.K. Puram, the second at Allahabad Bank, Tilak Nagar and the third at Punjab National Bank, R.K. Puram. Eleven cheques amounting to ₹5,72,648/- issued by S.K. Aggarwal (A-17) Pay & Accounts Officer were deposited fraudulently in appellant's account by himself. Besides the appellant fraudulently deposited cheques in the Account No.5945 Bank of India and Account No.7733 State Bank of India Vikas Puri of Sunil Kumar who was his friend. Appellant also issued two counter cheques for a sum of ₹20,000/- and ₹35,000/- in favour of Y.P. Sharma. He also deposited cheques received from Subhash Chander and Gulshan Kumar in his account No. 9778 maintained at Punjab National Bank, R.K. Puram. Appellant further

got deposited such fraudulently issued cheques in the account of Subhash Chander, Assistant Fitter in DTC in his account No. 5160, Canara Bank, Tagore Garden, New Delhi and account No. 6565 Syndicate Bank, Hari Nagar. He also deposited fraudulently issued cheques in the account of Gulshan Kumar, brother of Sunil Kumar in his account No. 8490 UCO Bank, Janakpuri. Thus contention of learned counsel for the appellant that he prepared the bills at the instance of the superior authorities is incorrect. Appellant is both a perpetrator of the offences as well as the beneficiary.

10.3. A perusal of the record reveals that the prosecution has been able to prove 5 out of the 11 cheques deposited in the various accounts of the appellant. Rajesh Kumar Chadha, (PW-8) Assistant Manager State Bank of India R.K. Puram exhibited the seizure memo Ex.PW-8/1 by which documents were collected by the CBI. He also identified the signatures of Shri K.C. Likha, Branch Manager as Ex.PW-8/2. Statement of account No.26936 maintained at State Bank of India R.K. Puram in the name of the appellant and Neeru Narang was placed on record as Mark 'B' and thus not exhibited, however the account opening form was exhibited as Ex.PW-8/3. It is thus evident neither the cheques No. 237918, 24150, 274739 and 276837 were proved nor was the statement of account of State Bank of India R.K. Puram. The only evidence proved in relation to the transaction of State Bank of India R.K. Puram was D-48, a P&AO Cheque No.233892 dated 20th October, 1998 for ₹52,000/- issued in favour of Om Prakash proved as Ex.PW-51/35. By the opinion of the handwriting expert, only fact proved is that S.K. Aggarwal (A-17) prepared a cheque for a sum of

₹52,000/- in favour of Om Prakash. In the absence of proof of collection or deposit of the cheque in the account of the appellant, the onus does not shift on the appellant under Section 106 Evidence Act to explain the transaction.

10.4. In respect of the Account No. 109020 Allahabad Bank, Tilak Nagar in the name of O.P. Narang, prosecution has exhibited four cheques of P&AO CWC bearing No.231363 dated 22nd July, 1998 for a sum of ₹51,028/- as Ex.PW-51/34, cheque No. 235939 dated 1st January, 1999 for ₹53,000/- vide Ex.PW-51/36, cheque No.238522 dated 31st February, 1999 for a sum of ₹88,937/- and cheque No.241861 dated 13th August, 1999 for a sum of ₹33,000/- vide Ex.PW-51/38 issued in favour of Om Prakash. Further Anil Kathuria (PW-4), Special Assistant Allahabad Bank, Tilak Nagar produced the certified copy of the statement of account No.109020 along with debit vouchers vide Ex.PW-4/5 and Ex.PW-4/3 respectively. Ex.PW-4/5 which has been duly proved shows four credit entries in Account No. 109020 Allahabad Bank of the appellant. Nothing has been elicited in the cross-examination of this witness, hence it can be safely held that prosecution has been able to prove the evidence in relation to the transactions in the account at Allahabad Bank, Tilak Nagar Branch against the appellant.

10.5. In respect of Account No.9778 Punjab National Bank, R.K. Puram cheque No.997181 for ₹22,000/-, cheque No. 997184 for ₹27,570/-, cheque No. 631230 for ₹18,000/- and cheque No. 997816 for ₹21,000/- have been proved by the investigating officer PW-54 vide Ex.PW-54/Z-51. Since the cheques are not akin to the statement of

bank account which are required to be proved as per Section 4 and Section 2A of the Act and no objection to the mode of proof was taken during trial, prosecution has proved that the appellant deposited four cheques in his account No.9778 Punjab National Bank, R.K. Puram.

10.6. Subhash Chander (PW-44) who was working as an Assistant Fitter in DTC Hari Nagar Depot-I deposed that he had two bank accounts one in Canara Bank, Tagore Garden Branch and other in Syndicate Bank, Hari Nagar Branch. He proved his account opening form-cum-specimen signature and statement of account at Syndicate Bank as Ex.PW-44/A and Ex.PW-44/B respectively and in respect of the Canara Bank Branch at Tagore Garden as Ex.PW-44/C and Ex.PW-44/D respectively. He knew the appellant as he used to visit his brother. He further deposed that a sum of ₹57,000/- was deposited in his bank account No.6565 Syndicate Bank by the appellant by cheque No.241538 dated 28th July, 1999 vide pay-in-slip dated 29th July, 1999 (D-149). He identified the signatures of the appellant and his own signatures on the pay-in-slip. He exhibited the cheque as Ex.PW-44/F-1 and pay-in-slip as Ex.PW-44/F-2. He further deposed that after two days on the asking of the appellant, he withdrew the amount of ₹55,100/- vide cheque No. 3533965 [Ex.PW-44/F-3] dated 2nd August, 1999 from his account and paid the amount to the appellant. The balance amount of ₹1900/- was paid to the appellant in cash. He further deposed that a sum of ₹49,470/- were deposited in his bank account 15160 Canara Bank through cheque No. 242363 dated 1st September, 1999 by the appellant. He identified signatures of the appellant on the pay-in-slip and exhibited the cheque as Ex.PW-44/G-

1 and pay-in-slip as PW-44/G-2. He further proved the pay-in-slip Ex.PW-44/G-3 dated 10th December, 1999 by which a sum of ₹57,000/- was deposited in his account No.15160 Canara Bank through cheque No. 276232 dated 7th December, 1999 by the appellant and identified signature of the appellant on the pay-in-slip. He also deposed that on the asking of the appellant he handed-over an amount of ₹27,570/- vide cheque No. 997184 [Ex.PW-44/G-4] dated 10th September, 1999 and ₹21,000/- vide cheque No.997186 [Ex.PW-44/G-5] dated 14th December, 1999. The balance amount of ₹57,900/- was also paid to the appellant in cash after withdrawing the amount from bank through self-cheques amounting to ₹20,000/- vide cheque No.997183 [Ex.PW-44/G-6] and ₹38,000/- vide cheque No.997185 [Ex.PW-44/G-7] dated 14th December, 1999. In cross-examination on behalf of the appellant, Subhash Chander further clarified that the cheques were never handed-over by the appellant to him but deposited in his account directly. Rest of the cross-examination hinges on as to how much time he remained in judicial custody and it was suggested that he was falsely deposing at the instance of CBI.

10.7. Prosecution also examined Sunil Kumar (PW-42) who was running a chemist shop with his brother and knew the appellant as he used to visit their shop to purchase medicines. Sunil Kumar deposed that the appellant asked him about his bank account to which he replied that he had two bank accounts. He exhibited the documents relating to his account bearing No.5945 in Bank of India, Keshopur Gaon i.e. account opening form as Ex-PW-42/A and specimen signature card as Ex.PW-42/B. Certified copy of the statement of account was

exhibited as Ex.PW-42/C. Objection was taken only in respect of the account opening form that it was not certified as per the provisions of the Act and hence inadmissible in evidence, which objection is required to be rejected as Section 2A and 4 of the Act has application to the entries in the books of accounts and not other documents. Sunil Kumar also proved his account opening form already exhibited as Ex.PW8/3 for account No.7733 State Bank of India Vikas Puri and its statement of account vide Ex.PW-42/D. He deposed that the appellant told him that some cheques were prepared in the name of Sunil Kumar in his office and asked him to deposit those cheques in his account. After some time appellant along with Y.P. Sharma came to his shop and told that he would not be troubled because it was their departmental matter. On their assurance he agreed to deposit the cheques in his account. He deposited cheques for ₹45,000/-, 62,000/- and 58,000/- in his bank accounts. After some time appellant demanded cash in lieu of the three cheques which he paid to him. Even in his cross-examination Sunil Kumar reiterated his version in the examination-in-chief and stated that he doubted the bona-fide of the appellant and Y.P. Sharma as the cheques were Government cheques but he was assured by the accused persons that no harm would come to him.

10.8. Though learned counsel for CBI presses that some cheques were deposited in the account of Gulshan Kumar who was the brother of Sunil Kumar, however Gulshan Kumar has not been produced as a witness. Further statement of account relating to Gulshan Kumar's bank account has been exhibited by the investigating officer as

Ex.PW-54/Z-60. Though Ex.PW-54/Z-60 can be read in evidence as it is certified copy of the statement of account of Gulshan Kumar, however in the absence of the testimony of Gulshan Kumar, there is no evidene of appellant being associated with the cheques deposited in the account of Gulshan Kumar.

10.9. The allegation of appellant issuing two counter cheques for sum of ₹20,000/- and 35,000/- in favour of Y.P. Sharma has already been dealt in Para 8.9 above while dealing with the appeal of Y.P. Sharma (A-1). In view of the evidence discussed in Para 8.9 above this allegation stands proved beyond reasonable doubt against the appellant as well.

10.10. Statements of Subhash Chander (PW-44) Sunil Kumar (PW-42), Gulshan Ahuja (PW-6), Bank Officer, Bank of India, Keshopur Branch coupled with the transactions prove the case of the prosecution against the appellant beyond reasonable doubt. From the evidence on record led by the prosecution it can be safely held that the prosecution has proved the case against the appellant for offences punishable under Section 13(2) read with 13(1)(d) PC Act, Section 403 IPC and 120-B read with 403/409 IPC.

11. **<u>Jai Kumar Singhal Crl.A. 396/2016 (A-4) :</u>**

11.1. Learned counsel for the appellant contends that there are three sets of allegations which have been found to be proved by the learned Trial Court against the appellant i.e.

"(i) First, that 8 cheques issued by the P&AO in the name of the appellant totalling ₹8,62,544/- were deposited by the

appellant in his accounts without any bill or entitlement and as such the amount was misappropriated by appellant.

(ii) Secondly, that appellant and accused No.1, 2, 17 and in conspiracy with each other cancelled 21 account payee cheques issued in favour of various officers of the CWC and in lieu thereof, issued nine fresh cheques in favour of the DDO/CWC and amounts were disbursed to officers who did not figure in the above list of 21 account payee cheques.

(iii) Thirdly, that the appellant prepared a bill for Hayat Singh (peon) in the name of H.Singh for an amount of ₹65,000/- so that the claim for TTA of H.S. Singh Dy. Director could be embezzled by Hayat Singh (peon)

(iv) Fourthly, the appellant did not disburse the GPF withdrawal of ₹2,72,475/- which was sanctioned in favour of S.P. Garg."

11.2. In respect of allegation No.1 learned counsel for the appellant submits that the appellant was cashier in the CWC and as per the duty assigned to the appellant, once cheque prepared in the name of DDO was received by the appellant, who thereafter got it encashed from the bank and after the money was withdrawn appellant was required to prepare a note for acquittance so that the money could be disbursed to the concerned person. Prosecution has not proved that the appellant committed any act beyond the permissible duty. Prosecution was required to prove that the cheques in question were issued without proper bills/sanction and that they were misappropriated by the appellant which it failed to prove. Bills mentioned in Ex.PW-52/B and PW-52/C do not relate to the appellant. Further Exhibit PW-52/A are acquittance roll, challan register, receipt books etc. and by these documents no bills were

proved which related to the appellant. In the three requisition memos sent by Yashpal Gera (PW-52) no bills relating to the appellant have been requisitioned. Thus no evidence has been led by the prosecution to prove that the bills relating to the appellant were sought and denied. Even otherwise it was the duty of the prosecution to lead positive evidence to show that the cheques were issued without bills/ sanctions. The prosecution did not lead any evidence and by the impugned judgment the Court reversed the onus on the appellant holding that "*why these cheques were issued to J.K. Singhal has neither been explained by A-17 nor by A-4 hence it is clear that cheques were issued by A-17 fraudulently without any bill/ sanction etc*." A.S. Gautam (PW-25) deposed that it was the responsibility of the DDO to prepare/ clear the bills for pay and allowances on the basis of sanction. No evidence has been adduced by the prosecution that the cheques in question were wrongly issued. Allegation that the details of the cheque had not been entered in the cheque acquittance register can also not be used against the appellant, since the same was not put to him under Section 313 Cr.P.C. nor does the cheque acquittance register for the year 1998-99 form part of the record nor has the same been proved. Thus, learned Trial Court rightly did not return any finding on this count against the appellant.

11.3. It is further contended that the prosecution failed to prove that the cheques in question were misappropriated by the appellant. No bank official from State Bank of India, R.K. Puram was examined and only a bank official from Syndicate Bank, Sonipat was examined.

Thus, the pay-in-slips and the cheques relating to State Bank of India, R.K. Puram have not been proved in accordance with law. Hand-writing expert who has rendered the opinion is not a person competent to depose about the documents of the bank. In the absence of any bank official, mere proof of signature of appellant on the documents does not prove that the pay-in-slips and self-cheques were given effect to i.e. cheques were deposited with the pay-in-slips and the amount credited to the account of the appellant where after the amount was withdrawn using self-cheques and debited from the account of the appellant. In view of the hand-writing expert's opinion even if the document is held to be proved the content thereof cannot be held to be proved. Further Kanhaiya Lal (PW-1) who is a witness from State Bank of India, R.K. Puram only identifies the signature on a seizure memo and does not state about the relevant transactions or the account numbers. The investigating officer (PW-54) exhibited the bank account opening form and account statement, however, he is not the competent witness to prove the said documents. Therefore, bank account statement is to be taken as not proved and in the absence of the bank account statement having been proved, no finding can be returned that the amounts were credited to the account of the appellant and later withdrawn. Reliance is placed on the decision of the Supreme Court in *Malay Kumar Ganguly (supra)* to contend that there is a distinction between exhibition of a document and proof of a document. Even if the document is exhibited without any objection if the same is inadmissible, mere exhibiting the same would not make the document admissible or the

contents thereof as proved in the absence of the author of the document being examined as a witness.

11.4. With regard to allegation No.2, it is the contention of learned counsel for the appellant that the case of the prosecution is in two parts; firstly that 21 account payee cheques were cancelled and 9 fresh cheques were issued in the name of DDO for the same amount and secondly cheques were encashed and amounts disbursed to persons other than persons in whose names the cheques had originally been signed. Learned counsel for the appellant contends that the appellant was only a cashier and had no role in either cancellation of a cheque or issuance of a fresh cheque. Prosecution examined B.S. Yadav, (PW-29) Pay & Accounts Officer CWC and N.R. Meena (PW-30) Assistant Accounts Officer, Regional Pay & Accounts Office, CWC who deposed about the procedure to be followed while cancellation of accounts payee cheques and issuance of fresh cheques. However, in the deposition of the two witnesses there is no allegation whatsoever as to the role played by the appellant in the conspiracy. The notes on the basis of which cheques were issued were sent by the DDO and the cheques were issued by the P&AO. The only role, if at all, ascribed to the appellant is that after fresh 9 cheques were issued by the P&AO in the name of DDO, these cheques were encashed by the appellant and upon receipt of the money from the bank, the appellant prepared a note for preparation of the acquittance roll for disbursement of the amounts which amounts were disbursed by the DDO. No document whatsoever has been signed by the appellant except a forwarding letter asking for preparation of the acquittance

roll. All the acquittance rolls have been signed by C.Manjhi who was the DDO and money was also released by him. Even R.C. Tuli (PW-26) who deposed about the acquittance rolls, identified the signatures of C.Manjhi, DDO and did not identify any document signed by the appellant. Forwarding letters for preparing the acquittance rolls was a part of the appellant's normal duty. Appellant neither disbursed the money nor cancelled the cheques nor prepared the cheques. Thus, no criminality can be attached to the actions of the appellant. The hand-writing expert PW-51 only proved the signatures of appellant on three notes for preparation of acquittance rolls. Thus even the second allegation against the appellant has not been proved by the prosecution.

11.5. Learned counsel further contends that the third allegation against the appellant is that he filled up the application/ bill for Transfer Travel Allowance (TTA) for Hayat Singh, the co-convict. Merely filling up the application/ bill of TTA for Hayat Singh will not impute any criminal liability to the appellant for the reason it is not unknown that applications of illiterate or less-educated staff are filled up by the senior officers. Further the said form is neither signed by the appellant nor the appellant has derived any benefit out of the same. Merely on the strength of the hand-writing expert's opinion that the appellant filled up the application/ bill for TTA which is not corroborated by any other evidence, appellant cannot be convicted on the ground that he conspired with Hayat Singh for misappropriating the amount. Reliance is placed on the decision reported as *190 (2012) DLT 600 Sandeep Dixit Vs. State*.

11.6. In respect of the fourth allegation learned counsel submits that the appellant did not disburse the GPF withdrawal of ₹2,72,475/- sanctioned in favour of S.P. Garg, learned Trial Court has already held the same to be not proved against the appellant.

11.7. Learned counsel for the appellant, lastly, submits that the order on sentence passed by the learned Trial Court is bereft of reasoning. Learned Trial Court has not even noted the mitigating and aggravating circumstances much less rejecting the same and awarded disproportionate punishment. Though C.Manjhi, the main accused has been granted 5 years rigorous imprisonment, the sentence awarded to the appellant is 7 years. It is thus prayed that in the alternative sentence of the appellant be reduced.

11.8. Learned counsel for the CBI countering the arguments of learned counsel for the appellant submits that the appellant was working as an Assistant-cum-Cashier drawing a salary of ₹10,142/- including various allowances such as DA, HRA, CCA and conveyance allowance etc., as proved vide Ex.PW-54/Z-11 which document when exhibited was not objected to. As per the statement of bank account No.126205 of State Bank of India, R.K. Puram of appellant, 7 CWC cheques were deposited by him in his account. The statement of bank account was exhibited by PW-54 as Ex. PW-54/Z-58 without any objection to the same. Further, the appellant withdrew a sum of ₹5,15,000/- through 10 cheques as is evident from documents Ex.PW-51/202 to 51/211. The said cheques bear the signature of the appellant on the front side as well as back side establishing the encashment by him and his signatures stand duly

proved by the testimony of handwriting Expert (PW-51). The pay-in-slips Ex.PW-51/194 to 200 have also been filled and signed by the appellant whose hand-writing has been proved by PW-51. Thus, the appellant deposited CWC cheques in his own account bearing No. 126205 at State Bank of India, R.K. Puram. Further the appellant deposited a CWC cheque No. 277100 dated 6th January, 2000 for a sum of ₹41,166/- in his account No. 6956 Syndicate Bank, Sonipat vide pay-in-slip dated 8th January, 2000 which fact has been proved from the testimony of Ashok Kumar Kathpal, (PW-12) Manager, Syndicate Bank who was in the year 2001 posted at Sonipat Branch of Syndicate Bank as Manager. He has proved the certified copy of the account opening form vide Ex.PW-12/A and that later it was converted into a joint account of the appellant with his wife Kamlesh Singhal and certified copy thereof was also exhibited as Ex.PW-12/B. Certified copy of the statement of account of the aforesaid account was exhibited as Ex.PW-12/E and the collection voucher of outstation cheque collected by the bank and signed by the account holder vide Ex.PW-12/F. It is deposed that payment of cheque No.277100 dated 6th January, 2000 for an amount of ₹41,166/- drawn on the State Bank of India R.K. Puram Branch was credited in account No.6956 of the appellant on 21st January, 2000 after deducting the collection charges. In respect of the third allegation relating to sanction of advance TTA for a sum of ₹65,000/- in favour of H.S. Singh, Deputy Director, prosecution has proved two bills Ex.P-5 and Ex.P-6 claiming sums of ₹15,000/- and ₹65,000/- respectively duly written by the appellant showing the name of

claimant as Hayat Singh and H. Singh respectively. Appellant fraudulently changed the same to H. Singh or Hayat Singh due to similarity of name of H.S. Singh, Deputy Director. Further the bill in relation to sanction order Ex.P-12 for advance TTA for a sum of ₹57,000/- to L.Ram, Deputy Director was also prepared by the appellant on the basis of fake sanction order P-13 in the name of Lalu Ram, Deputy Director. The bills were duly proved. On verification it was found that no such sanction order was issued for a sum of ₹65,000/- in favour of H. Singh or H.S. Singh on his transfer to Bhubneshwar.

11.9. Rebutting the arguments on behalf of CBI, learned counsel for the appellant submits that prosecution has failed to discharge the onus to show that the cheuqes in question were issued without valid bills or against improper bills and since DDO/ Pay & Accounts Officer/ other officials of the Account Department have not been charged with taking part in the transaction, presumption arises that the cheques were duly issued. Reiterating the contention that PW-54 or PW-51 were not competent to prove the bank account statements or the bank records it is submitted that there is no legal evidence on record to prove the first allegation against the appellant. The objection as to admissibility of the document can be raised at any stage. Section 34 of the Indian Evidence Act is not applicable as the same deals with the relevancy of the fact and not of admissibility. In respect of the cheque deposited at Syndicate Bank, Sonipat prosecution has failed to prove that the cheque in question had been issued without a valid bill/ sanction. As regards the allegations

relating to sanctions in favour Hayat Singh and Lachi Ram it is contended that the testimony of the hand-writing expert, cannot be the sole basis of conviction as held by the Supreme Court in (*1977) 2 SCC 210 Magan Bihari Lal Vs. State of Punjab*; (*1996) 4 SCC 596 S. Gopal Reddy Vs. State of A.P*. and (*1973) 4 SCC 46 Smt. Bhagwan Kaur Vs. Shri Maharaj Krishan Sharma & Ors.*. In respect of fourth allegation of misappropriation, learned Trial Court has already held that there is no evidence to connect the appellant to the said transaction, hence the appellant cannot be convicted for the same.

11.10. In respect of the first set of allegations against appellant prosecution has proved from the pay bill register Ex.PW-54/Z-11 that appellant was drawing a salary of ₹10,142/- per month including various allowances such as DA, HRA, conveyance allowance etc. Further statement of bank account No.126205 State Bank of India R.K. Puram has been proved by PW-54 by producing certified copy of the statement of bank account No.126205 as mandated under Section 2A of the Bankers' Books Evidence and has been exhibited vide Ex.PW-54/Z-58. Though it is contended that the said document is not admissible in evidence, however as earlier held while dealing with this issue if the certified copy is compliant of Section 2A of the Act then it is a document admissible in evidence and in respect of the mode of proof that it was exhibited by the investigating officer, no objection was taken at the time when the document was exhibited. Thus certified copy of the statement of account Ex.PW-54/Z-58 is held to be legally admissible and validly proved document. Statement of account No.126205 State Bank of India, R.K. Puram in

the name of the appellant i.e. Ex.PW-54/Z-58 reveals that 7 cheques numbered 237735, 239491, 240060, 238125, 239010, 275095 and 277099 issued in favour of Jai Kumar Singhal, for sum of ₹86,065/-, 1,35,671/-, 86,955/-, 1,29,801/-, 98,546/-, 76,500/- and 53,340/- respectively were deposited in the account. Further though the last four cheques were not available, hand-writing on the first three cheques i.e. cheque numbers 237735, 239491 and 240060 has been proved to be of S.K. Aggarwal (A-17) vide Ex.PW-51/50, Ex.PW-51/51 and PW-51/52. From the certified copy of the statement of bank account No.126205 State Bank of India, R.K. Puram Ex.PW-54/Z-58 in the name of the appellant it is further evident that he withdrew a sum of ₹5,15,000/- through 10 self-cheques. Hand-writing on the self-cheques has been proved to be of appellant vide the opinion of the expert who examined the said self cheques vide Ex.PW-51/202 to 51/211. Further from the evidence of Ashok Kumar Kathpal, (PW-12) the then Manager Syndicate Bank, Sonipat who proved the joint account No.6956 to be in the name of appellant and his wife Kamlesh Singhal and exhibited the statement of account vide Ex.PW-12/E it has been proved that a cheque of ₹41,166/- was credited to his account on 21st January, 2000 after deducting the collection charges. As noted above, it has been proved by the prosecution that the salary of appellant was ₹10,142/- per month including various allowances. Hence deposit of a sum of ₹8,62,544/- in his bank accounts within a period of less than one year and corresponding withdrawals by self-cheques during the same period proves unaccounted for deposits and withdrawals from his bank

account. The same having been proved by the prosecution, under Section 106 of the Indian Evidence Act onus shifts on the appellant to explain facts especially within his knowledge which it could do either by cross-examining the prosecution witnesses or leading defence evidence or even probabilising the same in his statement under Section 313 Cr.P.C. which appellant has failed to prove. Contention of learned counsel for the appellant that the evidence that details of cheques had not been entered into in the cheque acquittance register was not put to him under Section 313 Cr.P.C. and thus cannot be used in evidence is required to be rejected, firstly for the reason that the first allegation against the appellant has been proved on the basis of the evidence noted above and not the cheque acquittance register and secondly, for the reason that in a statement under Section 313 Cr.P.C. entire circumstance is required to be put to the accused and not individual pieces of evidence constituting the circumstance. Thus, it can safely be held that the first allegation of the prosecution against the appellant has been proved beyond reasonable doubt.

11.11. In respect of the second set of allegations against the appellant regarding cancellation of 21 accounts payee cheques issued in favour of various officers of CWC and in lieu thereof issuance of 9 cheques in favour of DDOs/ CWC, where after the amount was disbursed to officers who did not figure in the list of 21 accounts payee cheques, this Court has already discussed the evidence while dealing with appeals of Y.P. Sharma (A-1) in paragraph 8.10, appellant C. Manjhi in paragraph 9.6 to 9.15, appellant S.K. Aggarwal in Paras 21.9 to

21.14 hereinafter, wherein the role of the appellant has also been explicated as this offence was committed by appellants Y.P. Sharma (A-1), C.Manjhi (A-2), J.K. Singhal (A-4) and S.K. Aggarwal (A-17) in conspiracy and are not being repeated herein.

11.12. The third allegation against the appellant is that he prepared fake bills in favour of Hayat Singh and Lachi Ram. Learned Trial Court in respect of Hayat Singh dealt the issue while dealing with case of Hayat Singh and in respect of Lachi Ram it was held that he was not inclined to discuss the same as Lachi Ram had died. As per this allegation the appellant prepared fake bills advance of Transfer Travel Allowance (TTA) in favour of H.S. Singh, Deputy Director and L. Ram, Deputy Director. An advance for a sum of ₹65,000/- was sanctioned vide sanction order Ex.P-7 where after two bills, Ex.P-5 claiming a sum of ₹15,000/- and Ex.P-6 claiming a sum of ₹65,000/- were prepared by the appellant and his hand-writing stands proved by the evidence of PW-51 on the bills wherein the claimants have been named as Hayat Singh and H. Singh respectively. Though the claim was purportedly made by H.S. Singh, Deputy Director which was sanctioned vide order dated P-7, however the bills were cleared in the name of Hayat Singh. Similarly, a sanction order Ex.P-13 for advance TTA was prepared for a sum of ₹57,000/- in favour of L. Ram, Deputy Director whereas bill Ex.P-12 claiming a sum of ₹57,000/- was prepared by the appellant in the name of claimant L. Ram and the bill was forwarded to C. Manjhi. A.S. Gautam, (PW-25) Senior Accounts Officer in the CWC appeared in the witness box and proved the aforesaid bills prepared by the

appellant. On verification it was found that no sanction order was issued by the Secretary CWC granting LTC of ₹15,000/- in favour of Hayat Singh. Thus the complicity of the appellant in the third allegation is also proved beyond reasonable doubt.

11.13. In respect of the fourth allegation relating to the non-disbursal of the GPF withdrawal of ₹2,72,475/- which was sanctioned in favour of S.P. Garg the prosecution examined S.P. Garg, PW-32 as a witness. Though contention of learned counsel for the appellant is that this allegation has been disbelieved by the Trial Court and he has been rightly acquitted, however it may be noted that the learned Trial Court held that it would not be safe to connect the appellant to this transaction.

11.14. S.P. Garg appeared as PW-32 and deposed that he was posted and functioning as Deputy Director CWC in the year 1999-2000 and in the month of November, 2000 he had applied for GPF withdrawal of ₹3 lakhs on account of marriage of his niece. Withdrawal of ₹2,72,475/- was sanctioned on 27th November, 2000 which was informed to him on 14th December, 2000. He was also informed that the amount had already been withdrawn on 1st December, 2000. However he had not received any money on account of such sanction and he did not know who embezzled the amount. He came to know about the facts when he applied for the cancellation of the withdrawal since the engagement of his niece was cancelled due to some problem. He saw the signatures on the Acquittance Roll (D-485) across the revenue stamp and stated that they were not his signatures and had been forged. He exhibited the Acquittance Roll as Ex.PW-

32/A. He deposed that he made representation, however when no action was taken he filed a writ petition before the High Court of Delhi when the authorities were directed to credit the account back in his GPF.

11.15. Further prosecution examined Mr. I.S.U. Puram, (PW-33) Sr. Assistant (Retired) from State Bank of India, R.K. Puram who exhibited the bank receipts scroll Ex.PW-33/A which was in his hand-writing and also the entries in the delivery book made on 1st December, 2000 of the said amount. He exhibited the copies of the delivery book vide Ex.PW-33/B and Ex.PW-33/C and the pay-in-slip vide Ex.PW-33/D whereby the amount of ₹2,72,475/- was deposited in the account. He also exhibited photocopy of the account opening form of B.K. Khullar vide Ex.PW-33/E. The computer generated certified copy of the statement of account of B.K. Khullar were also exhibited as Ex.PW-33/F. I.S.U. Puram also deposed that he received the credit voucher from the appellant and the amount was credited in bank account of B.K. Khullar No.13061 which shows the complicity of the appellant in unauthorizedly siphoning off the cheque from the GP Fund of S.P. Garg (PW-32).

11.16. As noted above, appellant was working as Assistant-cum-Cashier in the CWC and Rule 13 of the Central Government Accounts, Receipts and Payments Rule provide that all transactions are required to be entered into the cash book. In this regard the prosecution examined Ram Yagya Tiwari, PW-39 who was posted as Accounts Officer in CWC from 6th December, 1996 to 30th March, 2001 on deputation. He exhibited 27 challans depositing the amounts in State Bank of

India, R.K. Puram being D-3 to D-29 and exhibited the same as Ex.PW-39/A-1 to A-27 and the cash books for the period 27th September, 1999 to 15th March, 2000 and 16th April, 2000 to 10th November, 2000 exhibited as Ex.PW-26/H and Ex.PW-39/B respectively. He deposed that all the challans which were in the name of B.M. Ghosh, B.B. Sharma, Chandrashekhar, Kamal Sharma, Sandeep Kumar, Gulshan Kumar, Sunil Kumar, Subhash Chander, Om Prakash, Shiv Sagar and R.L. Kawale were under the signatures of C.Manjhi (A-2) and he could identify the same as he had seen him writing and signing and the cash books exhibited as Ex.PW-26/H and Ex.PW-39/B respectively did not contain entries in respect of the aforesaid challans Ex.PW-39/A-1 to A-27. This witness also deposed that it was the duty of the cashier to make entries in the cash book in the ordinary course of business. Though this witness has been cross-examined by C.Manjhi, however there is no cross-examination on behalf of the appellant.

11.17. In view of the discussion aforesaid, the prosecution has been able to prove all four allegations against the appellant beyond reasonable doubt and his being a part of larger conspiracy with other appellants.

12. **Crl.A. 297/2016 - J.P. Sharma v. CBI (A-6) :**

12.1. Learned counsel for the appellant contends that the appellant was employed as Deputy Director in the CWC and not in the accounts branch of CWC, thus had no access to the documents of the accounts branch. There is no evidence on record to infer that the appellant procured the cheques from Pay & Accounts Office (P&AO). The

cheque payment delivery register/ cheque acquittance register of the accounts department of CWC reflects no entry showing that the appellant received the cheques in question. Thus, there is no evidence that while working as public servant, the appellant was entrusted with the property i.e. the cheques. No fraudulent or dishonest intention has been proved by the prosecution. Assuming though not admitting that the appellant deposited cheques in the accounts of some persons, the same were deposited in the name of the persons to whom the cheques belonged. Learned Trial Court convicted the appellant solely on the basis of the examination-in-chief of the witnesses recorded without noting the contradictions and improvements brought out in the cross-examination. Some of the witnesses admitted that the original documents were not available and hence not proved. Conviction has been based on allegations which were not part of the charge.

12.2. Learned counsel for the CBI submits that while the appellant was working as Deputy Director, CWC, he deposited cheques fraudulently issued by Pay & Accounts Office, CWC in pursuance of a criminal conspiracy in the bank accounts of Chander Shekhar his son, Bhagwan Singh, his friend, Om Prakash, Retired Officer from CWC, his friend, Sandeep Kumar, his neighbor, B.B. Sharma, U.D.C. CWC, Yesudanam, Assistant Director and Bhagwan Singh, Junior Computer, CWC. The appellant was drawing a salary of ₹15,338/- including various allowances such as DA, HRA, CCA, conveyance allowances etc., as per Ex.PW-54/Z/11. The appellant maintained one account at State Bank of India, R.K. Puram being

Account No. 36903. Statement of account No. 36903 has been proved by PW-28 as per which four cheques were deposited in the account of the appellant for sum of ₹18,139/-, ₹61,140/-, ₹50,000/- and ₹1,00,000/-. Statement of account also reflects credit entry of ₹5,000/- on 6th March, 1999 from Om Prakash S/o Sohan Lal (A-11) which has not been explained by the appellant in his statement under Section 313 Cr.P.C. Appellant also maintained an account at Canara Bank, Shastri Nagar being account No. 2890 wherein an amount of ₹36,700/- was credited from the account of Om Prakash (A-11) which fact is proved by the testimony of Sunit Prakash, (PW-41) Manager, Canara Bank. Further appellant deposited fraudulently issued 7 cheques in the account of his son Chander Shekhar (PW-47), one cheque in the account of Brij Bhushan Sharma (PW-14), Canteen Manager, one cheque in the account of Brij Kishore Sharma (PW-5) Clerk, Delhi State Cooperative Bank, one cheque in the name of Sandeep Kumar Maheshwari (PW-49) who was rendering tuitions to the children of the appellant and three cheques in the name of Kamal Kumar Sharma (PW-40) nephew of the appellant. Further J.P. Sharma also deposited one cheque in the account of Bhagwan Singh for a sum of ₹95,154/-. It is contended that the appellant was an active participant in the conspiracy and committed the offences, he has been convicted of.

12.3. To prove the allegations of depositing four cheques in his account No. 36903 State Bank of India, R.K. Puram against the appellant, prosecution has examined I.S. Ranga, (PW-28) Deputy Manager State Bank of India who was posted at R.K. Puram Branch of State

Bank of India in July 2000. He exhibited the account opening form of the appellant as Ex.PW-28/A by virtue of which his saving accounts No. 36903 was opened on 11th May, 1990. He exhibited the computerized statement of account running into 23 pages as Ex.PW-28/B inadvertently noted as Ex.PW-8/B, however the same is an uncertified copy thus not admissible in evidence. Further Ex.PW-41/B which is stated to be the statement of account No. 2890 in the name of Anaro Devi and the appellant is actually statement of account of Chander Shekhar that too is not a certified copy as per Section 2A of the Act. However R.C. Tully (PW-26) proved that there was no corresponding entry in respect to cheque No. 229533 dated 18th May, 1998 issued for ₹18,139/- exhibited as Ex.PW-7/B in the cheque acquittance register Ex.PW-7/A. In respect of an amount of ₹36,700/- credited into the account No. 2890 Canara Bank, Shastri Nagar maintained by the appellant from the account of Om Prakash (A-11), Sunit Prakash, (PW-41) Manager, Canara Bank appeared in the witness box and exhibited the pay-in-slip for a sum of ₹36,700/- vide Ex.PW-41/D and the production-cum-seizure memo vide Ex.PW-41/C. Statement of account No. 2890 was also placed on record and exhibited vide Ex.PW-41/B, however the copy placed on record is not certified in terms of Section 2A of the Act, thus inadmissible in evidence. Be that as it may, from the pay-in-slip Ex.PW-41/D duly proved by Sunit Prakash (PW-41), deposition of a sum of ₹36,700/- in the account of the appellant stands proved and when asked question No.44 in this respect in his statement under Section 313 Cr.P.C., the appellant failed to render any explanation

except stating that the same was false. Facts especially within his knowledge as to how the money from the account of Om Prakash (A-11) duly proved vide Ex.PW-54/Z-42 was credited into the account of the appellant was required to be explained by him, which onus under Section 106 of the Evidence Act he failed to discharge.

12.4. Prosecution examined Chander Shekhar S/o J.P. Sharma (appellant herein) as PW-47 who deposed that the appellant employed in CWC was his father and he had given him 7-8 cheques to be deposited in his bank account. On the directions of his father he opened an account in the Canara Bank, Shastri Nagar being account No.12676. He admitted his signatures and photograph on the account opening form as Ex.PW-41/E and PW-41/F respectively. He also identified his signatures on the statement of account exhibited as PW-41/B. Ex.PW-41/B which is stated to be the statement of account No. 2890 in the name of Anaro Devi and the appellant is actually statement of account of Chander Shekhar but is also not a certified copy as per Section 2A of the Act hence not admissible in evidence. Be that as it may, Chander Shekhar further identified the handwriting on the four pay-in-slips for depositing the said cheques which were filled-in by his father vide Ex.PW-47/1 to 4, though he did not identify hand-writing on the remaining four pay-in-slips i.e. Ex.PW-47/5 to 8. Thus the deposition of Chander Shekhar coupled with the pay-in-slips showing deposit of sum of ₹53,169/-, ₹28,530/-, ₹99,096/- and ₹1,22,043/- in his account duly written by his father, the appellant herein, proves the complicity of the appellant. Further as per the opinion of hand-writing expert (PW-51), five cheques vide Ex.PW-

51/39 to 44 issued in the name of Chander Shekhar were signed by S.K. Aggarwal (A-17). Chander Shekhar, (PW-47) further testified that after the clearance of said cheques in his account, the amount of the said cheques was withdrawn by him and handed-over to the Y.P. Sharma (A-1) whom he identified in Court. Chander Shekhar has not been cross-examined by the appellant or S.K. Aggarwal or Y.P. Sharma, thus his testimony has gone unchallenged.

12.5. The prosecution also examined Brij Bhushan Sharma, (PW-14) who deposed that in the year 2000 he was working as Manager Canteen in the office of CWC. During that period appellant was the Secretary of the canteen. On the day when he was going to retire in December 2000, he was served with a letter from the Vigilance Department asking for a cheque amounting to ₹93,000/- credited into his account, to which he informed that the appellant who was his immediate senior had demanded ₹25,000/- to ₹30,000/- from him as he needed money on the condition that he would return the same in 2-3 days. So he gave him ₹28,000/- in cash. He had withdrawn the said amount by withdrawal slip from Syndicate Bank, R.K. Puram and handed-over the amount to the appellant. Thereafter, the appellant asked Brij Bhushan his account number and informed him of the deposit of a cheque in his account through a pay-in-slip duly signed by the appellant. However, when he went to his bank he found ₹93,000/- were deposited in his account and on asking the appellant he replied that he had done so to save income-tax. When he objected to this high deposit into his account, appellant asked him to return the money after retaining ₹28,000/- and thus he handed-over the access

amount to the appellant. PW-14 exhibited the two withdrawal slips as Ex.PW-14/A and 14/B respectively. He also identified signatures of the appellant on the cheque deposit slip dated 22nd December, 1999 which was exhibited as Ex.PW-14/C. Though this witness has been confronted with certain improvements such as clarification about the account number being taken by the accused or the pay-in-slip, however the same are only clarificatory in nature elaborating the sequence of events and do not amount to material improvements which would entail discrediting the testimony of Brij Bhushan Sharma. Further the contention of learned counsel for the appellant that since the pay-in-slip i.e. Ex.PW-14/C was not put to him in his statement recorded under Section 313 Cr.P.C. is also required to be rejected for the reason it is well settled that in the statement under Section 313 Cr.P.C., incriminating circumstance has to be put to the accused and not every separate piece of evidence constituting the circumstance. [*See AIR 1967 SC 752 Bakshish Singh Dhaliwal Vs. State of Punjab*] In question number 7 put to the appellant in his statement under Section 313 Cr.P.C. the learned Trial Court put the circumstance of the appellant depositing a sum of ₹93,532/- in the account of Brij Bhushan Sharma to which the appellant replied that he had not received any cheque from office and the cheque given by B.B. Sharma had been deposited in his account. Further contention of learned counsel for the appellant that the learned Trial Court failed to notice cross-examination of B.B. Sharma wherein he admits that the appellant had not filled the deposit slip in his presence, thus no reliance can be placed on the examination-in-chief deserves to be

rejected for the reason though Bharat Bhushan Sharma did not see the appellant filling up and depositing the amount he identified appellant's signature on the slip as he had seen him writing in the ordinary course of work, the appellant being his immediate superior. Further the prosecution also examined R.P. Lekhi (PW-10) the then Manager Syndicate Bank, R.K. Puram who identified the seizure memo Ex.PW-1/A by virtue of which attested copies of the account opening form, specimen signatures, statement of account of Brij Bhushan Sharma were duly seized. Though from the testimony of R.P. Lekhi (PW-10), appellant seeks to show that original pay-in-slip was not recovered however when Ex.PW-14/C was exhibited by Bharat Bhushan Sharma no such objection was taken. The fact remains that the version of Brij Bhushan Sharma is duly corroborated by the documentary evidence proved by him thereby proving the allegation against the appellant.

12.6. Prosecution has also examined Sandeep Kumar Maheshwari (PW-49) who used to give tuitions to children of the appellant at his residence at Shastri Nagar, Delhi. This witness deposed that he had opened a savings bank account No. 1440 with the Delhi State Cooperative Bank at Bharat Nagar and further proved the account opening form, his signatures and statement of account already exhibited by Brij Kishore Sharma, (PW-5) Clerk of the Delhi State Cooperative Bank vide Ex.PW-5/2 and PW-5/4 respectively. Sandeep Kumar Maheshwari deposed that on 30th July, 1999 a cheque for an amount of ₹53,851 had been deposited in his account and he did not know who deposited the said amount vide the pay-in-slip already exhibited

as Ex.PW-5/5. He further deposed that son of the appellant came to his residence in the morning same day in the year 1999 and told him that his father had told him that a cheque had been inadvertently deposited in the account of Sandeep Kumar Maheshwari and asked him to issue a cheque for a sum of ₹53,200/-. Thus, he issued the self-cheque (B-682) of the aforesaid amount and handed-over to the son of the appellant. He identified the self-cheque issued by him and signatures of the appellant appearing at point A at the back side of the cheque and his own signature at point B on the front side. Nothing material has been elicited in his cross-examination except that Sandeep Kumar refunded a sum of ₹53,851/- to the CWC during the investigation of the case. Be that as it may, refunding the amount of ₹53,851/- by Sandeep Kumar Maheshwari does not absolve the appellant of his complicity in the offences alleged by the prosecution and from the evidence of Sandeep Kumar Maheshwari (PW-49) and Brij Kishore Sharma (PW-5) the prosecution has proved beyond reasonable doubt the facts noted hereinabove against the appellant.

12.7. Prosecution has also examined Kamal Kumar Sharma nephew of J.P. Sharma as PW-40. He deposed that the appellant was his maternal uncle and had borrowed a loan in the name of Kamal Kumar Sharma for purchasing a car for himself. He stated that the appellant gave him two demand drafts of ₹87,379/- and ₹67,445/- in the month of July and October. Both the drafts were deposited in his account bearing No. 16103 Syndicate Bank, Raj Nagar, Ghaziabad. He identified his signatures on the account opening form and the specimen signature card exhibited as Ex.PW-40/A1 and A2

respectively. He also identified his statement of account vide Ex.PW-40/A3 which is duly certified in terms of Section 2A of the Act and depicts the two entries and that he withdrew the amounts of two demand drafts and paid over the said amount to the appellant. In his cross-examination he further stated that he handed-over the amount to the appellant who was accompanied with accused Y.P. Sharma whom he identified in the Court. Further A.S. Gautam, (PW-25) Senior Accounts Officer, Pay and Accounts proved that a draft of ₹87,339/- was issued in favour of Kamal Sharma as reflected at serial number 341 of the demand draft register Ex.PW-15/A.

12.8. Prosecution has pressed a further allegation against the appellant that cheque No. 275051 dated 6th October, 1999 for a sum of ₹95,154/- was issued in favour of Bhagwan Singh, however the only fact proved in this regard is that the pay-in-slip dated 5th October, 1999 for ₹95,154/- which bears the name of Bhagwan Singh was in the signature of the appellant as proved by the hand-writing expert. However, the prosecution has not examined Bhagwan Singh but having proved the pay-in-slip for a sum of ₹95,154/- in the name of Bhagwan Singh duly signed by the appellant, onus shifts on him to explain why an amount of ₹95,154/- was deposited in the account of Bhagwan Singh.

12.9. In view of the discussion aforesaid, the prosecution has proved beyond reasonable doubt that the appellant fraudulently deposited four cheques in the account of Chander Shekhar his son, one cheque in the account of Brij Bhushan Sharma, one cheque in the name of Sandeep Kumar Maheshwari, two drafts in the name of Kamal

Kumar Sharma his nephew, thereafter took the money from all these persons and mis-utilized the same. Further, the appellant failed to explain filling up of the pay-in-slip in respect of a cheque of ₹95,154/- in favour of Bhagwan Singh. Hence the prosecution has proved beyond reasonable doubt that the appellant committed offences punishable under Sections 403, 120B IPC read with 403/409 IPC.

13. **Crl.A. 342/2016 - Shiv Sagar Naik v. CBI (A-7) :**

13.1. Learned counsel for the appellant contends that the prosecution has not proved the case beyond reasonable doubt against the appellant. Though it is alleged that 17 cheques were fraudulently deposited in the account of the appellant, however chart produced by the CBI relates to 15 cheques only. The amount of three cheques has already been refunded which fact has been deposed to by M.E. Haque (PW-24). Though it is alleged that the appellant acted in conspiracy with Y.P. Sharma, however there is no such finding while deciding the conviction of Y.P.Sharma. The appellant has no connection whatsoever with the four sanction orders of LTC. Bank account statement of the appellant has not been proved. Even as per the statement of investigating officer PW-54 the appellant played no role in preparation of the challans. The appellant neither granted any sanction nor prepared any bills and thus he cannot be held liable with the aid of Section 120B IPC. In any case on similar allegations the appellant has already been convicted, thus, conviction in the present case would amount to double jeopardy.

13.2. Learned counsel for the CBI on the other hand contends that the appellant was Section Officer in Establishment and Accounts Section of CWC and used to draw a salary of ₹9974/- including various allowances such as DA, HRA, CCA and conveyance allowances as per Pay Bill register Ex.PW-54/Z/11. It is the case of the prosecution that 13 cheques were deposited in the account of the appellant for a sum of ₹59,883/-, ₹99,000/-, ₹1,58,736/-, ₹53,211/-, ₹59,883/-, ₹1,67,194/-, ₹67,445/-, ₹72,000/-, ₹54,000/-, ₹94,606/-, ₹62,450/-, ₹41,027/- and ₹25,800/-. The prosecution has proved the certified copies of the bank account opening form, signatures and computerized statement of the account No. 3233 of the appellant. Further Shri I.P.S. Bhatia, (PW-46) Deputy Manager, State Bank of India, R.K. Puram proved the cheques deposited in the account of the appellant. Further the said amount was withdrawn by 13 self-cheques from September, 1998 to February, 2000 which was not commensurate to the income/ salary of the appellant. Besides three more cheques were deposited in account No. 9975 maintained by the appellant at Syndicate Bank, R.K.Puram which fact stands proved by the testimony of M. Jinarajadasa (PW-11). LTC advance bills were prepared to the destinations Kerala and Kanya Kumari. Though the rule permits LTC once in a block of 2 to 4 years depending on the post, however within the same year two bills were approved. Four cheques were issued on account of LTC bills in the name of non-existing entities namely Shiv Sagar CE, Shiv Sagar Director and Shiv Sagar Assistant Director and credited into the accounts of the appellant clandestinely. No acquittance roll were prepared in respect

of all these cheques. Further three bills relating to LTC advance were prepared and the supporting documents were sent along with fake sanction orders. The bills in respect of the cheques were not available. The cheques were fraudulently issued by Y.P. Sharma and the funds credited to the accounts of appellant, withdrawn and shared with Y.P. Sharma. In one of the such withdrawals of ₹1,06,000/-, Y.P. Sharma has signed the document.

13.3. To establish its first charge of deposition of 13 cheques in account No. 32333 of the appellant in State Bank of India, R.K. Puram, prosecution examined Kanahya Lal, (PW-1) Assistant Manager, State Bank of India, R.K. Puram who deposed that he went to the CBI office and handed-over to the investigating officer who seized attested photocopies of the account opening form, original credit voucher and computerized statement of account No.32333 in the name of the appellant. Though this witness exhibited the production-cum-seizure memo Ex.PW-1/1, he did not exhibit the statement of account of the appellant which was exhibited by I.P.S. Bhatia, (PW-46) Deputy Manager, State Bank of India, R.K. Puram while dealing with the transaction of the cheque bearing No. 277701 which was credited into the account vide Ex.PW-46/B. The said statement of account is certified as per Section 2A of the Act and thus admissible in evidence. I.P.S. Bhatia deposed that cheque of ₹1,39,097/- bearing No. 277701 was credited in three accounts firstly in the name of Shiv Sagar Naik having account No.01190/032333 wherein a sum of ₹41,027/- was credited vide entry 'A' and the statement of account was exhibited as PW-46/F. The pay-in-slip of the said cheque was

exhibited as Ex.PW-46/G. A perusal of Ex.PW-46/F which has been duly exhibited by I.P.S. Bhatia along with certificate under Section 2A of the Act also shows credit entry for a sum of ₹59883/- on 17th March, 1999 by Government Transfer (GT). From the perusal of Ex.PW-46/F it is evident that by 13 cheques amount of ₹59,883/- on 4th December, 1998, ₹99,000/- on 2nd January, 1999, ₹1,58,736/- on 4th February, 1999, ₹53,211/- on 1st March, 1999, ₹59,883/- on 17th March, 1999, ₹1,67,194/- on 31st March, 1999, ₹25,800/- on 23rd April, 1999, ₹67,445/- on 29th April, 1999, ₹72,000/- on 11th June, 1999, ₹54,000/- on 20th September, 1999, ₹94,606/- on 13th October, 1999, ₹62,450/- on 7th January, 2000 and ₹41,027/- on 29th January, 2000 respectively had been credited to the account of the appellant. Prosecution has also proved the 11 pay-in-slips vide Ex.PW-51/142, 143, 144, 145, 146, 147, 148, 149, 150, 151. Further the statement of account Ex.PW-46/F reveals withdrawal through self-cheques for sums of ₹25,000/- on 17th August, 1998, ₹30,000/- on 21st September, 1998, ₹45,000/- on 7th December, 1998, ₹15,000/- on 16th December, 1998, ₹1,00,000/- on 4th January, 1999, ₹42,000/- on 27th January, 1999, ₹35,000/- on 4th March, 1999, ₹42,000/- on 19th March, 1999, ₹1,20,000/- on 31st March, 1999, ₹10,000/- on 26th April, 1999, ₹14,000/- on 28th April, 1999, ₹10,000/- on 1st May, 1999, ₹46,000/- on 3rd May, 1999, ₹48,000/- on 12th June, 1999, ₹3,000/- on 1st July, 1999, ₹85,000/- on 15th October, 1999, ₹43,000/- on 10th January, 2000, ₹30,000/- on 1st February, 2000. This is further corroborated by the opinion of PW-51 who proved hand-writing of the appellant on the cheques Ex.PW-51/158 to 176 except

Ex.PW-51/163 for withdrawal of ₹1,06,000/- on 5th February, 1999 which was in the handwriting of Y.P. Sharma. Thus, the first set of allegations stands proved beyond reasonable doubt against the appellant.

13.4. The second set of allegation against the appellant is of deposit of three cheques in his account being account No. 9975, Syndicate Bank, R.K. Puram. This allegation is proved by the prosecution by examining M. Jinarajadasa, (PW-11) Manager, Syndicate Bank who was posted as such in the year 2001 who exhibited his signatures on the production-cum-seizure memo dated 11th May, 2001 as Ex.PW-11/A. He further proved the certified copies of the account opening form of account No. 9975 and specimen signature card of appellant vide Ex.PW-11/B and PW-11/C respectively. He also produced the certified copy of the statement of account duly signed by S.C. Chhabra, the then Branch Manager and initialed by him vide Ex.PW-11/D. He also proved the three original credit slips which he had handed-over to the CBI vide Ex.PW-11/E to G. He further deposed that this account was opened on 6th April, 1999 and was introduced by Y.P. Sharma who held account No. 9580. The statement of account Ex.PW-11/D is duly certified in terms of Section 2A of the Act and thus can be read in evidence. As per the statement of account of the appellant with the Syndicate Bank, R.K. Puram Branch, sums of ₹45,000/- on 26th May, 1999, ₹1,79,256/- on 2nd July, 1999 and ₹49,458/- on 30th October, 1999 were credited to his account. As noted above, the three original pay-in-slips in regard to these credit entries were exhibited vide Ex.PW-11/E to 11/G and the

opinion on this count was also rendered by the handwriting expert PW-51. Thus from the evidence of M. Jinarajadasa and the handwriting expert prosecution has proved beyond reasonable doubt the second set of allegation against the appellant.

13.5. In respect of the third set of allegation that four cheques were issued on account of the LTC bills in the name of non-existing entities namely Shiv Sagar CE, Shiv Sagar Director and Shiv Sagar Assistant Director, prosecution has examined A.S. Gautam (PW-25). He deposed that he was posted and functioning as Senior Accounts Officer in the P&AO of CWC with effect from April, 2001 to August 2002 and as a Senior Accounts Officer, his duties in general were to process the bills submitted by the DDO by checking the same with the various accounts manuals and passing the same if found in order. He explained the procedure in respect of passing of the bills. After seeing the documents he stated that document (D-487) was a LTC advance bill along with the sanction order of LTC amount of ₹72,000/- in favour of the appellant and his family members. He further identified (D-488) as another LTC bill dated 16th September, 1999 for a sum of ₹54,000/- in favour of the appellant along with which a sanction order dated 15th September, 1999 was enclosed in favour of the appellant and his family members. He also identified document (D-489) another LTC bill dated 5th January, 2000 for a sum of ₹62,450/- in favour of the appellant along with a sanction order dated 4th January, 2000 in favour of the appellant and his family members. He also identified document (D-486) another LTC bill dated 21st May, 1999 for a sum of ₹45,000/- in favour of the

appellant along with a sanction order dated 20th May, 1999 in favour of the appellant and his family members. As noted above, from the statement of account of the appellant, amounts of ₹72,000/-, ₹54,000/-, ₹62,450/- and ₹45,000/- stood credited to the account when as per the rules he was entitled to only one LTC in a block period of 2 -4 years. The only challenge of learned counsel for the appellant to the testimony of A.S. Gautam is that in the voucher number 2200 signature of Assistant Account Officer does not figure and voucher number 2443 is supported by carbon copy of sanction order, however the witness has not been cross-examined on these aspects when he appeared in the witness box as PW-25. Thus, the allegation of the prosecution that the appellant was a part of the larger conspiracy wherein on the basis of fake bills and sanction orders, cheques were got prepared which were credited to his account as well has also been proved beyond reasonable doubt by the prosecution.

13.6. The fourth allegation against the appellant is also in continuation with the third allegation that after the bills relating to LTC advances were prepared and supporting documents were sent along with fake sanction orders, the same were credited to the account of the appellant who withdrew the same and shared it with Y.P. Sharma. As noted above, cheque No. 619620 dated 5th February, 1999 for a sum of ₹1,06,000/- was withdrawn from the account of the appellant by Y.P. Sharma. Thus the allegations of the prosecution stands proved beyond reasonable doubt against the appellant.

13.7. For the discussion aforesaid this Court finds no infirmity in the conviction of the appellant for offences punishable under Sections 403 IPC and 120B read with Section 403/409 IPC.

14. **Crl.A. 280/2016 - Jeet Ram Sharma v. CBI (A-9) :**

14.1. Learned counsel for the appellant contends that there is no evidence to show that the four accounts payee cheques were actually collected by the appellant. Out of the four pay-in-slips of the cheques only two were collected which were also not sent to the FSL for the opinion of the hand-writing expert. Moreover, the statement of account No. 9446, Syndicate Bank, R.K. Puram does not show any deposit of ₹ 80,325/-. There is no evidence on record to show that the medical bill of the mother of the appellant had been submitted by the appellant to the P&AO for realization of the said medical bill. Further no evidence has been led to show that the appellant encashed four accounts payee cheques fraudulently issued by P&AO, CWC for a sum of ₹2,98,844/- in his account maintained by State Bank of India, R.K. Puram.

14.2. Learned counsel for the CBI submits that the appellant was working as Junior Computer Operator in the Account Section – III of CWC during the relevant period. A bill dated 13th January, 1999 for a sum of ₹80,325/- was submitted by the appellant along with the photocopy of bill of Escorts Heart and Research Institute, Okhla in the name of Bhagwati Sharma, mother of appellant. The bill was not supported by any sanction order, however, N.R. Suman (A-16) approved the said bill which fact stands proved by the opinion of the

hand-writing expert. Further, Chetan Mukund Pandit (PW-35) proved that the supporting documents with the bill were forged and fabricated. R.C. Tully (PW-26) proved that though it did not contain any sanction but the bill format indicated that the same was signed by co-accused C. Manjhi. Further four cheques for a sum of ₹80,325/- ₹1,04,029/-, ₹64,939/- and ₹49,5498/- were deposited in the account of the appellant.

14.3. In respect of the first allegation regarding submission and claim of a forged medical bill in the name of the mother of the appellant, prosecution examined Chetan Mukund Pandit (PW-35) who deposed that he hailed from Central Water Engineering Service and was working in CWC as member till his retirement in the year 2012. Since he had some medical problem during his tenure, he got his treatment from Escorts Hospital in the year 1998. He submitted a medical claim on 25th April, 1998 for reimbursement of medical expenses vide document (D-561) for a sum of ₹1,25,785/- exhibited as Ex.PW-35/A which was accompanied by photocopies of discharge summary, application, I-card and registration card of Escorts Heart Institute exhibited as Ex.PW-35/B1 to B4. He was reimbursed a sum of ₹1,25,785/- along with further claim of ₹13,800/- totaling to ₹1,38,935/-. He also identified his signatures across the revenue stamp in the acquittance register (D-611). He further deposed that the claim bill of ₹1,25,785/- vide (D-562) in the name of Smt. Bhagwati Sharma W/o late R.R. Sharma was in the name of a female but as against the column of age "male" was written and the claim was supported by the same documents that were submitted by him in

respect of his claim for reimbursement with fabrication by putting a different name of the claimant as Smt. Bhagwati Sharma. He identified the fabrications in the said document vide Ex.PW-35/C-1 and C-2. The only cross-examination on behalf of the appellant was whether Chetan Mukund Pandit knew appellant to which he denied. It is thus evident that the testimony of Chetan Mukund Pandit has gone unchallenged.

14.4. Prosecution also examined R.C. Tully (PW-26) who deposed that the medical bill No. M-1393/I in the name of J.R. Sharma running into four pages back to back vide (D-562) neither indicates the designation of the person nor contains any sanction. However the bill format indicates that as against a claim of ₹1,25,785/- bill for ₹80,325/- was prepared and he identified the signature of C. Manjhi at point 'A' on the bill format Ex.PW-26/I. Further PW-51 identified the handwriting of the appellant on Ex.PW-26/I, the medical claim for a sum of ₹1,25,785/- in the name of Smt.Bhagwati, mother of the claimant. Thus the first allegation against the appellant that a false medical claim was raised on the strength of forged documents stands proved beyond reasonable doubt by the prosecution.

14.5. The second set of allegation against the appellant as noted above is deposit of amount of ₹80,325/- as against the false medical bills besides ₹1,04,029/-, ₹64,339/- and ₹49,548/- in his account. In this regard certified copy of the account opening form of account No. 9446 of Syndicate Bank, R.K. Puram, pay-in-slips dated 14th August, 1999 and 8th April, 1999 indicating deposit of a sum of ₹49,548/- and ₹1,04,029/- vide Ex.PW-54/D2 and Ex.PW-54/D respectively were

proved by PW-54. Though M. Jinarajadasa (PW-11) appeared in the witness box but he did not depose about the transactions. Thus it will have to be seen whether from the testimony of PW-54 and PW-51 the allegations of the prosecution stand proved. PW-54 also proved vide Ex.PW-54/ZX a letter from the bank dated 30th August, 2005 which stated that though the statement of account was provided, however the bank could not retrieve the statement of account from 1st January, 1999 to 31st January, 1999 nor the pay-in-slip for ₹80,325/- dated 23rd January, 1998. Thus even though the prosecution proved that a cheque for a sum of ₹80,325/- (D-72) was prepared in favour of the appellant, it could not prove that the sum of ₹80,325/- was deposited in his account. The prosecution however proved deposit of two amounts of ₹49,548/- and ₹1,04,029/- in the account of the appellant in view of the endorsements on the two pay-in-slips Ex.PW-54/D2 and Ex.PW-54/D for which the appellant rendered no explanation.

14.6. Prosecution having proved beyond reasonable doubt the first allegation and partially the second, conviction of the appellant for offences punishable under Sections 471/403 and 120B read with 403/409 IPC is upheld.

15. **Crl.A. 241/2016 - B.M. Ghosh v. CBI (A-10) :**

15.1. Learned counsel for the appellant states that the allegation that five cheques fraudulently issued by P&AO amounting to ₹3,53,953/- and deposited in the bank accounts of the appellant has not been proved by legally admissible evidence. Though it is the case of the prosecution that the bills on the basis of which two cheques for

₹1,20,000/- were prepared had been collected, however as per the acquittance register not even a single cheque had been received by the appellant. The appellant has neither received any cheque from the department nor deposited the same in his account. Claim that false and fabricated sanction order was prepared is not connected to the appellant. Medical bill allegedly submitted does not also show that the appellant took part in preparing the false medical bill or sanctioning the amount thereof or that he was beneficiary of the said transaction.

15.2. Learned counsel for the CBI submits that the appellant filed a fake medical claim in the name of his wife Subhra Ghosh along with an application for reimbursement of the medical claim showing it to be a total joint replacement though the permission was for neurological problem. As per the opinion of the hand-writing expert the bill was duly signed by C.Manjhi (A-2) and passed by N.R. Suman (A-16). Handwriting and signatures of the appellant on the application form claiming refund attached with the above-mentioned bill have been duly proved by the report of the hand-writing expert PW-51. R.C. Tully (PW-26) proved the procedure to claim reimbursement of medical bills, sanction orders and the claim sent to the account department for preparation of the bill. He also proved copy of the medical bill in the name of the appellant and that a claim for ₹1,20,000/- was raised which bill was duly signed by DDO. Further Ex.PW-51/17 was the original AIIMS bill for total ankle joint replacement along with other bills in the name of Amandeep/ Aman and vide Ex.PW-54/Z/17 AIIMS responded that Subhra Ghosh was

neither admitted in the hospital nor was a payment of ₹1,20,000/- made. Vijay Kumar Sethi (PW-34) bank official from UCO Bank proved the bank account opening form, specimen signature card, attested computerized copy of the statement of account and the pay-in-slip vide Ex.PW-34/B-1 to B-3 respectively besides the production-cum-seizure memo vide Ex.PW-34/A by which these documents were seized. Further Kanhaiya Lal, Assistant Manager (PW-1) State Bank of India, R.K. Puram Branch proved the production-cum-seizure memo in respect of the bank account of the appellant. However, the UCO Bank was not able to retrieve the statement of account for the relevant period.

15.3. In respect of the allegation of preparing a fake medical claim in the name of the wife of the appellant Smt. Subhra Ghosh, prosecution examined R.C. Tully (PW-26) who was then working in the CWC as Section Officer. He explained the procedure regarding reimbursement of medical claim stating that the employees after availing treatment either at Government hospital or private hospital recognized under CGHS preferred the claims to the respective administrative sections. These claims were then processed as per the relevant package deal rates and a sanction order was issued for reimbursement. Copies of the sanction orders were sent to the respective Account Section along with the claim in duplicate. The Account Section then prepared a bill which was signed by the DDO and sent to the P&AO. The P&AO would pass the bill and issue the cheque for the amount either in the name of the DDO or in the name of the individual as per the request sent along with the bill. The

amount was then disbursed to the individual either by way of cash or cheque, obtaining his signatures on the cheque acquittance register. In case the payment was made by cash an acquittance roll was prepared by the respective Accounts Section, signed by the DDO and then sent to the cashier to disburse the amount after obtaining the signatures on the acquittance of the individual on a revenue stamp if required. R.C. Tully vide Ex.PW-26/Z identified (D-560) the medical bill No. M-1141/III dated 15th January, 2004 in the name of the appellant running into four pages back to back. The bill did not indicate the designation of the person but a claim was raised for ₹1,20,000/-. It did not contain any sanction but the bill format indicated that the bill for ₹1,20,000/- was prepared. As noted in the procedure, only after sanction order was prepared a bill could be prepared. R.C. Tully also identified the signatures of C. Manjhi (A-2) at point 'A' on the bill format Ex.PW-26/Z. He also exhibited the letter dated 7th September, 1998 vide Ex.PW-26/A duly signed by Shri D. Vidyarthi, the then Under Secretary, Government of India permitting B.M. Ghosh to carry on the treatment of his wife from AIIMS. The handwriting expert (PW-51) proved the signature of N.R. Suman on the bill and the handwriting and signature of appellant on the application form. Further vide Ex.PW-51/15 and 51/16 the handwriting expert identified the handwriting of the appellant on the reimbursement certificate for indoor patient and certificate 'B' respectively as attached with the bill. Ex.PW-51/17 the original bill from AIIMS for total ankle joint replacement was in the name of Amandeep/ Aman and not Subhra Ghosh. Thus from the

evidence of these witnesses and the documents exhibited prosecution has been able to prove beyond reasonable doubt that a fake medical claim was got sanctioned by the appellant.

15.4. With respect to the deposit of five cheques issued by P&AO of CWC amounting to ₹3,53,953/- in the accounts maintained at State Bank of India and UCO Bank, R.K. Puram during the period 1st March, 1999 to 30th December, 1999 which included the two cheques for ₹1,20,000/- and ₹74,874/- the prosecution examined Kanhaiya Lal (PW-1) bank official of State Bank of India, R.K. Puram who only proved the production-cum-seizure memo Ex.P-1/1 vide which the attested copy of the account opening form of account No. 29933 State Bank of India. R.K. Puram, certified copy of the statement of account, original credit voucher dated 8th December, 1999 for ₹60,000/- were seized. However, PW-1 did not exhibit the certified copy of the statement of account which would have shown the credit entries, as he exhibited only the seizure memo and not the statement of account. Moreover, though claimed in the seizure memo that certified copy of the statement of account has been obtained, however the statement of account on record as shown by learned counsel for the CBI is not certified in terms of Section 2A of the Act and hence not admissible in evidence. Thus, the prosecution has failed to prove credit entry of ₹60,000/- in the account of the appellant in State Bank of India, R.K. Puram.

15.5. Vijay Kumar Sethi, (PW-34) Assistant Manager UCO Bank exhibited the account opening form in respect of account No. 6704 in the name of the appellant at UCO Bank, R.K. Puram Branch, besides his

specimen signature card and the attested computerized copy of the statement of account for the period 12th June, 1999 to 3rd December, 2000 vide Ex.PW-34/B1 to B3. Attested copy of the statement of bank account does not relate to the relevant period i.e. January 1999 to April, 1999 as the same could not be retrieved due to technical problem. However, Vijay Kumar Sethi exhibited the pay-in-slips dated 12th February, 1999 and 27th February, 1999 for a sum of ₹1,20,000/- and ₹74,874/- respectively and a debit cheque No. 324721 dated 16th February, 1999 as PW-34/B4 to B6 collectively. Vijay Kumar Sethi also proved the debit cheques Nos. 324723, 324729 and 324735 dated 3rd March, 1999 for ₹45,000/-, ₹7000/- and ₹20,000/- respectively which were also exhibited as Ex.PW-34/B6 collectively. Further PW-51 the handwriting expert vide his opinion identified the handwriting of the appellant on the debit cheques. B.V. Jagdish Kumar (PW-50) who was then posted as LDC in the Account Section –III of CWC exhibited the pay bill register for the period 1999 to 2000 vide Ex.PW-50/F wherein the entries on the left page were made by him, however he denied that the entries on the right side of the pages were in his hand-writing and stated that the same were insertions. Though not on the basis of bank account statement, the prosecution has been able to prove beyond reasonable doubt that two cheques for ₹1,20,000/- and ₹74,874/- fraudulently issued from the P&AO of the CWC were deposited by the appellant, through the pay-in-slips dated 12th February, 1999 and 27th February, 1999 respectively in his UCO Bank, R.K. Puram Branch account No. 6704 on the basis of the evidence of Vijay Kumar Sethi and that an

amount of ₹1,20,000/- was reimbursed to the appellant on the basis of a fake medical bill.

15.6. Thus the prosecution have proved beyond reasonable doubt that the appellant committed offences punishable under Section 471, 403 IPC and 120B read with 403/409 IPC.

16. **Crl.A. 134/2016 - Om Prakash v. CBI (A-11) :**

16.1. Learned counsel for the appellant submits that in short the allegations of the prosecution against the appellant are that while working as a draftsman, GR-I in CWC New Delhi during the relevant period and maintaining his bank account at Punjab National Bank, R.K. Puram, three cheques fraudulently issued by the Pay & Accounts Office, CWC were deposited in the appellant's account by J.P. Sharma and the appellant retaining a substantial/ part amount of the same permitting J.P. Sharma to withdraw the amount either through accounts payee cheque or through self-cheque. Contention of learned counsel for the appellant is that the bank statement of the appellant Ex.PW-54/Z-42 Document D-291 clearly shows that no amount whatsoever has been retained by him and the entire amount was deposited by J.P. Sharma in the account of the appellant and also withdrawn by J.P. Sharma. It is contended that the bank account statement clearly shows that there were normal bank transactions in his account and the appellant cannot be convicted when it is the case of the prosecution itself that all cheques in the appellant's name were deposited and money withdrawn by J.P. Sharma only. It is stated that since J.P. Sharma was the senior officer of the appellant who was

writing his ACR, the appellant had to succumb to his dictates and give blank signed cheques to him. Further the appellant was not the only person victimised by J.P. Sharma. From the evidence on record it is evident that J.P. Sharma deposited similar cheques in the account of various persons including his own son Chanda Shekhar (PW-47), Canteen Manager Brij Bhooshan (PW-14), his nephew Kamal Kumar Sharma (PW-40) and tutor of his children namely Sandeep (PW-49). The appellant cannot be held responsible for the misappropriation as he was not even aware of the source of cheques being deposited by J.P. Sharma in his accounts who was the Deputy Director in CWC whereas the appellant was only a draftsman. The admitted case of the prosecution itself is that even the cheque depositing slips were prepared and filled by J.P. Sharma in his own handwriting. When every action was done by J.P. Sharma without the knowledge of the appellant, he cannot be held guilty with the aid of Section 120B IPC as there was no meeting of minds. No benefit has been derived by the appellant directly or indirectly. Qua the allegation No.7 relating to Y.P. Sharma a finding has been returned by the Trial Court that the appellant Om Prakash is not connected with the 7th transaction, hence the same cannot be pressed by the CBI. Reliance is placed on the decision reported as *2007 (3) JCC 2318 Shreya Jha Vs. CBI* wherein the accused was discharged in a transaction where his account was utilized without his knowledge and the accused was not a beneficiary.

16.2. As regards the sentence it is submitted that the appellant has been awarded 5 years rigorous imprisonment for offences punishable

under Section 120B read with Section 403/409 IPC and 1 year rigorous imprisonment for offence punishable under Section 403 IPC when no substantive offence under Section 403 IPC has been committed by the appellant. Learned Trial Court maintained no parity while awarding the sentence as similarly situated convicts like Jeet Ram, B.M. Ghosh, Yesudanam have been awarded sentence of rigorous imprisonment for 1 year for offences punishable under Section 120B read with Section 403/409 IPC. Even Natha Ram Suman who is stated to be one of the main accused by the CBI has been awarded rigorous imprisonment for a period of 1 year only for offences punishable under Section 120B read with 403/409 IPC and also under Section 13(1)(d) punishable under Section 13(1)(2) of the PC Act. It is further submitted that the offence punishable under Section 409 IPC is the aggravated form of Section 403 IPC and the appellant cannot be convicted and sentenced for both the offences i.e. Section 403 and 409 simultaneously.

16.3. Learned counsel for the CBI submits that the bill dated 19th February, 1999 exhibited as Ex.PW-51/11-14 submitted under the signature of Y.P. Sharma (A-1) was cleared and cheques issued which were duly signed by S.K. Aggarwal (A-17). The handwriting of both Y.P. Sharma on the bill and S.K. Aggarwal on the cheques has been proved beyond reasonable doubt by the opinion of the hand-writing expert PW-51. The original cheques and register of demand drafts were seized from P.K. Rooprai (PW-36) and duly exhibited. The register of demand draft of CWC i.e. acquittance register contains the relevant entries, the amounts so credited into the account of the

appellant where after the cheques were withdrawn by J.P. Sharma (A-6). In response to questions put to him under Section 313 Cr.P.C. the appellant admitted that cheques in question were deposited by J.P. Sharma in his accounts and that he paid some specified amounts to J.P. Sharma post-deposit. The defence of the appellant is that he acted under the pressure of his senior which cannot be accepted as no public servant can commit an offence even though pressurized by his superior. Prosecution having proved that the amount was deposited in the bank account of the appellant, onus shifted on him to prove the facts especially within his knowledge under Section 106 Evidence Act. Further in view of the explanation rendered under Section 313 Cr.P.C. which can be taken as an additional link in the chain of circumstances prosecution has been able to prove its case beyond reasonable doubt. Two of its star witnesses to prove the case of the prosecution i.e. Ramesh Chander, Manager Punjab National Bank, R.K. Puram and S.K. Jindia AAO, P&AO, CWC could not be examined as the first one passed away before he could be examined and the second one shifted to London and thus could not be served. In the absence of above primary evidence, the prosecution was within its right to lead secondary evidence which was not objected to at the time of recording of the evidence.

16.4. Case of the prosecution against the appellant is that four cheques bearing No. 228394, 230010, 232492 and 237231 for a sum of ₹28,819/-, ₹23,819/-, ₹1,10,568/- and ₹54,202/- respectively were credited into the account of the appellant. The original account opening form, three original pay-in-slips and attested copy of the

statement of account No.5715 were seized from Ramesh Chander, Deputy Manager Punjab National Bank, R.K. Puram vide Ex.PW-54/T, however before Ramesh Chander could be examined, he passed away. Since Shri Ramesh Chander had passed away, the investigating officer PW-54 exhibited not only the seizure memo vide Ex.PW-54/T but the account opening form in the name of the appellant bearing account No. 5715 but also certified copy of the statement of account, pay-in-slips and cheques from the Punjab National Bank, Sewa Bhawan, R.K. Puram, New Delhi which were proved as D-291 to D-295 and D-285 to D-286 respectively and collectively exhibited as Ex.PW-54/Z/42. Copy of the statement of bank account No.5715 is a certified copy in terms of Section 2A of the Act depicting credit entries for a sum of ₹ 28,819/-, ₹23,819/-, ₹1,10,456/- and ₹54,202/- into the account of the appellant.

16.5. Having led the evidence as noted above prosecution also relies upon the non-explanation of the appellant to the incriminating circumstance put to him under Section 313 Cr.P.C. Question No.1,3,4,5,9 & 11 asked from the appellant and his answers thereto are as under:

"*Q.1. It is in evidence against you that during the relevant time you were posted as Draftsman, Grade-I in CWC. What have you to say?*

Ans. It is correct.

Q.2. It is in evidence against you that you were having bank account No. 5715 with PNB, R.K. Puram, New Delhi during the relevant time. What do you have to say?

Ans. It is correct.

Q.3. It is in evidence against you that in pursuance of criminal conspiracy co-accused J.P. Sharma deposited 03 cheques in your account procured on false document bearing cheque No.228394 dt. 01.03.1998 for ₹28,819/-; cheque No.230010 dt. 29.05.1998 for ₹2,38,190/-; cheque No. 232492 dt. 07.08.1998 for ₹1,10,568/- which amount was misappropriated by you. What do you have to say?

Ans. It is correct that accused J.P. Sharma had deposited three cheques in my account but the same were procured by him, they were deposited by him under his handwriting. However, I never entered into any kind of conspiracy with any person in my office.

Q.4. It is in evidence against you that you had made payment of ₹2,880/-; ₹20,000/-; ₹36,700/- and ₹5,000/- to co-accused J.P. Sharma to split the ill gotten amount. What do you have to say?

Ans. It is correct that these payments were made to accused J.P. Sharma through cheque as well as cash by me. I was not beneficiary of these proceeds.

Q.5. It is in evidence against you that payment of ₹36,700/- and ₹500/- had been done through account No.36903 of co-accused J.P. Sharma. What have you to say?

Ans. It is correct that I had issued a cheque pertaining to the above amount in the name of accused J.P. Sharma who in fact had deposited the said amount in my account and later on directed me to return the same which I did through the above mode.

Q.8. It is in evidence against you that during the investigation register of demand draft had been seized by the IO for the period 30.3.1999 to 27.2.2001 vide memo Ex.PW-54/G-3 showing disbursement of cheque No.228394 dt. 01.03.1998 for ₹28,819/-; cheque No. 230010 dt. 29.05.1998 for ₹2,38,190/-; cheque No.231363 dated 22.07.1998 for ₹5000/-, cheque No. 232492 dt. 07.08.1998 for ₹1,10,568/-, cheque No.233892 dated 20.10.1998 for ₹52,000/- and cheque No.235939 dt. 01.01.1999 for ₹53,000/- to you. What have you to say?

Ans. I do not know.

Q.11. Why the case is made against you?

Ans. This is a false case. The fact of the matter is that I was working just as a Draftsmen in CWC where accused J.P. Sharma was my boss who during that time had threatened me to spoil my confidential report and to effect me in my service career and under that threat I was being blackmailed to return the money which was deposited by him under his handwriting in my account despite my several requests and insistence. He continued to deposit the false and fabricated cheques in my account the amount of which later on under his direction was withdrawn by me and handed over to him. I am not beneficiary out of the proceeds of the cheques whatsoever had been deposited in my account. It was only the accused J.P. Sharma who is responsible for it. I am innocent.

16.6. Though from the evidence as led by the prosecution and discussed in Para 16.4 and 16.5 above, the prosecution has been able to prove beyond reasonable doubt that the appellant was a part of the conspiracy, his non-explanation and admissions in the statement under Section 313 Cr.P.C. can be used as an additional circumstance against him to convict him for the offences charged with. The prosecution having proved that on different dates spanning for a long period of time (from 2nd April, 1998 to 27th February, 1999) appellant received a total sum of more than ₹2 lakhs of which only a part was paid to J.P. Sharma the plea of the appellant that the entire action was that of J.P. Sharma and he was not a part of conspiracy and also that he was not a beneficiary to the transaction deserves to be rejected. Thus the conviction of the appellant for offences punishable under Sections 403 IPC and 120 r/w 403/409 IPC is upheld.

17. **Crl. A. No. 151/2016 Om Prakash s/o Amir Singh v. CBI (A-12) :**

17.1. Learned Counsel for the appellant contends that the prosecution case against the appellant is based upon the testimony of 3 witnesses namely, Suraj Lal (PW-13), T.K. Sarkar (PW-23) and R.S. Bedi (PW-54). Suraj Lal who is the Assistant Cashier cum Clerk in State Bank of India, R.K. Puram Branch deposed that all the money deposited in the account of the appellant was transferred to his account from Government account. He does not depose about the five cheques which were alleged to have been deposited in the account. Furthermore, as per the prosecution case, the period of conspiracy was 1998 to 2000, however no entry of deposit between August, 1998 and March, 2000 has been proved. Suraj Lal in his cross examination deposed, "it is correct that no entry is there as per statement of account Ex. PW-13/B after 06.03.1998". Thus the appellant cannot be convicted for the alleged conspiracy.

17.2. T.K. Sarkar who was Deputy Manager in State Bank of India, Main Branch, Rohtak also does not depose about any entry in the Rohtak Branch of the Bank. R.S. Bedi, Investigating Officer, admitted in his examination-in-chief as well as cross examination that neither the specimen of the handwriting of the appellant was taken nor the opinion of expert was sought. Furthermore, the case of the prosecution was that the alleged five cheques were deposited in the account of the appellant by J.P. Sharma but the question put to the appellant under Section 313 Cr. P.C. was that five cheques were

deposited by the appellant in his bank account and misappropriated. Hence the circumstance cannot be used against the appellant.

17.3. Learned Counsel on behalf of the CBI submits that from the evidence of investigating officer who seized the cheque paid register from M.E. Haque (PW-24) and the Acquittance Roll for the period, the deposition of cheques in the account of appellant has been proved beyond reasonable doubt. Further, Kanahiya Lal Kashyap (PW-1) proved the original account opening form, three original pay-in-slips and attested copy of the statement of account No.30221. Suraj Lal also proved certified copy of the statement of account No.30221 vide Ex.PW-13/1 and has deposed about the disputed entries. Learned Trial Court rightly drew the presumption under Section 106 of the Evidence Act once entries in the bank account of the account holder were proved. Though a deposit of a sum of ₹3,31,938/- by five cheques was made, the withdrawals were only for a sum of ₹72,000/- . Thus the appellant was a beneficiary of the larger conspiracy involving fraudulent transactions.

17.4. Contention of learned counsel for the CBI is that the investigating officer PW-54 exhibited the cheque payment delivery register/ cheque acquittance register vide Ex.PW-54/Z-67 collectively duly seized from M. Haque (PW-24) i.e. D-536, D-610, D-612 and D-613. Though M. Haque does not depose about this seizure however no objection as to the mode of proof was raised when these documents were being exhibited by the investigating officer. PW-26 R.C. Tully though proves the procedure however did not depose about the Acquittance Register which fact is proved by the testimony of the

investigating officer who deposes about the seizure of the Acquittance Roll vide Ex.PW-54/DX. Further PW-26 stated that the Register and Acquittance Roll should have the entries. The investigating officer PW-54 deposed that he seized original cheques from P.K. Rooprai PW-36 vide seizure memo Ex.PW-54/G2. Suraj Lal (PW-13) the star witness of the prosecution who was working as a Assistant Cashier-cum-Clerk in State Bank of India, R.K. Puram Branch exhibited the certified copy of the statement of bank account No.30221 in the name of the appellant vide Ex.PW-13/A. All the entries of the account deposed to by him in connection with account No.30221 related to the period 27th September, 1996 to 23rd September, 2008. Suraj Lal (PW-13) also exhibited the certified copy of the account opening form of the account of the appellant vide Ex.PW-13/B. PW-29 B.S. Yadav also explained the procedure in the Pay and Accounts office of the CWC. Further the prosecution has exhibited the deposit slips in relation to the five cheques D-683 to D-687 for a sum of ₹45,574/-, ₹1,04,258/-, ₹64,560/-, ₹45,574/- and ₹71,972/- vide Ex.PW-51/131 to Ex.PW-51/135 respectively. Prosecution has also exhibited the two cheques bearing No.231611 dated 31st July, 1998 and 239724 dated 24th May, 1999 vide Ex.PW-51/31 and Ex.PW-51/33 respectively. No objection to the mode of proof of the documents was being taken when PW-51 exhibited the documents. The fact that 5 Government cheques for a sum of ₹45,574/-, ₹1,04,258/-, ₹64,560/-, ₹45,574/-, ₹71,972/- also stand proved by the statement of account of the appellant proved vide Ex.PW-13/A which is certified copy in terms of Section 2A of the

Act in respect of account No.30221, State Bank of India, R.K. Puram. Prosecution has also exhibited the cheque Ex.PW-51/136 whereby a sum of ₹72,000/- stands withdrawn as per the statement of account Ex.PW-13/A on 17th January, 2000. Though the prosecution has also proved the account opening form and statement of account in respect of the account No.138705 of the appellant vide Ex.PW-23/B and PW-23/C, however the five cheques have not been deposited in the said account.

17.5. The two questions put to the appellant i.e. question No.8 & 9 relating to the two cheques and their answers in the 313 Cr.P.C. statement are as under:

> *"Q8.It is in evidence against you that you had procured 05 cheques fraudulently procured by co-accused J.P. Sharma from P&AO, CWC during the period 03.08.1998 to 17.01.2000 and got the same deposited in your bank account. What do you have to say?*
>
> *Ans. It is incorrect. I had not procured any cheques and deposited the same in my bank account.*
>
> *Q.9. It is in evidence against you that cheque No.231611 dt. 03.08.1998 for ₹45,574/-; cheque No. 237602 dt. 15.03.1999 for ₹1,04,258/-; cheque No.239724 dt. 28.05.1999 for ₹64,560/-; cheque No.276268 dt. 09.12.1999 for ₹45,574/- and cheque No.277256 dt. 17.01.2000 for ₹71,972/- had been deposited by you in your bank account and misappropriated. What do you have to say?*
>
> *Ans. It is incorrect. I had not deposited the aforesaid cheques in my account"*

17.6. Contention of learned counsel for the appellant is that though the five cheques were deposited in his account by J.P. Sharma, however the question put to the appellant under Section 313 Cr.P.C. was that five

cheques were deposited by the appellant in his bank account and misappropriated. As noted above this circumstance has been put to the appellant in two questions. In question No.8 the learned Judge put to the appellant that he had procured five cheques fraudulently by co-accused J.P. Sharma from P&AO, CWC during the period 3rd August, 1998 to 17th January, 2000 and got the same deposited in the bank account of the appellant. It is thus clear that deposit into the account of the appellant is attributed to J.P. Sharma. Though in question No.9 it is wrongly put to the appellant that he had deposited the said five cheques in bank account, however question No.9 gets clarified from question No.8 where it has been specifically mentioned that J.P. Sharma get the same deposited in the account of the appellant. Appellant has duly answered the two questions and no prejudice has been demonstrated on this count.

17.7. In view of the discussion aforesaid the prosecution has proved beyond reasonable doubt that a sum of ₹3,31,938/- by five cheques was deposited in account No. 30221, State Bank of India, R.K. Puram of the appellant which was beyond the entitlement of the appellant and the appellant has failed to render any explanation thereof. Therefore, the prosecution has proved beyond reasonable doubt that the appellant committed offences punishable under Section 403 and 120 IPC read with Section 403/409 IPC.

18. **Crl.A. 240/2016 - Yesudanam v. CBI (A-14) :**

18.1. Learned counsel for the appellant submits that the only allegation of the prosecution against him is that without any related bill being

available with CWC and there being no signature on the acquittance roll, a cheque for an amount of ₹1,22,000/- was deposited in the account of the appellant maintained with State Bank of India, R.K. Puram by J.P. Sharma. On the very next day a sum of ₹91,000/- was withdrawn by a self-cheque. It is contended by learned counsel for the appellant that neither the appellant deposited the cheque nor there is any evidence that the appellant had any knowledge of deposit of cheque issued in his name by S.K. Aggarwal. The explanation render by the appellant in his statement under Section 313 Cr.P.C. was probable and since J.P. Sharma was his immediate boss he was supposed to act on his instruction.

18.2. Learned counsel for the CBI submits that the pay bill register of the Assistant Director was produced by R.C. Tully (PW-26), DDO CWC which was seized vide production-cum-seizure memo Ex.PW-54/D1. A cheque issued by S.K. Aggarwal (A-17) in favour of appellant was also exhibited vide Ex.PW-51/55. The said cheque was produced by P.K. Roop Rai, (PW-36) Senior Accounts Officer, CWC through production-cum-seizure memo Ex.PW-54/F1. Statement of account was seized from PW-1 and proved by PW-54 vide Ex.PW-54/Z-46 showing a credit entry in the account of the appellant. Appellant in his statement under Section 313 Cr.P.C. admitted that the cheque in question was deposited in his account and he had paid a specified amount to J.P. Sharma after the deposit. His defence is that he acted under the pressure of his senior J.P. Sharma thereby admitting his guilt.

18.3. Certified copy of the statement of account of the appellant for savings account No. 46147 has been proved by the investigating officer PW-54 vide Ex.PW-54/Z-46. The said statement of account is admissible in terms of Section 2A of the Act. As the document is admissible in evidence, the mode of exhibition of the same being done by the investigating officer (PW-54) ought to have been objected at the time of proving the document. The said objection having not been taken during trial, the appellant cannot now object to the mode of proof of the document. Perusal of Ex.PW-54/F1 shows a credit entry for a sum of ₹1,22,000/- by CWC cheque No.237424. Further by the opinion of the handwriting expert it has been proved that the cheque in question was in the handwriting of S.K. Aggarwal (A-17). Even though the pay bill register has not been proved by R.C. Tully (PW-26) and what is proved is the seizure memo of the pay bill register, from the certified copy of statement of account of the appellant an entry by way of a Government cheque for a sum of ₹1,22,000/- in his account having been proved, onus shifted on the appellant under Section 106 of the Evidence Act to state the facts specially within his knowledge. The prosecution having discharged its initial burden, the explanation of the appellant in his statement under Section 313 Cr.P.C. can be taken into consideration.

18.4. The answers of the appellant to questions No.3, 4 & 5 in his statement under Section 313 Cr.P.C. statement are as under:

"Q.3 It is in evidence against you Pay & Accounts Office, CWC cheque No.237424 for a sum of ₹1,22,000/- had been deposited in your account by co-accused Y.P. Sharma in pursuance of criminal conspiracy to procure bogus cheques

without any bills or claims and get the amount misappropriated. What do you have to say?

Ans. It is correct. Accused J.P. Sharma, my immediate boss and not accused Y.P. Sharma, my confidential report writing officer called me to his chamber at about 6.00 PM on 08.03.1999 and gave me a counterfoil of pay-in-slip saying that a cheque had been deposited in my account and called upon me to return the amount.

Q.4 It is in evidence against you that soon after the deposit of said cheque on 09.03.1999 you withdrew an amount of `91,000/- from the said account and embezzled the same in criminal conspiracy with co-accused persons. What do you have to say?

Ans. It is incorrect. After handing over counterfoil of the pay-in-slip to me, accused J.P. Sharma insisted me to return the money by self-cheque. Thereafter, accused J.P. Sharma accompanied me in his red Maruti car to my quarter to take the cheque from me where I gave him a self cheque of ₹91,000/- which was filled by me on his directions where I put one signatures on the front side of the cheque and he asked me to sign thrice on the reverse on the backside of the cheque which I did on his directions and handed over the cheque to him. The remaining amount was also returned subsequently to him on his directions.

Q.5. It is in evidence against you that no entry had been made in regard to above said cheque of ₹1,22,000/- in the bill register and/ or cheque acquittance register maintained in the ordinary course of business. What do you have to say?

Ans. Since the cheque was not prepared under my knowledge therefore, I did not know anything about the entry in the said register or any other document concerning the cheque. Therefore, there was no signatures done by me in the register against the entry of the cheque."

18.5. Prosecution has proved that a Government cheque Ex.PW-51/55 issued by S.K. Aggarwal (A-17) in favour of the appellant for a sum of ₹1,22,000/- was deposited on 8th March, 1999 in his bank account as is evident from the statement of bank account proved vide Ex.PW-54/Z-46. On the very next date, appellant withdrew an amount of ₹91,000/- by a self-cheque. As per the statement of account of the appellant, the two entries of credit and debit are the only entries for major amounts, rest all entries are of smaller amounts in commensurate to appellant's pay and allowances. There is no explanation whatsoever of the remaining amount i.e. ₹31,000/-. The explanation of the appellant that it was at the insistence of J.P. Sharma who was his senior, cannot absolve him of the offence committed. Thus, prosecution has proved beyond reasonable doubt the charge against the appellant and his conviction for offences punishable under Sections 403 and 120B read with 403/409 IPC.

19. **Crl.A. 347/2016 - Hayat Singh v. CBI (A-15) :**

19.1. Learned counsel for the appellant contends that as regards the submission, preparation or sanctioning of the LTC bill or the TTA bill for a sum of ₹15,000/- and ₹65,000/- the appellant is not at all involved as in none of the documents, his handwriting has been proved. The appellant cannot be convicted for the illegal activities and preparation of fraudulent cheques by his seniors. Further even as per the evidence collected by the prosecution, appellant had no knowledge of the deposit of the cheques and he acted on the dictates of his seniors who asked him to withdraw and return the money. The

appellant cannot be held to be a part of the larger conspiracy. In fact the appellant is a victim of the circumstance being subordinate in rank, working as a Peon in the CWC.

19.2. Learned counsel for the CBI submits that LTC bill for a sum of ₹15,000/- was prepared in the name of Hayat Singh under the signatures of C.Manjhi. One more TTA Bill for a sum of ₹65,000/- was prepared in the name of H. Singh, Deputy Director, CWC again by C. Manjhi which was in the handwriting of J.K. Singhal. Further noting on the said bill was of N.R. Suman whose handwriting stands proved by the opinion of the handwriting expert. Statement of account of the appellant has been proved by cogent evidence which shows credit entries for a sum of ₹15,000/- on 20th May, 1999, ₹65,000/- on 2nd December, 1999 and ₹74,500/- on 23rd October, 1999 where after withdrawals by cheque and in cash are duly reflected in the statement of account of the appellant. Thus, merely because it has not been proved that the appellant signed the bill or processed the same it cannot be said that he was not a part of the conspiracy and thus liable to be acquitted or that he acted on the dictates of his superiors.

19.3. Allegation against the appellant who was working as a peon in CWC, New Delhi is that three cheques issued by the Pay & Accounts Office amounting to a sum of ₹1,54,500/- were deposited in his account during May 1999 to December 1999. Though the prosecution proved only one cheque deposited vide Ex.PW-51/47 for a sum of ₹15,000/- by S.K. Aggarwal (A-17) in the name of Hayat Singh in his bank account maintained at State Bank of India, R.K. Puram, a perusal of

the copy of the statement of bank account of the appellant Ex.PW-46/D duly certified as per Section 2A of the Act reveals three deposits which were for major amount and withdrawals. Besides the three major deposits i.e. of ₹15,000/-, ₹74,500/- and ₹65,000/- on 20th May, 1999, 23rd October, 1999 and 2nd December, 1999 respectively amounts credited into the account of the appellant are of minimal except one entry for a sum of ₹9,000/-. Prosecution has thus proved deposit of ₹1,54,500/- and a withdrawal of ₹1,10,000/- beyond the income of the appellant which the appellant was required to explain being facts specially within his knowledge. The prosecution has also proved that one cheque Ex.PW-51/47 amounting to ₹15,000/- was issued by S.K. Aggarwal (A-17) Pay & Accounts Officer whose signatures have been proved by the opinion of PW-51 in the name of the appellant.

19.4. Explanation of the appellant in his statement under Section 313 Cr.P.C. is that J.K. Singhal used to bring cheques to him and never gave satisfactory reply as to how the cheques were prepared in the name of the appellant whereas he never demanded cheques from the office or they were due against any official dues. Every cheque that had been deposited in his account was without his knowledge and the proceeds of the cheque were given back to accused J.K. Singhal. He never used any money out of the cheques so deposited. He was just a peon and was acting on the directions of accused J.K. Singhal and other co-accused who were his senior officers. At times he refused to withdraw the money and file a complaint to higher officers to which he was always threatened that he would loose his job in case anybody

was informed about their misdeeds and he continued to obey their directions with respect to the cheques in question.

19.5. Explanation of the appellant that he never demanded cheques from the office or that they were deposited without his knowledge and the proceeds of the cheque were given back to J.K. Singhal deserves to be rejected. Out of the three cheques of the misappropriated amount i.e. ₹15,000/- on 20th May, 1999, ₹74,500/- on 23rd October, 1999 and ₹65,000/- on 2nd December, 1999 major withdrawal for a sum of ₹60,000/- is on 25th October, 1999 i.e. immediately after the deposit of a sum of ₹74,500/-. Thus even if the said amount of ₹60,000/- has been returned to J.K. Singhal, besides this self-cheque there is withdrawal by 7 other self-cheques. Considering that the prosecution has been able to prove deposit of a sum of ₹1,54,500/- in the account of the appellant which was withdrawn by 8 self-cheques proved to be in the handwriting of appellant by the opinion of the handwriting expert coupled with the explanation of appellant, conviction of the appellant for offences punishable under Sections 403 IPC and 120B read with 403/409 IPC is upheld.

20. **Crl.A. 847/2016 – Natha Ram Suman v. CBI (A-16) :**

20.1. Learned counsel for the appellant contends that it is the case of the prosecution itself as per the evidence of M.E. Haque (PW-24) that there was no specific allegation against the appellant in the complaint lodged. Further even the investigating officer in his cross-examination admitted that appellant had not got deposited any misappropriated amount in his bank account. Despite there being no

evidence on record, the appellant has been convicted for offences punishable under Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, also under Section 120B IPC read with Section 403/409 IPC and awarded rigorous imprisonment for a period of 1 year on both the counts.

20.2. Learned counsel for the CBI contends that the case of the prosecution against the appellant is not that he is a beneficiary but that in conspiracy with other accused he fraudulently passed number of bills. The act of the appellant cannot be held to be mere negligence. Though the prosecution alleged that the appellant surreptitiously passed number of bills, however learned counsel for the CBI restricted the role of the appellant in passing 6 bills. The defence of the appellant that once bills which were duly sanctioned were presented to him, he was not required to see anything more but clear the same cannot be accepted. Learned counsel for the CBI submits that after sanction two kinds of bills i.e. LTC/ TCA and the medical bills used to come to the appellant. Even accepting that he had no mechanism to find out that the sanction was forged and fabricated, however in some cases appellant cleared the bills without their being any sanction, or sanction being for a different ailment which shows that he was a part of the conspiracy.

20.3. To prove the case against the appellant, prosecution examined R.C. Tully (PW-26) who deposed about the procedure regarding reimbursement of the medical claims or other bills as also noted in Crl.A.241/2016. The first bill allegedly passed by the appellant is one LTC bill (D-490) Ex.P-5 for a sum of ₹15,000/- in the name of

Hayat Singh (D/M Grade II) written in the handwriting of J.K. Singhal (A-4), cleared by the appellant who was the then Senior Accounts Officer, CWC and passed by S.K. Aggarwal without any sanction order. The handwriting of the appellant on the bill has been duly proved by the testimony of the handwriting expert (PW-51) and the bill has been exhibited by A.S. Gautam, (PW-25) Senior Accounts Officer in P&AO, CWC as Ex.P-5. A.S. Gautam deposed that D-490 and D-491, one being LTC bill dated 17th May, 1999 for a sum of ₹15,000/- in favour of Hayat Singh and another being TTA bill dated 1st December, 1999 for ₹65,000/- in favour of H. Singh along with sanction order (D-491) (Ex.P-7) dated 29th November, 1999 in favour of H. Singh and his family members were cleared. It is thus apparent that the LTC bill for a sum of ₹15,000/- was cleared by the appellant without sanction order and the TTA bill for ₹65,000/- with sanction order in favour of one H.S. Singh, Deputy Director, when no such person existed or was posted as such. Further the TCA bills No.288 and 964 dated 7th June, 1999 and 16th September, 1999 for a sum of ₹72,000/- (D-487) (Ex.P-1) and ₹54,000/- (D-488) (Ex.P-B1) in the name of Shiv Sagar CE, Shiv Sagar Director and Shiv Sagar Assistant Director; were cleared without sanction order. A.S. Gautam (PW-25) also deposed that LTC bill dated 21st May, 1999 for a sum of ₹45,000/- i.e. (D-486) (Ex.P-10) was accompanied by a sanction order (Ex.P-11) (Pg 8127) dated 20th May, 1999. He exhibited the document as Ex.P-10 (D-486) and P-11 (Sanction order). Further TCA No. 288 (D-487) and 964 (D-488) bills for a sum of ₹72,000/- and ₹54,000/- are

accompanied by sanction orders Ex.P-2 and Ex.P-4 respectively. It is thus evident that in the same names different LTC and TCA bills were cleared despite an employee being entitled to one LTC in a period of two years or four years as per entitlement.

20.4. Sanction in respect of three TCA bills 288, 964 & 629 has been proved as Ex.P-2, P-4 and P-11 respectively. In respect of the medical claim of B.M. Ghosh for a sum of ₹1,20,000/- qua treatment of his wife Smt. Subra Ghosh, sanction order Ex.PW-26/K shows that the treatment was for neurological problems from AIIMS, however the Doctor's certificate issued was in respect of total ankle joint replacement. Thus, even if the sanction order was there, failure of the appellant to examine the necessary documents before passing the bill cannot be termed as mere negligence. No doubt, he had no mechanism to find out whether the document was forged but where a discrepancy is so writ large that the approval is for neurological problem whereas the treatment paper shows total ankle joint replacement, it is apparent that the sanction order was false and forged on the face of it and the appellant passing such a bill cannot be held to be merely negligent. In respect of the 6th bill relating to Jeet Ram Sharma, Junior Computer Operator, CWC original bill was produced as (D-561) vide Ex.PW-35/A. Evidence of Chetan Mukund Pandit (PW-35) an employee of CWC is relevant who stated that the photocopy of the document annexed with the claim of Smt. Bhagwati Sharma were the same on the basis of which he had claimed his medical reimbursement. R.C. Tully (PW-26) proved the medical bill No.M-1393/I in the name of J.R. Sharma running into

four pages back to back vide D-562 neither indicating the designation of the person nor the sanction order. Handwriting of the appellant as the person who passed the bill has been proved by the opinion of the handwriting expert (PW-51). Thus the contention of the appellant that he had no mechanism to find out whether the sanction was forged and fabricated is not substantiated as the bill was not supported by any sanction order. Further as noted in the appeal of Jeet Ram Sharma forgery and fabrication of the medical claim has been proved beyond reasonable doubt by the prosecution.

20.5. No doubt in a case where there is no mechanisim with the appellant to find out forgery, the appellant clearing the bills unknowingly cannot be held guilty of the offence with the aid of conspiracy but in a case where the documents on the face of it show that the claims have been changed and documents of one person utilized for another it cannot be said to be case of mere negligence but shows that the appellant was a part of the conspiracy. In view of the discussion aforesaid the appellant has been rightly convicted for offences punishable under Section 13(1)(d) read with 13(2) and 120B read with Section 403/409 IPC.

21. **Crl.A. 150/2016 - S.K. Agarwal v. CBI (A-17) :**

21.1. Learned counsel for the appellant contends that as per the procedure of preparation of cheques which is admitted case of the prosecution the appellant who was working as Pay and Accounts Officer (P&AO) of the CWC, was not concerned with the verification, checking and scrutiny of documents which was all done by the DDO/CWC who

passed the bills and forwarded the same under his signatures to the P&AO i.e. the appellant. Thereafter the appellant used to issue a token number against each bill to DDO. The P&AO section used to thereafter send the bill to pre-check section for passing the bill. The accountant after verifying the arithmetical calculation on the bill as correct used to submit the bill to the pre-check P&AO in Expenditure Control Register along with pay order and thereafter sent the bill to the pre-check section. After the pre-check section, the bill was sent to the concerned cheque section of P&AO office for preparation of cheque. The cheque writer used to prepare the cheque and send it to the appellant for his signatures. After the appellant used to sign the cheques and tick the cheque number to see that the amount on cheque appears to be same and consistent with the amount passed for payment and defacing the pay order given earlier, the cheque and bill used to return to the cheque section for giving the concerned cheques to the DDO. The cheque section thereafter issued a voucher number on each bill wherafter the bill was sent to the accounts section for preparation of monthly account and at the end of month the total of the bills i.e. the vouchers and the amount of cheques was tallied. Thus, the allegations of the prosecution that the cheques were issued without the bills are totally wrong and without any basis. Without a bill, a cheque could never be issued even as per statement of N.R. Meena, (PW-30) the Assistant Accounts Officer. N.R. Meena admitted that the procedure as noted above was the correct procedure and followed. Thus, the only role assigned to the appellant as P&AO was to verify the amount on the bills and the cheques and thereafter

sign the cheques. No investigation whatsoever has been carried out from the officials of the pre-check section and hence the prosecution is without any basis. There is no evidence led by the prosecution that the appellant was beneficiary of any of the transactions or that even one claim was cleared in the name of the appellant. The Investigating Officer R.S. Bedi (PW-54) in his cross-examination admitted that he did not produce the three important documents i.e. pseudonymous register, audit report of CAG and the report of the vigilance department of the CWC. The cheque writer N.R. Meena who is the main accused has not been arrayed as an accused and the appellant has been falsely implicated. It is not the case of the prosecution that in any of the 27 challans, handwriting was of the appellant. The Investigating Officer admitted that neither the appellant nor N.R. Suman deposited any misappropriated amount in their accounts. Though two cheque writers i.e. N.R. Meena PW-30 and Rattan Lal PW-16 were examined as witnesses however third cheque writer was not examined as witness.

21.2. The two sets of oral allegations against the appellant beyond the documents are that on the instructions of the appellant, 5-6 cheques were prepared and after cheques were signed by the appellant, they were left with him for delivery. It is contended that these oral allegations are contrary to the record.

21.3. The allegations based on the documents against the appellant are that the cheques were received by the appellant for cancellation but were not reissued in those very names but in the name of DDO and that some drafts which were sent to the DDO were disbursed to non-

employees and that the appellant signed cheques even in favour of non-employees. Learned counsel for the appellant states that it was on the request of the DDO that he used to prepare cheques in his name and not in the name of persons whose cheques were cancelled and since no requisition slips have been proved on record which would have shown the bona fide working of the appellant, the appellant cannot be convicted on this count.

21.4. As regard the second allegation based on documents, learned counsel contends that since there were 5000 employees working in the organization, it was difficult to know the name of each employee and since the cheques were being received through authorized channel after due verification, the appellant used to sign the same. Further the documents which would have proved the innocence of the appellant i.e. requisition slips and sanction letters etc. have also not been proved by the prosecution and it is contended that in the absence of any documentary or oral evidence, the conviction of the appellant be set aside. As regards the allegation in respect of issuance of cheque for a sum of ₹15000/- which was encashed from the account of Hayat Singh, it is contended that the DDO is the person responsible for the dispersal of the amount and beneficiary has to approach the DDO first and not the appellant. There is no evidence on record to show that there was a meeting of mind between the appellant and co-convicts and hence the appellant is liable to be acquitted.

21.5. Learned counsel for the CBI contends that appellant worked as Senior Accounts Officer in the capacity of P&AO of CWC from June 1995

to February 2000. While working as P&AO in CWC his duties included re-checking of the pre-checked bills of CWC and other DDOs and issuing of cheques towards payment of such bills, after observing necessary formalities. N.R. Suman (A-16) Senior Accounts Officer was responsible for passing bills presented by DDO of CWC. Investigation reveals that majority of paid cheques and paid vouchers were missing. Y.P. Sharma posted in the accounts department used to collect cheques issued in the name of existing, non-existing staff and private persons. Cheque No. 277701 for a sum of ₹1,39,097/-was split and credited into account of J.P. Sharma, S.S. Naik and Bhagwan Singh. Original cheque and bill/ vouchers were not available. Further between 21st May, 1999 to 1st March, 2000 nine fresh cheques for a total sum of ₹3,44,947/- were issued in favour of DDO-I, CWC in lieu of 21 account payee cheques issued in the name of various officers of CWC and after encashing the cheques J.K. Singhal disbursed the amount to those officers whose name did not figure in the aforesaid 21 account payee cheques. Fresh cheques were issued on the basis of ordinary slip prepared and initialled by Y.P. Sharma, counter-signed by C. Manjhi and these slips do not bear any dispatch or diary number. The allegations against the appellant are that he prepared several cheques without proper authorization/ sanction or assisted in preparation of cheques in the name of fake individuals without proper bill, entries or prepared fresh cheques against old/ outdated cheques without following proper procedure deliberately.

21.6. Learned counsel for the CBI further contends that the defence of the appellant that he was merely a signatory of the cheques and papers were cleared by the "pre-check clearance" department which was manned by different persons is belied by the evidence led by the prosecution and the procedure prescribed in the Civil Accounts Manual (CAN) which traces its origin to Article 151 of the Constitution of India and is issued by the Controller General of Accounts.

21.7. Before dealing with the testimony of B.S. Yadav (PW-29) and N.R. Meena (PW-30) which proves the conspiracy/ involvement of the appellant in the conspiracy it would be relevant to discuss the testimony of A.S. Gautam (PW-25) who have deposed about the Civil Accounts Manual and the procedure prescribed to be followed. A.S. Gautam (PW-25) deposed that he was working as a Senior Accounts Officer in P&AO of CWC with effect from April 2001 to August 2001. He described the procedure for issuance of cheque in respect of the bill stating that the bills are submitted at the counter of P&AO by the DDO against which a token was issued to the DOO. The bill is then diaried at the counter of the P&AO and thereafter it is sent to the Payment Section. The bill is then scrutinized by the concerned accountant so as to see if it is in order i.e. whether it is made according to the Civil Accounts Manual. If the bill is found in order, it is submitted to the Assistant Accounts Officer who is the Section Incharge for payment. If it is not in order then it is returned back to the DDO. Thereafter, the Assistant Accounts Officer is supposed to examine the bill in terms of Civil Accounts Manual,

Receipt and Payments and GFR and on finding it in order, he signs on the pay order and the same is sent to the Senior Accounts Officer for approval/ signature. The bill with the pay order is sent back to the Assistant Accounts Officer and then it is routed to the Accounts Officer for preparation of cheque which is sent to the cheque Section. The cheque is prepared by the Cheque Clerk which is then put up before the Sr. Accounts Officer (not the one who earlier signed the pay order but the second one) for signatures. The cheque is then sent to the counter by the Cheque Clerk which is issued to the DDO concerned after retrieving the token issued.

21.8. Further Surender Kumar (PW-15) who had joined as an Accountant in the year 1995 in the CWC deposed that his duties were to prepare demand draft and to look after stationery. He identified the appellant as his Pay & Accounts Officer. He stated that the entry of the demand draft used to be made in the demand and drafts register which he exhibited as Ex.PW-15/A. He deposed that the entry at serial number 341 was in his handwriting and the DD was in the name of Kamal Sharma, in respect of cheque No. 241009 dated 14th July, 1999 and that the cheque was received by the appellant vide entry encircled in red at point 'A'. He deposed that against this cheque demand draft was prepared. He also identified the entry at serial No.562 in the name of Kamal Sharma for cheque No. 274744 dated 29th September, 1999 against which demand draft was prepared for ₹67,445/- vide demand draft No. 848413 dated 1st October, 1999. He identified the entry of the demand draft to be in the handwriting of S.K. Aggarwal and that the demand draft was collected by Y.P.

Sharma. This witness has not been cross-examined on behalf of S.K. Aggarwal and thus his testimony has gone unchallenged.

21.9. The evidence of PW-29 and PW-30 besides explaining the procedure also shows the complicity of the appellant in the larger conspiracy and his role. It would be thus relevant to note the depositions of PW-29 and PW-30 as well. B.S. Yadav (PW-29) deposed as under:

> *"I remained posted and functioning as Pay & Accounts Officer in Central Water Commission (CWC) in October, 2002 to November, 2005. I am well conversant with the procedure of issuance of cheque in P&AO as well as issuance of fresh cheque after cancellation of the cheque already issued. There are three categories of cheques i.e. (a) issue in favour of private party/ individual; (b) cheque is issued in favour of DDO for disbursement of pay and allowances of the staff and (c) cheque is issued in favour of department/ govt. transactions. The entire transaction of accounts has to be guided by Civil Account Manuals issued by controller General Accounts. Revalidation of time barred cheque according to manual was permissible at the relevant time. After issuance of the cheque, the bank has to return paid cheque along with payment scroll to the P&AO of CWC for reconciliation purposes.*
>
> *There are two types of DDOs i.e. first, local DDOs are required to submit the bill to P&AO. Bills received from local DDOs in P&AO are allotted token numbers in the cheque section and after that they are sent to the concerned payment section for pass and payment. The number of bills received in the payment section are again diarised in that section by the dealing clerk and handed over to the concerned Accountants. Outstation DDOs are empowered to issue cheques and cheques are issued to them by P&AO.*
>
> *In LOP (List of payment) a detailed entry regarding the amount already paid has to be mentioned along with voucher number as well as cheque number. After that the said LOP has to be sent to compilation section of the P&AO for compilation*

of monthly accounts for its submission to Principal Accounts Office of concerned Ministry i.e. CWC.

I have seen document No.D-532 already marked Ex.PW-23/A (a file bearing No. WR/P&AO/CWC/Administration bearing caption cancellation of cheques 1999/2000. This file used to maintain for cancellation of cheques.

I have seen cheque Nos. 238515 dated 31.03.1999 for ₹1189/-, 238682 dated 19.04.1999 for ₹3291, 239111 dated 22.04.1999 for ₹15660/-, 239996 dated 26.05.1991 for ₹15660/-, 240565 dated 23.06.1999 for ₹8821, 24050 dated 23.06.1999 for ₹20,772/-, 240626 dated 24.06.1999 for ₹12630/-, 240628 dated 24.06.1999 for ₹8456/-, 240775 dated 30.06.1999 for ₹450/-, 240772 dated 30.06.1999 for ₹450/-. These cheques are Ex.P1 to P10. The cancellation of signatures on the cheques denotes that the cheques were sent to P&AO, CWC for cancellation. The concerned cheques were received vide Ex.23/C-1 for its cancellation in total amount of ₹87,379/- and in lieu of those very cheques, a fresh one cheque of the said amount was required to be issued.

For issuance of demand draft, a requisition is received from the concerned DDO. After passing the bill, the cheque is drawn in favour of the bank i.e. State Bank of India, R.K. Puram Branch. A requisition is sent to the bank for issuance of demand draft after making necessary entries in the Demand Draft Register.

Vide noting N/7 dated 14.09.1999, cheques bearing Nos. 241546 dated 28.07.1999 for ₹15533, 231949 dated 12.08.1998 for ₹157/-, 238023 dated 26.03.1999 for ₹14563/-, 235679 dated 21.12.1998 for ₹8077, 238526 dated 31.03.1999 for ₹2600/-, 237347 dated 26.02.1999 for ₹600/- and 236999 dated 19.02.1999 for ₹672/- were ordered to be cancelled and in lieu of that necessary entries have been made in the record and a fresh cheque was ordered to be issued in lieu of the aforesaid cancelled cheques. The said note sheet is marked X-1 for identification.

The cheque books used to be received by P&AO, CWC from Principal Accounts Office, Ministry of Water Resources,

Shastri Bhawan, New Delhi and all the cheques bear the caption of Govt. of India. The P&AO has to use the said cheque leaf for payment and the details of amount mentioned I the cheque leaf has to be reflected in the counterfoil of the said booklet of cheque. The concerned cheque writer has to make necessary entry regarding the issuance of cheque in favour of the person concerned.

I have seen the counterfoil of cheque book bearing serial No.241001 to 241100 (D-360) and the same is marked Ex.PW-29/A. As per Ex.PW-29/A, entry mark encircled 'A', a fresh cheque bearing No.241009 for ₹87,379/- was issued in lieu of 10 cancelled cheques in favour of State Bank of India, R.K. Puram Branch and the same is marked as Ex.P-11. I have seen Demand Draft Register already marked Ex.PW-15/A, wherein an entry at serial No.341, page No.35 already marked as point-A the said cheque No.241009 for ₹87379/- was issued in the name of Kamal Sharma was made and as per record Shri S.K. Aggarwal has received a demand draft on 16.07.1999 by putting the signatures.

I have also seen 7 cheques bearing Nos. 241546 dated 28.07.1999 for ₹15533, 231949 dated 12.08.1998 for ₹157/-, 238023 dated 26.03.1999 for ₹14563, 235679 dated 21.12.1998 for ₹8077, 238526 dated 31.03.1999 for ₹2600/-, 237347 dated 26.02.1999 for ₹600/- and 236999 dated 19.02.1999 for ₹672/-. The same are Ex.P-12 to Ex.P-18. In lieu of the aforesaid 7 cheques, a fresh cheque already marked as Ex.PW-26/O was issued in favour of DDO-I, CWC on 14.09.1999 for ₹42,202/- (D-382).

Ex.PW-26/L (D-381) does not bear any dispatch number/ diary number from the concerned DDO.

Vide Note No.21/N dated 01.03.2000, cheque bearing No.278285 dated 25.02.2000 for ₹15,609/- which was issued earlier in the name of SC Gupta was received for cancellation with request to issue fresh cheque in favour of DDO-I.

I have seen the xerox copy of cheque bearing No.278285 dated 25.02.2000 for ₹15,609/- at page No.205 of file Ex.PW-23/A. This cheque was earlier issued on 25.02.2000 in favour

of Shri S.C. Gupta and later on it was endorsed in the name of DDO-I, CWC after making cutting on the said cheque. The cheque is marked as X-2 for identification. I have seen N/21. According to this note, on 01.03.2000, cheque bearing No.278285 dated 25.02.2000 was received for cancellation and also for issuance of a fresh cheque for ₹15,609/- in favour of DDO-I, CWC, New Delhi. The said note is marked X-3 for identification.

Vide noting 11/N, the five cheques bearing Nos. 274492 dated 23.09.1999 for ₹11,695/-, 274327 dated 20.09.1999 for ₹1470/-, 241289 dated 23.07.1999 for ₹10324/-, 242251 dated 25.08.1999 for ₹10960/- and 240380 dated 22.06.1999 for ₹323/- had been received for cancellation and a fresh cheque was issued in favour of DDO-I in lieu thereof. The said noting is marked as X-4 for identification. As per page No.155 in file Ex.PW-23/A, only the details of four cheques excluding 240380 dated 22.06.1999 for ₹323/- has been mentioned and in lieu of that four cheque, a fresh cheque bearing no.018424 dated 25.10.1999 for ₹34,449/- was issued in favour of DDO-I, CWC and the same is marked X-5 for identification.

Vide noting 14/1, six cheques bearing Nos. 242881 dated 11.09.1999, 274738 dated 28.08.1999, 275562 dated 04.11.1999, 242709 dated 12.09.1999, 241201 dated 23.07.1999 and 242713 dated 17.09.1999 had been received for cancellation and a fresh cheque was issued in favour of DDO-I in lieu thereof. The said noting is marked as X-6 for identification. As per page No.174 in file Ex.PW-23/A, the details of six cheques has been mentioned and in lieu of that six cheque, a fresh cheque bearing No. 018530 dated 25.11.1999 for ₹50,570/- was issued in favour of DDO-I, CWC and the same is marked as X-7 (D-508) for identification. The said cheque was given to Shri S.K. Aggarwal vide noting mark X-8.

On the back side of noting 7/N, there is a noting Mark X-9, vide which a demand draft No. 846597 dated 18.09.1999 for ₹62,000/- was issued in favour of AV Reddy, received from CWC for cancellation and a fresh cheque was issued in favour of Shri R.L. Kawale in lieu thereof. As per page No.67 of file

Ex.PW-23/A, a request was received by the DDO from the P&AO for issuance of fresh cheque in the name of Shri R.L. Kawale for ₹62,000/-. The said cheque was given to Shri S.K. Aggarwal, Senior Accounts Officer vide noting Mark X-10.

As per Ex.PW-15/A as sl. No.536 i.e. register of DD vide cheque No.242670 dated 17.09.1999 bank draft bearing No.846597 dated 18.09.1999 in favour of A.V. Reddy payable at Nagpur was got issued form the bank and according to this register the said draft was received by Sh. Y.P. Sharma. The same is marked X-11 for identification. I have seen Xerox copy of the said bank draft in file Ex.PW-23/A as page No.66. The same is marked as X-12 for identification.

I have seen counterfoil of D-364, according to that cheque No.274501 for ₹62,000/- was issued in the name of R.L. Kawale in lieu of DD marked X-12. The said cheque book counterfoil is marked Ex.PW-29/B and the said entry in the counterfoil is marked at point A. The said cheque issued to Sh. Kawale as House Building Advance.

As per page No.54 sl. No.562, on 29.09.1999 vide cheque No.274744 DD bearing No.848413 dated 01.10.1999 for ₹67,445/- was issued in favour of Kamal Sharma payable at Ghaziabad and as per receipt column, the same was acknowledged by one Shri Y.P. Sharma and as per column No.8, it also bears the initials of Gazetted Officer i.e. GO on 29.09.1999. The entire entry is marked at point C in Ex.PW-15/A. The signatures of GO is mandatory to authenticate the entry as reflected in Ex.PW-15/A."

21.10. No separate cross-examination of PW-29 was conducted on behalf of the appellant and he adopted the cross-examination by other counsels and in cross-examination this witness reiterated that after a cheque is cancelled it can only be re-validated in the name of the earlier beneficiary and not in the name of a different person and not at all in the name of an outsider or a stranger.

21.11. N.R. Meena, (PW-30) Assistant Accounts Officer deposed as under:

""From 1993 to 2007, I was posted and functioning as Senior Accountant, Pay & Accounts Office, CWC. From 2001 to 2004 I was posted in CSMRS, Hauz Khas, New Delhi. My duties were to put up a note for cancellation of cheques, whenever any request from the DDO concerned. The request for cancellation used to come in writing by way of a letter accompanied with the cheque, which was to be cancelled. On receiving such written request, I used to draw a note and put it up before the Pay & Accounts Officer for his approval and for drawing up a new/ fresh cheque for the same amount.

During the relevant time, accused S.K. Aggarwal, present in Court today was Pay & Accounts Officer, under whom I was working.

I have seen the original documents, which are kept in D-381 in the present case, which contains a requisition slip from Shri C.Manjhi, DDO bearing his signature at point-A and I identify his signatures. The requisition slip is already Ex.PW-26/L. I had put a noting, which is encircled in red Mark-B, whereby 7 cheques were cancelled and a fresh cheque bearing No. 018289 dated 14.09.1999 for ₹42,202/- was prepared by me and the said cheque is already marked as Ex.PW-26/O. Further on the requisition slip, there is also an endorsement made by me that cheque given to S.K. Aggarwal, Senior Accounts Officer, which is encircled in red Mark - C. The cheque Ex.PW-26/O has been signed by Shri S.K. Aggarwal at point –A in favour of DDO-I, CWC, New Delhi. The 7 cheques, which were received for cancellation are also on the judicial file and the same are marked as Ex.PW-29/P-12 to P-18. All the said 7 cheques were also issued under the signatures of Shri S.K. Aggarwal and the details are mentioned in the requisition slip Ex.PW-26/L.

I have seen the original documents, which are kept in D-381 page No.3 in the present case, which contains a requisition slip from Shri C.Manjhi, DDO bearing his signatures at point-A and I identify his signatures. The requisition slip is already Ex.PW-26/M. I had put a noting, which is encircled in red Mark – B, whereby a one cheque Ex.PW-30/A-1 was cancelled and a fresh cheque bearing No.039426 dated 01.03.2000 for

₹15,609/- was prepared by me in favour of DDO-I, CWC, New Delhi and the said cheque is already marked as Ex.PW-30/A-2. I cannot make out, who had signed the cheques Ex.PW-30/A-1 and Ex.PW-30/A-2. I cannot identify who had put the remarks in encircled red portion Mark-X. Again said, this remarks had been written by the concerned P&AO and my remarks in encircled red is mark B.

I have seen the original documents, which are kept in D-381 in the present case, which contains a requisition slip No.4 from Shri C.Manjhi, DDO bearing his signatures at point-A and I identify his signatures. The requisition slip is already Ex.PW-26/N regarding the cancellation of four cheques for ₹34,449/- and the same was put up before concerned P&AO, CWC and on his direction a fresh cheque bearing No.018424 dated 25.10.1999 for ₹34,449/- was issued, in favour of DDO-I, CWC, New Delhi, which is marked as Ex.PW-30/A-3, bearing the signatures of Shri S.K. Aggarwal at point-A. The said cheque was given to Shri S.K. Aggarwal, Senior Accounts Officer vide noting is encircled in red Mark – B. The 4 cheques, which were received for cancellation are also on the judicial file and the same are marked as Ex.PW-30/A-4 to A-7. All the said 4 cheques were also issued under the signatures of Shri S.K. Aggarwal and the details are mentioned in the requisition slip Ex.PW-26/N.

I have seen the original documents, which are kept in D-381 in the present case, which contains a requisition slip No.5 from Shri C.Manjhi, DDO bearing his signatures at Point-A and I identify his signatures. The requisition slip is Ex.PW-30/A-8 regarding the cancellation of one cheque for ₹50,110/- and the same was put up before concerned P&AO, CWC and on his direction a fresh cheque bearing No.018298 dated 16.09.1999 for ₹50,110/- was issued, in favour of DDO-I, CWC, New Delhi which is marked as Ex.PW-30/A-9, bearing the signatures of Shri S.K. Aggarwal at point-A. The said cheque was given to Shri S.K. Aggarwal, Senior Accounts Officer vide my noting is encircled in red Mark – B. The one cheque which were received for cancellation are also on the judicial file and the same are marked as Ex.PW-30/A-10. The fresh cheque also

issued under the signatures of Shri S.K. Aggarwal and the details are mentioned in the requisitioned slip Ex.PW-30/A-8.

I have seen the original documents, which are kept in D-381 in the present case, which contains a requisition slip No.6 from Shri C.Mankhi, DDO bearing his signatures at point-A and I identify his signatures. The requisition slip is Ex.PW-30/A-11 regarding one cancellation of one cheque for ₹50,570/- and the same was put up before concerned P&AO, CWC and on his direction a fresh cheque bearing No.018530 dated 25.11.1999 for ₹50,570/- was issued, in favour of DDO-I, CWC, New Delhi which is marked as Ex.PW-30/A-12, bearing the signatures of Shri S.K. Aggarwal at point-A. The said cheque was given to Shri S.K. Aggarwal, Senior Accounts Officer vide my noting is encircled in red Mark-B. The one cheque which were received for cancellation are also on the judicial file and the same are marked as Ex.PW-30/A-13. The fresh cheque also issued under the signatures of Shri S.K. Aggarwal and the details are mentioned in the requisition slip Ex.PW-30/A-11.

I have seen the original documents, which are kept in D-381 in the present case, which contains a requisition slip No.7 from Shri C.Manjhi, DDO bearing his signature at point-A and I identify his signatures. The requisition slip is already Ex.PW-30/A-14 regarding the cancellation of one cheque for ₹31,131/- and the same was put up before concerned P&AO, CWC and on his direction a fresh cheque bearing No.018394 dated 14.10.1999 for ₹31,131/- was issued, in favour of DDO-I, CWC, New Delhi which is marked as Ex.PW-30/A-15, bearing the signatures of Shri S.K. Aggarwal at point-A. The said cheque was given to Shri S.K. Aggarwal, Senior Accounts Officer vide my noting is encircled in red Mark – B. The one cheque which were received for cancellation are also on the judicial file and the same are marked as Ex.PW-30/A-16. The fresh cheque are issued under the signatures of Shri S.K. Aggarwal and the details are mentioned in the requisition slip Ex.PW-30/A-14.

I have seen the Xerox copy of the requisition slip received from Shri C.Manjhi, DDO, CWC bearing his signatures at point – A, which I identify, regarding the cancellation of bank draft

No.846597 dated 18.09.1999, issued in favour AV Reddy for ₹62,000/- with request to issue a cheque in favour of Shri R.L. Kawale by account payee cheque. The requisition slip is already Ex.PW-30/A-17. In compliance of direction, a cheque was given to Shri S.K. Aggarwal vide my noting encircled red Mark – B. On 14.05.2003 there is an acknowledgement mentioning words "received original" but I cannot identify the writing and signatures on the acknowledgement. The Xerox copy of the draft received for cancellation is marked as Ex.PW-30/A-18.

I have seen D-637 to D-640, which are cheques in the name of KMP Rao for ₹15,372/- in the name of A.Parmeshan for ₹41,549/-, in the name of R.Sunder Murty for ₹14,534/- all dated 14.01.2000. The total amount of the aforesaid cheques was ₹71,455/-. All these cheques were prepared by me and signed by Shri S.K. Aggarwal, the then P&AO at point-A. All the aforesaid cheques are marked as Ex.PW-30/A-19 to A-21.

On 17.01.2000 D-640, which is a cheque bearing No.277276 for ₹71,455/- payable to State Bank of India, R.K. Puram, New Delhi, signed by Shri S.K. Aggarwal was prepared by me. The said cheques is marked at Ex.PW-30/A-22 and was later on made payable to R.L. Kawale by making a cutting across the words State Bank of India, R.K. Puram, New Delhi.

I have seen Ex.PW-30/A-19 to Ex.PW-30/A-22, on the back of the said cheques the endorsement are in my own handwriting at point B encircled. The cheque Ex.PW-30/A-22 for a sum of ₹71,455/- there is endorsement that "the said cheque was kept by Sr. AO Aggarwal". The said endorsement is marked at point C encircled.

I have seen D-651 which is a cheque bearing No.241009 dt. 14.07.1999 for ₹87,379/- issued under the signatures of Shri S.K.Aggarwal. The said cheque is marked Ex.PW-30/A-23 and the signatures of Shri Aggarwal at point A. The said cheque was also prepared by me. On the back of the said cheque, Shri S.K. Aggarwal, Pay & Accounts Officer received the payment through DD in his own signatures along with seal that endorsement is encircled at point B.

I have seen D-642 to D-651 which are the cheques in the name of Y.N.Rao dt. 31.03.1999 for ₹1189/-, B.R.K. Pillai dt. 10.4.1999 for ₹3291/-; B.R.K. Pillai dt. 22.4.1999 for ₹15,660/- ; B.R.K. Pillai dt. 26.05.1999 for ₹15,660/-; 23.06.1999 for ₹8821/- in the name of M.K. Sharma; cheque 24.06.1999 for ₹12,630/- in the name of C.D. Khoche; cheque dt. 24.06.1999 for ₹8456/- in the name of V.V. Badri Narayan; cheque dt. 30.06.1999 for ₹450/- in the name of A.K. Bhati and C.M. Pandey respectively were issued by Shri S.K. Aggarwal, the then Pay & Accounts Officer.

Cheque dt.22.04.1999 for ₹15,460/- in the name of B.R.K. Pillai was prepared by me. Remaining cheques were not prepared by me but all cheques had been signed by Mr. Aggarwal.

I have seen D-700 which is a cheque dt. 23.06.1999 for ₹20,772/- in the name of A.K. Bajaj was signed by Shri S.K. Aggarwal.

The aforementioned cheques are marked Ex.PW-30/A-24 to Ex.PW-30/A-33 respectively and the signatures of Mr. Aggarwal is marked at point A on all the cheques. The total amounts comes of all the cheques to the extent of ₹87,379/-.

Ex.PW-30/A-32, on the back of the said cheque there is an endorsement by me that "cheque for ₹87,379/- issued in favour of State Bank of India, R.K. Puram, New Delhi was kept by Shri Aggarwal" and the same is encircled at point B and the said cheque is Ex.PW-30/A-23 for ₹87,379/-.

I have seen D-653 and D-654 which are two cheques issued in favour of Mr. B.R.K. Pillai for ₹12,563/- each dt. 28.01.1999 and 22.02.1999. Both cheques have been cancelled and fresh cheques in the name of DDO-I was prepared. The said two cheques were issued under the signatures of Shri S.K. Aggarwal at point A and the same are marked Ex.PW-30/A-34 and Ex.PW-30/A-35. On the back of both the cheques there is an endorsement as "fresh DDO-I" means these two cheques were cancelled by Shri S.K. Aggarwal and in lieu of a fresh of consolidated amount of ₹25,126/- was issued in the name of DDO-I, CWC, New Delhi and the same was prepared by me on

16.07.1999 and signed by Mr. S.K. Aggarwal. The said cheque is marked Ex.PW-30/A-36 and the signatures of Mr. Aggarwal at point A. The said cheque was encashed from State Bank of India, R.K. Puram, New Delhi on the endorsement of Shri C.Manjhi then DDO-I, CWC, New Delhi. The endorsement of Shri Manjhi is encircled at point B.

On Ex.PW-30/A-24 to A-33, the signatures of Mr. S.K. Aggarwal has been cancelled and the necessary entries have been made in the cheque drawn register.

I have seen D-641 dt. 10.08.1999 for ₹49,548/- in the name of AONWDA New Delhi. The same was issued by Shri S.K. Aggarwal which was later on cancelled and it was prepared in my handwriting. The said cheque is marked Ex.PW-30/A-37. The signatures of Mr. Aggarwal at point A. On the back of the said cheque, J.R. Sharma is written. That portion is encircled at point B.

One Mr. Rattan Lal who was Sr. Accountant during the relevant time used to prepare the cheques. Further, we both were bound to prepare cheques on the directions of Pay & Accounts Officer. During our tenure Mr. S.K. Aggarwal was the Pay & Accounts Officer.

The Court observation is made that learned Special PP states that examination in chief of this witness has already been recorded and he does not wish to put any further question to this witness."

21.12. The only thing elicited from the cross-examination of N.R. Meena is that he used to write down the amount in numerical and words besides writing down the names of payee, date etc. and the appellant used to sign. However he clarified that the same was done with the prior approval of the appellant.

21.13. Subhash Chander (PW-44) who was a fitter in the DTC and had nothing to do with the CWC deposed that a cheque No. 241538 dated 20th July, 1999 for a sum of ₹57,000/- was prepared in his name and

deposited in his account from which he withdrew an amount of ₹55,100/- and gave to O.P. Narang.

21.14. From the evidence of the witnesses noted above and that of Subhash Chander (PW-44) it is evident that cheques were prepared not in the name of the same person but in different names. N.R. Meena (PW-30) exhibited cheque Ex.PW-30/A-37 issued in favour of Government organization namely National Water Development Authority (NWDA) on 10th August, 1999 for a sum of ₹49,548/- which was cancelled and prepared in favour of Jeet Ram Sharma (A-9) and deposited in his account. Further bypassing the procedure prescribed in CAN appellant re-issued 8 cancelled cheques such as cheque exhibited PW-30/A-1 was initially issued in the name of S.C. Gupta was sent for re-issuance in favour of DDO as D-390 Ex.PW-30/A-2 and withdrawn in cash. Further a fresh cheque No. 034426 dated 1st March, 2000 Ex.PW-30/A-2 was issued in lieu of one cancelled cheque 272858 dated 25th February, 2000 Ex.PW-30/A-1 contrary to the procedure. PW-30 also exhibited D-508 vide Ex.PW-26/N whereby a fresh cheque No. 018424 dated 25th October, 1999 Ex.PW-30/A-3 for a sum of ₹34,449/- was issued in lieu of four cancelled cheques being Ex.PW-30/A-4 to A-7 contrary to the procedure for a sum of ₹34,449/-. One of the cheque was in the name of specified individual A.S.P. Sinha and re-issued in the name of DDO-I. Further vide Ex.PW-51/7 fresh cheque No. 018298 dated 16th September, 1999 for a sum of ₹55,110/- was issued in lieu of cancelled cheque bearing No. 242509 dated 8th September, 1999 for a sum of ₹55,100/- Ex.PW-30/A-10. PW-30 also deposed about

various other cheques which appellant re-issued consolidating earlier old cheques in different names and in some of the documents viz. Document-381 there was no dispatch number or diary number also given. Thus bypassing all the procedures cheques were re-validated in different names.

21.15. The evidence on record and the procedure as noted above clearly proves that the appellant got cancelled the cheques and then issued cheques in the name of unauthorized persons and strangers. Hence the contention of learned counsel for the appellant that he had no role and he was only signing the cheques is required to be rejected. In view of the discussion aforesaid conviction of the appellant for offences punishable under Section 13(1)(d) read with 13(2) of P.C. Act and also under Sections 409 IPC and 120B read with Section 403/409 IPC is upheld.

22. **SENTENCE**

22.1. Having upheld the conviction of the appellants for offences convicted by the learned Special Judge, this Court is now required to deal with the contentions of learned counsel for the appellants in respect of the disproportionate sentence awarded to them claiming that there is no parity in sentencing. For the sake of brevity sentences awarded by the learned Trial Court to the appellants on various counts are categorized as under:

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CATEGORY 1-

OFFICIALS OF CWC POSTED IN ACCOUNTS BRANCH

Appeal No.	Name of the appellant & Accused No.	Designation	Categories of allegations	Conviction under PC Act	Sentence under PC Act (RI)	Conviction under IPC	Sentence under IPC (RI)
323/2016	Y.P. Sharma A-1	Program Assistant [RA (S)]	i iii	13(1)(d)/13(2)	1 year	403 120B r/w 403/409	1 year 7 years
259/2016	Chandreshwar Manjhi A-2	Section Officer (Rtd.)	i ii iii	13(1)(d)/13(2)	1 year	120B r/w 403/409	5 years
269/2016	Om Prakash Narang A-3	UDC	iii	13(1)(d)/13(2)	1 year	403 120B r/w 403/409	1 year 7 years
396/2016	Jai Kumar Singhal A-4	Assistant	i iii	13(1)(d)/13(2)	1 year	403 120B r/w 403/409	1 year 7 years

CATEGORY 2-

OFFICALS OF PAY AND ACCOUNTS OFFICE(P&AO)

Appeal No.	Name of the appellant & Accused No.	Designation	Categories of allegations	Conviction under PC Act	Sentence under PC Act (RI)	Conviction under IPC	Sentence under IPC (RI)
847/2016	Natha Ram Suman A-16	Senior Accounts Officer	ii iii	13(1)(d)/13(2)	1 year	120B r/w 403/409	1 year
150/2016	S.K. Aggarwal A-17	Pay & Accounts Officer (Rtd.)	i ii iii	13(1)(d)/13(2)	1 year	409 120B r/w 403/409	7 years 7 years

SENTENCE CATEGORY 3- OFFICIALS OF CWC

Appeal No.	Name of the appellant & Accused No.	Designation	Categories of allegations	Conviction under PC Act	Sentence under PC Act (RI)	Conviction under IPC	Sentence under IPC (RI)
297/2016	J.P.Sharma A-6	Dy. Director (Rtd.)	iii	NIL	NIL	403 120B r/w 403/409	1 year 7 years
342/2016	Shiv Sagar Naik A-7	Section Officer	ii iii	NIL	NIL	403 120B r/w 403/409	1 year 5 years
280/2016	Jeet Ram Sharma A-9	Jr. Computer Operator	ii iii	NIL	NIL	471 403 120B r/w 403/409	3 years 1 year 1 year
241/2016	B. M. Ghosh A-10	Extra Asstt. Director	ii iii	NIL	NIL	471 403 120B r/w 403/409	3 years 1 year 1 year
134/2016	Om Prakash S/o Sohan Lal A-11	Draftsman	iii	NIL	NIL	403 120B r/w 403/409	1 year 5 years
151/2016	Om Prakash S/o Amir Singh A-12	Dy. Director (Rtd.)	iii	NIL	NIL	403 120B r/w 403/409	1 year 5 years
240/2016	I. Yeshudanam A-14	Assistant Director	iii	NIL	NIL	403 120B r/w 403/409	1 year 1 year
347/2016	Hayat Singh A-15	Peon	ii iii	NIL	NIL	403 120B r/w 403/409	1 year 5 years

22.2. Contention of learned counsels for the appellant Y.P. Sharma is that the sentence is severe and harsh whereas learned counsel for J.K. Singhal contends that he is the first time offender, senior citizen and

there is no previous conviction. Learned counsel for J.P. Sharma contends that he is 75 years old and in his 39 years of service, he was never involved in any criminal case, hence leniency be shown. Learned counsel for Shiv Sagar Naik and B.M. Ghosh contends that they were 65 and 67 years old respectively suffering from multiple ailments and having clean antecedants in service for the last nearly 40 years. Contention on behalf of Om Prakash (A-11) is that he was a victim of circumstances forced by the senior officers, thus he should be granted the benefit of Probation of Offenders Act. Learned counsel for Om Prakash (A-12) contends that Om Prakash retired in the year 1996 and is 78 years old suffering from heart ailment, incurable deceases and one of his daughters was physically challenged, abandoned by her husband, thus leniency be shown. Similar prayers of old age, multiple ailments and clean antecedants has been raised on behalf of C.Manjhi, Om Prakash Narang, Jeet Ram Sharma, Yesudanam, Hayat Singh, N.R. Suman and S.K. Aggarwal.

22.3. Appellants Y.P. Sharma (A-1), Chandreshwar Manjhi (A-2), Om Prakash Narang (A-3) and Jai Kumar Singhal (A-4) fall in category-1 being the officials of CWC posted in Accounts Branch and appellants Natha Ram Suman (A-16) and S.K. Aggarwal (A-17) fall in category-2 being the officials of Pay and Accounts Office (P&AO). All six of them have been convicted for offence punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and awarded sentence of rigorous imprisonment for a period of 1 year and a fine of ₹1,000/- and in default whereof to undergo simple imprisonment for a period of 7 days which is not required to be

modified and is maintained. Appellant Y.P. Sharma (A-1), Om Prakash Narang (A-3), Jai Kumar Singhal (A-4) have been convicted for offences punishable under Section 403 IPC and awarded sentence of rigorous imprisonment for a period of 1 year and to pay a fine of ₹1,00,000/- in default whereof to undergo simple imprisonment for a period of 6 months. The said sentence is also not required to be modified. A perusal of the evidence as noted above would reveal that appellants Y.P. Sharma (A-1), Om Prakash Narang (A-3) and Jai Kumar Singhal (A-4) besides being posted in the Accounts Department were beneficiaries also and their conviction for offences punishable under Section 120B read with Section 403/409 IPC has been upheld. Even considering mitigating circumstances as noted above, this Court finds no reason to modify the sentence of rigorous imprisonment for a period of 7 years and to pay a fine of ₹1,00,000/- in default whereof to undergo simple imprisonment for a period of 6 months awarded to them for offences punishable under Section 120B read with Section 403/409 IPC. Hence sentences of Y.P. Sharma (A-1), Om Prakash Narang (A-3) and Jai Kumar Singhal (A-4) as awarded by the Trial Court are maintained. Appellant Natha Ram Suman has been awarded sentence of rigorous imprisonment for a period of 1 year and to pay a fine of ₹1,000/- in default whereof to undergo simple imprisonment for a period of 7 days for offences punishable under Section 120B read with Sections 403/409 IPC. No appeal for enhancement of the sentence has been filed by the CBI and his sentence as noted above is maintained. Conviction of S.K. Aggarwal (A-17) has been upheld for offences punishable under

Sections 409 and 120B read with Section 403/409 IPC and he has been awarded rigorous imprisonment for 7 years on both the counts and to pay a fine of ₹1,00,000/- and in default whereof to undergo simple imprisonment for 6 months. Considering the fact that there is no evidence led by the prosecution that S.K. Aggarwal was a beneficiary, his sentence for offences punishable under Section 409 and 120B read with Section 403/409 is reduced to 5 years rigorous imprisonment on both the counts and to pay a fine of ₹1,00,000/- and in default whereof to undergo simple imprisonment of 6 months on each count. Sentence of appellant Chandreshwar Manjhi for offence punishable under Section 120B read with 403/409 IPC is maintained.

22.4. Officials of the CWC falling in the category-3, J.P. Sharma (A-6), Shiv Sagar Naik (A-7), Jeet Ram Sharma (A-9), B.M. Ghosh (A-10), Om Prakash (A-11), Om Prakash (A-12), Yeshudanan (A-14) and Hayat Singh (A-15) have all been convicted for offence punishable under Section 403 IPC and awarded sentence of rigorous imprisonment for a period of 1 year. Further on this count J.P. Sharma (A-6) has been directed to pay a fine of ₹1,00,000/- in default whereof to undergo simple imprisonment for a period of 6 months; Shiv Sagar Naik (A-7), Jeet Ram Sharma (A-9), B.M. Ghosh (A-10), Yeshudanan (A-14) and Hayat Singh (A-15) have been directed to pay a fine of ₹10,000/- in default whereof to undergo simple imprisonment for a period of 1 month; Om Prakash (A-11) and Om Prakash (A-12) are directed to pay a fine of ₹50,000/- in default whereof to undergo simple imprisonment for a period of 3 months; which fine amount or sentence in default thereof is not required to be modified. Appellants

Jeet Ram Sharma (A-9) and B.M. Ghosh (A-10) have been convicted for offence punishable under Section 471 IPC and awarded sentence of rigorous imprisonment for a period of 3 years and to pay a fine of ₹10,000/- in default whereof to undergo simple imprisonment for a period of 1 month which sentence is also not required to be disturbed. Appellants Shiv Sagar Naik (A-7), Jeet Ram Sharma (A-9), B.M. Ghosh (A-10), Om Prakash (A-12) have been convicted of offences punishable under Section 120B read with 403/409 IPC and all of them are beneficiaries. Though convicted for offences punishable under Section 471 IPC, sentence awarded to Shiv Sagar Naik and Om Prakash S/o Amir Singh (A-12) is 5 years whereas others i.e. Jeet Ram Sharma and B.M. Ghosh is 1 year. To maintain parity in sentence and also the fact that they are beneficiary, sentence of Shiv Sagar Naik (A-7) and Om Prakash (A-12) for offence punishable under Section 120B read with Section 403/409 IPC is modified to rigorous imprisonment for a period of 3 years and to pay a fine of ₹10,000/- in default whereof to undergo simple imprisonment for a period of 1 month. Sentence of Jeet Ram Sharma (A-9) and B.M. Ghosh (A-10) for offences under Section 120B read with Section 403/409 IPC is not required to be modified. Sentence of appellant Om Prakash (A-11) is modified to rigorous imprisonment for a period of 3 years and to pay a fine of ₹10,000/- in default whereof to undergo simple imprisonment for a period of 1 month for the offence punishable under Section 120B read with Section 403/409 IPC. J.P. Sharma (A-6) being a beneficiary to a great extent his sentence for offence punishable under Section 120B read with Section 403/409 IPC is rigorous imprisonment for a

period of 7 years and to pay a fine of ₹1 lakh and in default whereof to undergo simple imprisonment for 6 months is maintained. The sentence of appellant Yesudanam for offence punishable under Section 120B read with Section 403/409 IPC being 1 year rigorous imprisonment and to pay a fine of ₹10,000/- in default whereof to undergo simple imprisonment for a period of 1 month is also maintained. As regards Hayat Singh (A-15) his sentence for offence punishable under Section 403 IPC of rigorous imprisonment for 1 year and a fine of ₹10,000/- in default whereof to undergo simple imprisonment for 1 month is maintained. However, maintaining parity with the other appellants his sentences for offences punishable under Section 120B read with Section 403/409 IPC is reduced to rigorous imprisonment for a period of 3 years and to pay a fine of ₹10,000/- in default whereof to undergo simple imprisonment for a period of 1 month.

22.5. Thus, in view of the aforesaid discussion the modified sentence of the appellants are:

"1. Y.P. Sharma (A-1)

S.No.	Offence punishable u/S.	Sentence of Rigorous Imprisonment	Fine (₹)	Sentence in default of fine
1	13(1)(d) punishable u/S. 13(2) of PC Act	01 year	1,000/-	07 days
2	u/S. 471 IPC	--	--	--
3	u/S. 409 IPC	--	--	--
4	u/S. 403 IPC	01 year	One Lakh	06 months
5	u/S. 120B r/w Sec. 403 & 409 IPC	07 years	One Lakh	06 months

2. C. Manjhi (A-2)

S.No.	Offence punishable u/S.	Sentence of Rigorous Imprisonment	Fine (₹)	Sentence in default of fine
1	13(1)(d) punishable u/S. 13(2) of PC Act	01 year	1,000/-	07 days
2	u/S. 471 IPC	--	--	--
3	u/S. 409 IPC	--	--	--
4	u/S. 403 IPC	--	--	--
5	u/S. 120B r/w Sec. 403 & 409 IPC	05 years	One Lakh	06 months

3. Om Prakash Narang (A-3)

S.No.	Offence punishable u/S.	Sentence of Rigorous Imprisonment	Fine (₹)	Sentence in default of fine
1	13(1)(d) punishable u/S. 13(2) of PC Act	01 year	1,000/-	07 days
2	u/S. 471 IPC	--	--	--
3	u/S. 409 IPC	--	--	--
4	u/S. 403 IPC	01 year	One Lakh	06 months
5	u/S. 120B r/w Sec. 403 & 409 IPC	07 years	One Lakh	06 months

4. Jai Kumar Singhal (A-4)

S.No.	Offence punishable u/S.	Sentence of Rigorous Imprisonment	Fine (₹)	Sentence in default of fine
1	13(1)(d) punishable u/S. 13(2) of PC Act	01 year	1,000/-	07 days

2	u/S. 471 IPC	--	--	--
3	u/S. 409 IPC	--	--	--
4	u/S. 403 IPC	01 year	One Lakh	06 months
5	u/S. 120B r/w Sec. 403 & 409 IPC	07 years	One Lakh	06 months

5. J.P. Sharma (A-6)

S.No.	Offence punishable u/S.	Sentence of Rigorous Imprisonment	Fine (₹)	Sentence in default of fine
1	13(1)(d) punishable u/S. 13(2) of PC Act	--	--	--
2	u/S. 471 IPC	--	--	--
3	u/S. 409 IPC	--	--	--
4	u/S. 403 IPC	01 year	One Lakh	06 months
5	u/S. 120B r/w Sec. 403 & 409 IPC	07 years	One Lakh	06 months

6. Shiv Sagar Nayak (A-7)

S.No.	Offence punishable u/S.	Sentence of Rigorous Imprisonment	Fine (₹)	Sentence in default of fine
1	13(1)(d) punishable u/S. 13(2) of PC Act	--	--	--
2	u/S. 471 IPC	--	--	--
3	u/S. 409 IPC	--	--	--
4	u/S. 403 IPC	01 year	10,000/-	01 month
5	u/S. 120B r/w Sec. 403 & 409 IPC	03 years	10,000/-	01 month

7. Jeet Ram Sharma (A-9)

S.No.	Offence punishable u/S.	Sentence of Rigorous Imprisonment	Fine (₹)	Sentence in default of fine
1	13(1)(d) punishable u/S. 13(2) of PC Act	--	--	--
2	u/S. 471 IPC	03 years	10,000/-	01 month
3	u/S. 409 IPC	--	--	--
4	u/S. 403 IPC	01 year	10,000/-	01 month
5	u/S. 120B r/w Sec. 403 & 409 IPC	01 year	10,000/-	01 month

8. B.M. Ghosh (A-10)

S.No.	Offence punishable u/S.	Sentence of Rigorous Imprisonment	Fine (₹)	Sentence in default of fine
1	13(1)(d) punishable u/S. 13(2) of PC Act	--	--	--
2	u/S. 471 IPC	03 years	10,000/-	01 month
3	u/S. 409 IPC	--	--	--
4	u/S. 403 IPC	01 year	10,000/-	01 month
5	u/S. 120B r/w Sec. 403 & 409 IPC	01 year	10,000/-	01 month

9. Om Prakash S/o Sohan Lal (A-11)

S.No.	Offence punishable u/S.	Sentence of Rigorous Imprisonment	Fine (₹)	Sentence in default of fine
1	13(1)(d) punishable u/S. 13(2) of PC Act	--	--	--
2	u/S. 471 IPC	--	--	--
3	u/S. 409 IPC	--	--	--

4	u/S. 403 IPC	01 year	50,000/-	03 months
5	u/S. 120B r/w Sec. 403 & 409 IPC	03 years	10,000/-	01 month

10. Om Prakash S/o Amir Singh (A-12)

S.No.	Offence punishable u/S.	Sentence of Rigorous Imprisonment	Fine (₹)	Sentence in default of fine
1	13(1)(d) punishable u/S. 13(2) of PC Act	--	--	--
2	u/S. 471 IPC	--	--	--
3	u/S. 409 IPC	--	--	--
4	u/S. 403 IPC	01 year	50,000/-	03 months
5	u/S. 120B r/w Sec. 403 & 409 IPC	03 years	10,000/-	01 month

11. I. Yeshudanam (A-14)

S.No.	Offence punishable u/S.	Sentence of Rigorous Imprisonment	Fine (₹)	Sentence in default of fine
1	13(1)(d) punishable u/S. 13(2) of PC Act	--	--	--
2	u/S. 471 IPC	--	--	--
3	u/S. 409 IPC	--	--	--
4	u/S. 403 IPC	01 year	10,000/-	01 month
5	u/S. 120B r/w Sec. 403 & 409 IPC	01 year	10,000/-	01 month

12. Hayat Singh (A-15)

S.No.	Offence punishable u/S.	Sentence of Rigorous Imprisonment	Fine (₹)	Sentence in default of fine
1	13(1)(d) punishable u/S. 13(2) of PC Act	--	--	--
2	u/S. 471 IPC	--	--	--
3	u/S. 409 IPC	--	--	--
4	u/S. 403 IPC	01 year	10,000/-	01 month
5	u/S. 120B r/w Sec. 403 & 409 IPC	01 year	10,000/-	01 month

13. Natha Ram Suman (A-16)

S.No.	Offence punishable u/S.	Sentence of Rigorous Imprisonment	Fine (₹)	Sentence in default of fine
1	13(1)(d) punishable u/S. 13(2) of PC Act	01 year	1,000/-	07 days
2	u/S. 471 IPC	--	--	--
3	u/S. 409 IPC	--	--	--
4	u/S. 403 IPC	--	--	--
5	u/S. 120B r/w Sec. 403 & 409 IPC	01 year	1,000/-	07 days

14. S.K. Aggarwal (A-17)

S.No.	Offence punishable u/S.	Sentence of Rigorous Imprisonment	Fine (₹)	Sentence in default of fine
1	13(1)(d) punishable u/S. 13(2) of PC Act	01 year	1,000/-	07 days
2	u/S. 471 IPC	--	--	--
3	u/S. 409 IPC	05 years	One Lakh	06 months

4	u/S. 403 IPC	--	--	--
5	u/S. 120B r/w Sec. 403 & 409 IPC	05 years	One Lakh	06 months

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23. Crl.Appeal Nos. 259/2016, 280/2016, 240/2016, 241/2016, 269/2016, 297/2016, 323/2016, 396/2016 and 847/2016 are dismissed. Crl.Appeal Nos. 134/2016, 150/2016, 151/2016, 342/2016 and 347/2016 are disposed of in view of the modification in sentence. Appellants Jeet Ram Sharma (A-9), B.M. Ghosh (A-10), Yeshudanam (A-14) and Natha Ram Suman (A-16) who are on bail shall surrender within four weeks to undergo the remaining sentence.

24. Copy of the judgment be sent to the Superintendent Tihar Jail for updation of the records.

25. Trial Court Record be sent back.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 05, 2017
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