

GAHC010236682005



2024:GAU-AS:11906

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./149/2005

PRANA RANJAN BHATTACHARJEE
GHY

VERSUS

CBI
GHY

Advocate for the Petitioner : MR. R C PAUL, MR. A K PURKAYASTHA

Advocate for the Respondent : SC, CBI,

Linked Case : CrI.A./175/2005

MRITUNJOY GHOSE

VERSUS

C B I

Advocate for : H DEKA

Advocate for : SC. C.B.I. appearing for C B I

- B E F O R E -
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. K. P. Pathak, Amicus
: Mr. A. K. Purkayastha, Adv.

For the Respondents : Mr. M. Haloi, Spl. P.P, CBI.

Date of hearing : 04.10.2024

Date of judgment : 29.11.2024

JUDGMENT & ORDER (CAV)

1. These two appeals are taken up together for final disposal as the same are filed under section 374 of the Code of Criminal Procedure, against the judgment and order of conviction dated 17.05.2005 passed by learned Special Judge, CBI, Guwahati in Special Case No. 92/2004, (Old Case No. 15(c)/89), whereby the appellants were convicted under Section 120B/420/471 read with Section 465 of IPC and under Sections 13(i)(d) read with 13(2) of P.C. Act, 1988 and sentenced to suffer rigorous imprisonment for 2 (two) years and also with fine of Rs. 2000/- and in default to undergo simple imprisonment for another 2 months for offence under Section 13(i)(d) read with 13(2) of the P.C. Act, 1988.

2. Mr. A. K. Purkayastha, learned counsel has been appearing for the appellant in CrI.A./149/2005. However, when the matter was called for final disposal on 25.08.2023, none represented the appellant in CrI.A./175/2005. In

the aforesaid backdrop, Mr. K. P. Pathak, learned counsel was appointed as Amicus to argue on behalf of the appellant in CrI.A./175/2005.

3. Heard Mr. A. K. Purkayastha, learned counsel has been appearing for the appellant in CrI.A./149/2005 and Mr. K. P. Pathak, learned Amicus Curiae for the appellant in CrI.A./175/2005. Also heard Mr. M. Haloi, learned Special Public Prosecutor for the CBI representing the respondents.

4. The prosecution case in a nutshell is that SP CBI, SPE, ACB, Shillong received a source information to the effect that the appellant namely Sri Prana Ranjan Bhattacharjee, the then Branch Manager, ADB, State Bank of India, Howly, and the appellants Sri Mritunjoy Ghosh and Sri Madan Kundu, Managing Directors of M/s Assam Farmers Friends (P) Limited, Sarbhog Bazar entered into a criminal conspiracy with one Sri Gopinath Kundu, Sri Manoranjan Ghose, Sri Tapan Gop, Sri Ramesh Ghose, Sri Swapan Kr. Paul, Sri Swapan Gop, Sri Prabir Paul, Sri Samir Paul, Sri Anil Paul and Sri Sunil Paul of Sarbhog and in pursuance of such criminal conspiracy, they committed offences of cheating and forgery. It was further alleged that in the process, Sri Prana Ranjan Bhattacharjee being a public servant abused the official position and acquired for him and others fabulous pecuniary advantages.

5. On the basis of above allegation, the then SP CBI Shillong registered five cases i.e. R.C. No. 13/87-SHG to 17/87-SHG. From those cases, RC Case No. 13/87-SHG and RC No. 16/87-SHG were endorsed to Sh. T. Kar, Inspector, ACB and other cases were endorsed to Shri K. N. Singh, Dy. SP, CBI, ACB, Geetanagar Unit for investigation. As all the cases aforesaid are inter-linked, so CBI submitted a common charge sheet in respect of those cases on 08.06.89 and forwarded the present accused/appellants for trial.

6. On receipt of the charge sheet, the special case being Special Case

No. 92/2004 (Old Case No. 15(c)/89) was registered and cognizance was taken. Charges were framed under sections 120B/420/467/468/465 read with Section 471 of IPC against the above named appellants. In addition, the accused appellant P. R. Bhattacharjee was also charged with having committed offence under Section 13(1)(d) read with Section 13(2) of the PC Act. The appellants pleaded not guilty to the charges. Accordingly the trial commenced.

7. To bring home the charge, the prosecution examined as many as 46 witnesses and exhibited many documents. The accused were examined under Section 313 Cr.P.C. however, they did not adduce any evidence. Thereafter, the impugned judgment and sentence was passed as recorded hereinabove. Being aggrieved, the present appeals are preferred.

8. Mr. K.P. Pathak, learned Amicus Curiae has argued that primary charge against the charge-sheeted accused persons Nos. 2 and 3 is of committing an offence of forgery under Sections 465/ 467/ 471 IPC. They have also been charged of committed an offence under Section 468 IPC i.e. forgery for purpose of cheating as well as for committing cheating under Section 420 IPC. It is further contended by Mr. Pathak that consequently all the three charge-sheeted accused persons have also been accused of indulging in criminal conspiracy under Section 120 B IPC. Additionally, accused No. 3 has been charged with committing an offence under Section 13(1)(d) read with Section 13(2) of the PC Act, 1988. Therefore, according to the learned Amicus the primary charge which is required to be established by the prosecution is the forgery as the offences are directly connected with commission of forgery. While summarizing the contention of the star witnesses of the prosecution, namely, PW6, PW 25, PW45, PW35, Mr. Pathak contends that PW6 has not made any statement alleging that the handwriting specimens were taken in his presence

nor he has made any statement identifying own signature on the documents. At the same time, PW29 has not made any statement stating that the handwriting specimens were taken in his presence and nor has he made any statement identifying his own signature on the documents. PW 45, who was investigating officer, according to Mr. Pathak has stated in his evidence that specimen handwriting and signature of the accused persons were taken in presence of the witnesses. He identified Ext. 650, 651, 652 and 653 as the said specimen handwriting and signatures and he has also identified his signature and that of the other investigating officer Sri KN Singh. However, the I/O has failed to identify the handwriting of the accused persons and the other persons, whose handwriting and signatures were collected along with them. PW 35, whose handwriting and specimen signatures were also obtained along with the accused persons, according to the learned Amicus did not say anything on those aspect during the cross-examination. Referring to the statement of the accused No. 1 recorded under Section 313 Cr.P.C., Mr. Pathak submits that accused No. 1 has only stated that his specimen handwriting and signature were taken even though he was specifically asked about deposition of PW 45, investigating officer, wherein the investigating officer has stated that specimen signatures and handwriting of the accused persons along with PW 35 were obtained by said investigating officer along with KN Singh. Accused Nos. 2 and 3 during their examination under Section 313 Cr.P.C. stated that they do not remember on which document their signatures were obtained. Referring to the provision of Section 468 IPC, Mr. Pathak submits that prosecution has failed to prove the charges of forgery beyond reasonable doubt due to lack of corroborative evidence and there are also glaring irregularity in collecting and proving the specimen of signature and handwriting due to which the opinion of the

handwriting expert cannot be the sole basis to convict the accused persons.

9. According to Mr. Pathak, the secondary charges of committing forgery for the purpose of cheating and cheating are directly co-related with the primary offence of charge of forgery. When the prosecution has failed to prove the charge of forgery against the accused then, the other related charges will definitely fall.

10. Mr. Pathak in support of his contention relies on the decision of the Hon'ble Apex court in ***State of Maharashtra Vs Sukhdeo Singh*** reported in ***(1992) 3 SCC 700*** and ***Sheila Sebastian Vs R Jawaharaj*** reported in ***(2018) 7 SCC 581***.

11. Referring to Section 47 of the Indian Evidence Act, Mr. Pathak, learned amicus argues that there was no iota of evidence on record to suggest that the accused persons are one those who had put their signatures in the specimen form. Referring to the determination made by the Hon'ble Apex Court in ***Sheila Sebastian (supra)*** and ***Sukhdeo Singh (supra)***, Mr. Pathak argues that the genuineness of the specimen/ admitted hand writing of the accused is not established beyond doubt in the present case and therefore, according to Mr. Pathak, the evidence of the handwriting expert i.e. PW37 and PW46 cannot be treated as reliable and dependable to convict the appellants in the given facts of the present case in absence of any other cogent and convincing evidence so far relating to their handwriting. Mr. Pathak on the point of forgery also argues that the prosecution has failed to prove beyond reasonable doubt that the alleged forged document was authored / manufactured by the appellants and in absence of such evidence the appellants cannot be convicted for committing offence of forgery. In support of such contention, Mr. Pathak relies on the decision of the Hon'ble Apex Court in the

case of ***Sheila Sebastian (supra)*** (para 17,18,19,25,26,27). Arguing further, Mr. Pathak submits that when the allegation of forgery falls, the conviction under Section 120 B of IPC, in the given facts of the present case shall also not be sustainable inasmuch as the conspiracy is required to be proved by circumstantial evidence as there may not be any direct evidence of such conspiracy which is also the case in hand. However, there is no such chain of circumstances that has been brought by the prosecution to convict the accused which leads to the irresistible conclusion of guilt of the accused persons and therefore, in the totality of the matter according to Mr. Pathak, learned amicus the appellants could not have been convicted under Section 120B IPC.

12. Mr. A. K. Purkayastha, learned counsel has also endorsed to the argument of Mr. Pathak, learned Amicus and more or less argued in the same line and therefore, such argument are not repeatedly recorded in the present case.

13. Countering the arguments of the learned counsels for the appellants, Mr. M. Haloi, learned Special Public Prosecutor for the CBI contends that the case of the prosecution is based on circumstantial evidence and through the 46 witnesses, the prosecution has been able to prove the circumstances which forms a complete chain to lead the inference that it is none other than these accused persons, who had committed the offences charged and therefore, there is no infirmity in the impugned judgment warranting interference at the hand of this Court. According to him, the stand of the defence that the forgery of the document was not proved and therefore, the other offences will not be attracted is having no legs to stand. According to the learned counsel, through the evidence of the PW-45, the Inspector of CBI, it is established that Deputy SP, K. N. Singh and PW-45 obtained the specimen signature of PW-35 and of the

accused appellants in presence of the witnesses and such specimen signatures were duly exhibited and such specimen signature has duly been proved to be of the accused persons and such evidence is corroborated by the evidence of PW-37 and PW-46 the Forensic Expert.

14. Relying on the determination made by the Hon'ble Apex Court in **Ritesh Sinha vs State of Uttar Pradesh** reported in **(2019) 8 SCC 1**, the learned counsel argues that the collection of specimen signature by the PW-45 shall not violate the right of the appellants under Article 21 of the Constitution of India inasmuch as at relevant point of time, Section 311 A of Cr.P.C. was not there. Therefore, no fault can be found in collection of specimen signature by the Investigating Officer on his own. It is further contended by Mr. Haloi, learned Special Public Prosecutor that the Investigating Officer, PW-45 who collected the specimen signature and writing of the appellants had seen them writing and as such said I.O. can be regarded as a person who is acquainted with writing of the accused/appellants and therefore, the learned Trial Court on the basis of the evidence of the I.O., PW-45 has correctly formed the opinion as to the persons by whom Exhibits 650, 651, 652 and 653 were written or signed inasmuch as such factum was corroborated by the evidence of handwriting expert i.e. Exhibits 770, 775, 782 and 789. It is further contended that the defence has not challenged Exhibits 650, 651, 652 and 653 during cross examination to be not their signatures. Relying on the decision of the Hon'ble Apex Court in **Tahir -Vs- State (Delhi)** reported in **(1996) 3 SCC 338**, Mr.Haloi, learned Special Public Prosecutor contends that there is no bar on conviction being based solely on the testimony of the police official, if the evidence of such police officer is found to be reliable and trustworthy inasmuch as in the present case, the Investigating Officer, PW-45 is a competent witness.

15. This Court has given anxious considerations to the arguments advanced by the learned counsel for the parties and also perused the material available on record.

16. Before dealing with the arguments advanced by the learned counsel for the parties, let this court first look into the depositions and testimonies of the witnesses.

I. Shri Amitabh Banerjee and Shri H. Medhi were examined as PW-1 and PW-6(A) respectively.

II. PW-1, who was an Accountant at SBI, Grin Deep Branch, Calcutta deposed that during 1987, he was working as Assistant Accountant, Local Head Office, SBI, Guwahati and was in Vigilance Section. During that time, CBI officials seized some documents from Vigilance Branch. Ext.1 to Ext.19 were the seizure memos through which documents mentioned therein were seized by CBI officials.

III. PW-6(A), who was a bank employee deposed that during 1989, he was in Vigilance Department, Local Head Office, SBI, Guwahati. During that time, CBI officials came to their office and seized some documents through Ext.22. PW-6(A) was not cross-examined by defence.

IV. PW-2, Md. A. Hussain, who was a Sub Post Master in his deposition stated that during 1997, he was working as Postal Assistant in the Barpeta Sub Post Office. He deposed that on 08-06-87, CBI official searched the house premises of Shri P.R. Bhattacharjee at Barpeta road. During the search, articles and documents mentioned in Ext.20, were recovered from the house of

Shri P.R. Bhattacharjee.

- V. PW-3, Shri D.K. Patowary** deposed that during 1987, he was working as a Postal Assistant, Barpeta Head Post Office and on 08-06-87, CBI official searched the house of Shri P.R. Bhattacharjee and recovered articles and documents, mentioned in Ext.20.
- VI. PW-4, Shri J.M. Choudhury**, who was also a Postal employee deposed that on 08-06-87, CBI officials searched the house of Shri Mritunjoy Ghose, situated at Sarbhog Bazar and recovered some articles, as mentioned in Ext.20.
- VII. PW-5 Shri P.C. Roykumar** was a search witness deposed that on 08-06-87, CBI official searched the house of Shri Mritunjoy Ghose, situated at Sarbhog Bazar and recovered some articles, mentioned, in Ext.21.
- VIII. PW6, Shri Pradip Kr. Thakuria**, who is the Dy. Manager (Advance), SBI stated that a person, who wants to open a bank account, must prefer an application in prescribed form to the Bank Manager. Such person then must be identified by either a bank official or by person having an account in the said bank. Otherwise, he must be a person, well known to bank. Once, his application is accepted, he is given an account number and if desired, he may also be given cheque facility against the account, so given to him.
- In regard to the procedure of purchase of bills, he stated that whenever an Account Holder desires to purchase any bill, he is required to approach the Branch Manager to submit the bills and documents, pertaining to title to the goods concerned. Thereafter,

Branch Manager shall consider the merit of the case and purchase the bill, if the amount of the bill is within the pecuniary limit of Branch Manager. However, if the amount of the bill is higher than the pecuniary limit of the Branch Manager, he is required to forward the same to his higher authorities, provided he is satisfied to recommend the same to the higher authority.

In regard to the procedure of selling and issuance of bank drafts by bank, this witness deposed that a person, who desires to purchase a bank draft; is required to make an application in prescribed form or in plain paper, before the Bank Manager, stating the details of the draft, required and also he needs to deposit the consideration money including draft charge. But such money may be paid in either cash or cheque, if the Account Holders have a cheque facility attached to his account. On the receiving of application together with consideration money and charges, the application is processed, and draft is written, signed by authorized signatory and handed over to the applicant.

PW-6 further stated that Ext.23, Ext.26, Ext.29, Ext.32, Ext.35, Ext.38, Ext.41, Ext.44, Ext.47, Ext.50 and Ext.53 are account opening forms in the names of (1) Shri Ramen Ghose, (2) Shri Swapan Gop, (3) Shri Swapan Kr. Paul, (4) Shri Samir Paul, (5) Shri Prabir Paul, (6) Shri Madan Mohan Kundu, (7) Shri Gopinath Kundu, (8) Shri Monoranjan Ghose, (9) Shri Tapan Gop, (10) Shri Anil Paul and (11) Shri Sunil Paul respectively. Aforesaid Account Holders were introduced by (1) Shri Prabir Paul, (2) Shri Madan Mohan Kundu, (3) Shri Madan Mohan Kundu, (4) Shri Madan Mohan

Kundu, (5) Shri Madan Mohan Kundu, (6) Shri Madan Mohan Kundu, (7) Shri Manoranjan Ghose, (8) Shri Manoranjan Ghose, (9) Shri Manoranjan Ghose, (10) Shri Swapan Gop, (11) Shri Swapan Gop respectively. Account Holders, namely (1) Shri Ramesh Ghosh, (2) Shri Swapan Gop, (3) Shri Swapan Kr. Paul, (4) Shri Samir Paul, (5) Shri Prabir Paul, (6) Shri Madan Mohan Kundu, (7) Shri Gopinath Kundu, (8) Shri Manoranjan Ghose, (9) Shri Tapan Gop, (10) Shri Anil Paul and (11) Shri Sunil Paul were given account numbers 612, 611, 600, 1525, 1524, 596, 598, 599, 610, 616 and 617 respectively.

On the other hand, Ext.24, 27, 30, 33, 36, 39, 42, 45, 48, 51 are the Specimen Signature Cards of (1) Shri Ramen Ghose, (2) Shri Swapan Gop, (3) Shri Swapan Kr. Paul, (4) Shri Samir Paul, (5) Shri Prabir Paul, (6) Shri Madan Mohan Kundu, (7) Shri Gopinath Kundu, (8) Shri Manoranjan Ghose, (9) Shri Tapan Gop, (10) Shri Anil Paul and (11) Shri Sunil Paul, whereas Ext.25, Ext.28, Ext.31, Ext.34, Ext.37, Ext.40, Ext.43, Ext.46, Ext.49, Ext.52 and Ext.55 are Ledger Transaction Sheets in regard to account nos. 612, 611, 600, 1525, 1524, 596, 598, 599, 610, 616 and 617 respectively. He also deposed that cheque facilities were accorded to all the accounts, aforesaid.

PW-6 proceeds further to depose that M/s Assam Farmers Friends (P) Ltd. **(in short AFFPL)** too had a Cash Credit Account in the name of SBI, Howly branch, 5/4 being the account number of the said account. Ext.56, Ext.57 and Ext.58 are Information Sheets, Transaction Sheet and Transaction Ledger Sheet respectively in

respect of aforesaid accounts. Ext.59, Ext.60, Ext.61, Ext.62, Ext.63, Ext.64, Ext.65, Ext.66, Ext.67, Ext.68, Ext.69, Ext.70, Ext.71, Ext.72, Ext.73, Ext.74 are various cheques drawn in favour of persons, namely Shri Madan Mohan Kundu, M/s AFFPL, Shri Dinesh Saha, Shri Manoranjan Ghose and Shri Gopinath Kundu. The payments against all those cheques were made and entries with regard to such payments are made in Ext.46. **Ext.46(1) to Ext.46(7) are those entries.**

Ext.75, Ext.76, Ext.77 are Demand Drafts, Purchase Schedules or Bill Remittent Schedules of Howly bank. Vide Ext.75, Ext.76 and Ext.77, A-1 purchased bill for Rs.7,80,000/– from Shri Madan Mohan Kundu on 31-10-85, purchased bill for Rs.76,185/– from the said Shri Madan Mohan Kundu on 31-10-85 and purchased another bill on the same date for Rs. 75,577.50P from the said person. All those bills were drawn on M/s Inputs Corporation of India, Sibpur, Howrah Branch. On 27-02-86, three other bills, vide Ext.77, Ext.79 and Ext.80 were purchased by said branch from Shri Madan Mohan Kundu and value of each of such bill was Rs.75,960/– and those bills were drawn on M/s Inputs Corporation of India, Sibpur, Howly branch. Ext.81 is the cheque for Rs.3,22,898.25P only, drawn by M/s Inputs Corporation of India in favour of Sibpur branch, **purporting to amount in respect of DDR No.1305, 1306, 1308 and 1309.** Likewise, Ext.83 is the draft application, submitted by M/s AFFPL and Ext.82 is the draft given to said applicant, pursuant to application, vide Ext.83. Ext.84 is the pay-in-slip whereby application amount, mentioned, in Ext.83 had been

deposited in the Bank. Ext.82 is the draft and Ext.85 is the Ledger Sheet of account in the name of M/s Inputs Corporation of India at Sibpur. As per Ext.85, Account Holder was introduced by Shri B. Goswami and aforesaid accounts were of Shri Jaihind Ghose and Shri Binoy Kr. Kundu, partners of M/s Inputs Corporation of India. Ext.84(1) is the relevant entry whereby amount mentioned in Ext.82 was credited in the said account on 31-01-86. Ext.86 is the current account opening form, submitted by M/s AFFPL at SBI, Sibpur. Ext.86(1) is the signature of Shri B. Goswami, Accountant, SBI, Howly branch. Ext.87 and Ext.88 are the deed of agreements of partners and partnerships are of the aforesaid firm. Ext.89 is the Information Sheet of account number SSI/483/1. Ext.83, Ext.91, Ext.92 are draft applications, submitted by Shri Madan Mohan Kundu in the name of M/s AFFPL. Ext.82 is a draft, issued against Ext.83 whereas draft no.213081, and draft no.218084 was issued against Ext.91 and Ext.92 respectively. Ext.90 is the Draft Issue Register and relevant entries in regard to payment of aforesaid drafts are made in Ext.90/1 and Ext.90/2, being the said register. Ext.117 to Ext.122 are those applications, submitted to A-1 for purchase of bills and such applications is submitted to Shri Tapan Gop. The said bills were supported by Consignment Notes, Hundees and all those bills were drawn in favour of M/s Inputs Corporation of India. Ext.111 to Ext.116 are pay-in-slips, prepared by ADB, SBI, Howly branch. Bank purchased those bills and credited the proceeds there-from to the account of Shri Tapan Gop. Ext.123 to Ext.128 are transfer pay-in-slips whereby amounts were

credited to the account of Tapan Gop. Ext.129 to Ext.134 are six numbers of Demand Draft Purchase Realization Schedules, prepared in respect of above bills and sent to SBI, Sibpur for realization of amount. The amounts credited into Ext.123 to Ext.129 have fully been reflected in Ext.49.

On 09-05-86, said Shri Tapan Gop submitted three applications for purchase of bills, vide Ext.138, Ext.139 and Ext.140 being supported by Consignment Notes and Hundees. The above bills were also purchased by bank and proceeds there-from, were credited in the current account of Shri Tapan Gop. Ext.144, Ext.145, Ext.146 are three transfers pay-in-slips in respect of above bill purchased. Ext. 147, Ext.148, Ext.149 are Demand Draft Bill Purchase Realization Schedules and relevant entries were made in Ext.49(2) in Ext. Ext.49. The above bills were drawn by Shri Tapan Gop in favour of M/s Inputs Corporation of India, Sibpur, Howrah.

Similarly, on 17-05-86, Shri Tapan Gop again submitted bills along with Hundees, Consignment Notes etc. to the Branch Manager, ADB, Howly for purchasing those bills. All those bills were drawn by Shri Tapan Gop in favour of M/s Inputs Corporation of India and all bills were purchased by A-1 and amounts were credited to the account of Shri Tapan Gop. Ext.156, Ext.157, Ext.158 are corresponding pay-in-slips and relevant entries in Ext.49 is found in Ext.49(3). The amount of bill is duly received and realized by bank. While Ext.117 to Ext.122 are returned unpaid, vide Ext.173(2), other bills, so submitted were duly realized and payment thereon, were received by bank, vide Ext.174 and Ext.176.

Similarly, Shri Ramesh Ghose submitted bills, vide Ext.162 to Ext.167; Ext.186 to Ext.191 to A-1 for his purchase. Both the bills were drawn on M/s Inputs Corporation of India. Shri P.R. Bhattacharjee purchased those bills and amounts were credited to account of Shri Ramesh Ghose. The payment made against Ext.162 to Ext.167 were realized, vide Ext.178, but bills vide Ext.186 to Ext.191 returned un-realized vide Ext.177. On the other hand, Ext.332 to Ext.337 are six bills submitted by Shri Gopinath Kundu and Ext.338 to Ext.343 are six bills submitted by Shri Mritunjoy Ghose. Ext.344 to Ext.350 are seven bills submitted by Shri Pabir Paul.

In the same way, Ext.351 to Ext.356 are the seven bills submitted by Shri Samir Paul, Ext.357 to Ext.362 are six bills again drawn by Shri Swapan Gop, Ext.363 to Ext.367 are five bills drawn by Shri Swapan Kr. Paul. All the bills were drawn in favour of M/s Inputs Corporation of India. All those bills were purchased by the then Branch Manager, who was none other than Accused No.1. After having prepared Appraisal Note, in regard to those bills by A-1 himself and proceeds there-from, were credited to the account of respective Account Holders. But there was no indication in Demand Draft, Purchase Realization Schedule and other relevant records that those amounts had ever been realized.

PW6 further deposed that Ext.65, Ext.66 and Ext.67; vide Ext.68 and Ext.69, Ext.62 to Ext.64, Ext.59 and Ext.60. Ext.263 and 264; Ext.271 and 272; Ext.274, Ext.279, Ext.281, Ext.284, Ext.288, Ext.291, Ext.293, Ext.300 to Ext.303, Ext.311 and Ext.312; Ext.317

to Ext.319; Ext.324 and Ext.325; Ext.327 to Ext.329 are various cheques, issued by Shri Gopinath Kundu, Shri Mritunjoy Ghose, Shri Tapan Gop, Shri Madan Mohan Kundu, Shri Sunil Paul, Shri Swapan Gop, Shri Samir Paul, Shri Swapan Kr. Paul and Shri Pabir Paul and those cheques were drawn from the respective Account Holders. Ext.269, Ext.270, Ext.275, Ext.277, Ext.282, Ext.289, Ext.294, Ext.299, Ext.304, Ext.306 are various Demand Drafts, issued by SBI, Bongaigaon branch and SBI, ADB, Howly branch in favour of many persons/ authorities, including M/s AFFPL, Bongaigaon as well as M/s Inputs Corporation of India, Sibpur, Howly. Ext.309, Ext.310, Ext.313, Ext.322, Ext.323, Ext.326 are various pay-in-slips, issued in connection with aforesaid transaction. On the other hand, Ext.444 to Ext.491 are various draft applications of various amounts in favour of M/s AFFPL, M/s Inputs Corporation of Inida, self., all those drafts were issued by Bongaigaon branch of SBI and applicants of the drafts were Shri Madan Mohan Kundu, Shri Manoranjan Ghose, M/s AFFPL and most of the drafts were payable to M/s AFFPL at Bongaigaon branch of SBI.

PW-6 further deposed that when Hundis purchased by bank stand realized from the bank to whom such bills are sent for collection of money then such hundis etc. are not returned. But when proceeds are not realized within the reasonable time, then Hundis are returned to the original bank. Then it becomes the duty of purchasing bank to ascertain the reason as to why those bills remained unpaid and such facts are to be ascertained from the drawee bank. If the bills are not realized by the party concerned,

then the drawer bank has to take up the matter with the Consignee of the bills for realization of the amount. If the amount stand realized from the drawer, the suitable notice against those bills is made in Demand Draft Purchase Realization Schedule and other relevant records and only then bills would return to the drawer.

PW-6 was cross-examined by all accused persons and in his cross-examination, he deposed that **he did not know Shri Binoy Kundu and Shri Jaihind Ghose and that they are the partners of M/s Inputs Corporation of India and that he could not remember the contents of Appraisal Note made by A-1 that is Ext.32 and Ext.35. He himself allowed opening of account in SBI, Howly on the introduction of Shri Madan Mohan Kundu.** He further deposed in his cross that Ext.135(A) is the index of Demand Liability Register with 25 names on it and some names struck of thereon and that **sanctioned Limit, granted to various account holders were within financial limit of Accused No.1**

IX. PW-7, Shri H. Bhandaris, who is an Assistant in Sibpur branch deposed that Ext.89 is the Current account information sheet in respect of account no. 483/1 in the name of M/s Input Corporation of India. Shri Jaihind Ghose and Binoy Kr. Ghose are the partners of the said firm. The Trade License was furnished subsequently and to that effect, an endorsement was made in Ext.89.

In his cross-examination, he deposed that account holder was introduced by B. Goswami, Accountant, SBI, Howly.

- X. PW-8, Shri Swapan Kr. Sarkar,** who was also a bank employee, SBI, Howly, deposed that during 1989, he was working at SBI, Howly, ADB. At that time, Shri P.K. Thakuria and Shri Mrinal Kakoti were also working in the said branch. Ext.245 is the cheque dt.01-09-86 for Rs. 1,997,394 issued by B.K. Thakuria and Ext.245(1) is the signature of P.K. Thakuria. On the other hand, Ext.246, Ext.247 and Ext.248 are cheques for various amount, passed by Shri B. Goswami and Ext.246(1), Ext.247(1) and Ext.248(1) are his signatures.
- XI. Pw-9, Shri Manoranjan Roy** is also an officer of SBI, Sibpur branch. He stated that in 1985, he was working at Sibpur branch as a Casual Account Ledger Keeper. Ext.89 is an account in the name of M/s Inputs Corporation of India and it was opened on 30-5-85. In Ext.89, he made a endorsement that the Trade License, was not produced, vide Ext.89(2).He further says that for opening an account, production of Trade License is not a must.
- XII. PW-11, Shri G.C. Dey** is also an officer of SBI, Sibpur branch. He deposed that Ext.86 is the current account opening form in the name of M/s Inputs Corporation of India operated by Shri Jaihind Ghose and Shri Binoy Kr. Ghose. As per address, found therein, said firm is situated at Ramkrishnapur, 44-Umacharan Bose Lane, P.O. Sibpur, Howrah and introducer was one B. Goswami, Accountant, Howly branch, SBI, aforesaid firm was given account no. SSI/483. Ext.85 is a Ledger Sheet of the said account. Ext.250, Ext.251, Ext.252, Ext.253, Ext.254, Ext.255, Ext.256, Ext.259 are various cheques, drawn against the account in the name of M/s

Inputs Corporation of India. In his cross-examination, he clarified that all the cheques issued by M/s Inputs Corporation of India were in favour of SBI, Sibpur branch.

XIII. PW-10, Shri Swapan Ghose deposed that he is a permanent resident of Sarbhog town. According to him, no person, by title Gop, ever resided at Sarbhog. However, he knew one Shri Tapan Ghose and Shri Mritunjoy Ghose, later, being the one of the owners of M/s Assam Farmers Friends (P) Ltd. During 1985-87, he did not sign any pay-in-slip or cheque in favour of State Bank of India, Howly Branch. In his cross-examination, he admitted that he does not know, each and every household, residing at Sarbhog town.

XIV. PW-12, Shri Tapan Ghose, also a resident of Sarbhog town, deposed that no person, Gop by title, resides at Sarbhog town. He also knows Shri Mritunjoy Ghose, who is one of the owners of Fertilizers Shop which runs under the name and style Assam Farmers Friends Ltd. In his cross-examination, he also deposed that he does not know, each and every family living in Sarbhog town.

XV. PW-13, Shri Mohini Kumar Saha, a resident of Sarbhog town deposed that he has been doing business at Sarbhog town, since long back and as such, he is acquainted with Shri Mritunjoy Ghose, Shri Madan Kundu, Shri Gopinath Kundu, Shri Mahindra Ghose, Shri Naresh Ghose, Shri Tapan Ghose and Shri Swapan Ghose. To the best of his knowledge, no person, either Ghose by title or Paul by title, resides in Sarbhog town. He also does not know any person, by the name of Shri Manoranjan Ghose, Shri Tapan Gop, Shri Swapan Gop, Shri Samir Paul, Shri Pabir Paul, Shri Sunil Paul, Shri

Anil Paul, Shri Swapan Kumar Paul ever residing in Sarbhog town. He was not cross-examined.

XVI. PW-14, Shri Sukumar Saha is a resident of Sarbhog town. It is his evidence that he has been residing in Sarbhog town since 1948 and as such, he knows most of the men, living in Sarbhog town. One Shri Mritunjoy Ghose is known to him. His other name was Shri Jaihind Ghose. Shri Madan Kundu is also known to him who has a husking mill at Sarbhog Bazaar. M/s AFFPL is a business establishment and it is situated in Sarbhog bazaar. Shri Mritunjoy Ghose and Shri Madan Kundu are the owners thereof. One Shri Gopinath Kundu is elder brother of Shri Madan Kundu. But he never/ever come across any person, known by the name of (1) Shri Manoranjan Ghose, (2) Shri Tapan Gop, (3), Shri Swapan Gop, (4) Shri Ramen Ghose, (5) Shri Samir Paul, (6) Shri Anil Paul, (7) Shri Pabir Paul, (8) Shri Swapan Kr. Paul, (9) Shri Sunil Paul. However, there are some persons known as Tapan Gop, Swapan Gop, Ramen Ghose in Sarbhog area. He was not cross-examined by defence.

XVII. PW-27, Shri Ramesh Ch. Ghose, deposed that he is a resident of Sarbhog town and as such, he knows A-2, Shri Mritunjoy Ghose, who married his maternal uncle's daughter, Smt. Mamata Rani Ghose. Another name of Shri Mritunjoy Ghose is Shri Jayhind Ghose. It is also his evidence that he never signed any bank paper, pertaining to SBI, Howly branch. In his cross-examination, he denies the suggestion that he deposes against accused Shri Mritunjou Ghose due to his thawed relationship with Shri Mritunjoy Ghose and that Shri Mritunjoy Ghose and Shri

Jaihind Ghose are not one and same person.

XVIII. Shri Gopinath Kundu was examined as PW-38.

According to him, he is a resident of Sarbhog town, Ward No. 2. Shri Madan Kundu is his younger brother. Shri Mritunjoy Ghose, as acquaintance of him jointly own a firm known as M/s AFFPL with his Head Office at Sarbhog town. He had an account at SBI, Howly, vide account number 598. Ext.41 is the account opening form in relation to above account. Though the various transactions were done through said accounts, most of those transactions were not made by him. PW-38 was declared hostile, as he refused to corroborate some of his statements, he made before the IO during the investigation.

XIX. PW-39, Shri Manoranjan Ghose is a businessman from Sarbhog town. He is a resident of Sarbhog town of Ward no. 2. He has a house at Kamakhya Guri, West Bengal as well. He knows Shri Mritunjoy Ghose as he married his elder sister. He also knows one Shri Madan Mohan Kundu. He went to SBI, Howly and opened an account. Ext.44 is the account opening application dt. 23-01-86. Ext.45 is a specimen signature card. Ext.44(1) to Ext.44(3); Ext.45(1) and Ext.45(2) are his signatures in those documents. Following submission of Ext.44, he was given account, vide Howly account no. 599. Ext.665 is an application form for draft purchase facilities in the name of Shri Manoranjan Ghose. Ext.666 is a letter of guarantee. Ext.667 is the current account pay-in-slips. But signatures, thereon, viz, Ext.665(1), Ext.666(1) and Ext.667(1) are his signatures.

On the other hand, Ext.668, Ext.670, Ext.672, Ext.674, Ext.676, Ext.678, Ext.680, Ext.682, Ext.684, Ext.686, Ext.688, Ext.690, Ext.692, Ext.694, Ext.696, Ext.698, Ext.700, Ext.702 are various current account pay-in-slips, pertaining to account no.599 while Ext.669, Ext.671, Ext.673, Ext.675, Ext.677, Ext.679, Ext.681, Ext.683, Ext.685, Ext.687, Ext. 689, Ext.691, Ext.693, Ext.695, Ext.697, Ext.699, Ext.701, Ext.703 are various letters but Ext.668(1), Ext.669(1), Ext.670(1), Ext.671(1), Ext.672(1), Ext.673(1), Ext.674(1), Ext.675(1), Ext.676(1), Ext.677(1), Ext.678(1), Ext.679(1), Ext.680(1), Ext.681(1), Ext.682(1), Ext.683(1), Ext.684(1), Ext.685(1), Ext.686(1), Ext.687(1), Ext.688(1), Ext.689(1), Ext.690(1), Ext.691(1), Ext.692(1), Ext.693(1), Ext.694(1), Ext.695(1), Ext.696(1), Ext.697(1), Ext.698(1), Ext.699(1), Ext.700(1), Ext.701(1), Ext.702(1), Ext.703(1) are not his signature. He also denies the statements, made is Ext.704 which seems to have been recorded by Magistrate. Ext.704(1) is not his signature. He was declared hostile.

XX. PW-15, Shri U.C. Debnath is a postman. He deposed that during 1988, he worked as Postman at Sub Post Office, Sarbhog. He was also a permanent resident of Sarbhog town, under ward no. 3. He knows Shri Mahindra Ghose and Shri Sukumar Saha from Sarbhog town. He also knows one Shri Swapan Gop of Sarbhog town. Sometime, during the period between 1988, he was asked to deliver a registered letter, addressed to one Shri Swapan Gop. When he went to him. The addressee refused to accept the same on the ground that he was not Shri Swapan Gop.

XXI. PW-16, Shri G.Ch. Das is a Postman. He deposed that during 1988, he was working as a Postman. It is his evidence that Registered Letter No. 5981, 5989, 5991, 5984, 5985, were given to him for being delivered to the addressee, name therein. As per Postman Book Entry, vide Ext.504, on 21-04-88, he was given letter no. 5998, 5986, 5982, 5983, 5990, 5987, 5988 and 5989. Those letters could not be delivered on 21-04-88. But on the next day, he delivered all the letters as per the statement, made by him, from Postman Book Entry, vide Ext.504(1), Ext.504(2), Ext.505(1), Ext.505(2).

It is all his evidence that on 22-8-88, he met Shri Mritunjoy Ghose at his Fertilizers shop and delivered all those letters to him, as he told him that addresses, aforesaid, were known to him and he could deliver those letters to those persons. On such information, he handed over those letters to him after receiving his signature on relevant documents. But he did not know any person, by the name of Shri Ramen Ghose, Shri Samir Paul, Shri Swapan Paul, Shri Anil Paul, Shri Pabir Paul, Shri Swapan Gop and Shri Tapan Gop. In his cross-examination, he admitted that he does not know all persons by name and face, who live in Sarbhog town. The suggestions to that effect that he did not make any such statement before the IO and that he did not deliver any letter to Shri Mritunjoy Ghose, was denied by him.

XXII. PW-17, Shri S.R. Ghose is an officer of SBI. He deposed that from 1985-87, he was posted at Nagaland Rural Bank, Kohima. Thereafter, he was posted at Zonal Office, SBI, Guwahati. Ext.519

is a letter from Branch Manager, SBI, ADB, Howly, forwarding an application of AFFPL, recommending sanction of loan under DD purchase facility and loan amount was Rs. 2 lacs. It is also stated in the letter, aforesaid, that the firm was already enjoying CC limit of Rs.10 lacs. Ext.520 is a letter from Regional Office to Howrah branch, objecting sanction of DD purchase loan of Rs. 3 lacs in favour of Managing Director of aforesaid firm and directed to cancel the limit immediately. Ext.520(1) is the signature of D.P. Hazarika, the then Regional Manager.

Ext.521 is a letter dt.4-4-86 from Regional Office to Branch Manager, Howly, stating that some control cards were not received from SBI, Howly branch. The particulars, mentioned in the returns, were also given in the said letter. The letter relates to DD purchase facility of Shri Gopinath Kundu. Ext.522 is a letter dt.3-6-86 of Regional Manager to Branch Manager, Howly with regard to the matter relating to sanction of DD purchase limit granted to AFFPL. Ext.523 is a letter dated 9-2-89, being addressed to Shri T. Kar, Inspector, CBI whereby copies of current account guide lines on instruction, regarding DD Purchase Facilities. Ext.524 is the photocopies of said guide lines. In his cross-examination, he speaks about the procedure of DD Purchase Bill Facility. He also admits that he had no knowledge if control card is returned, as mentioned, in Ext.522, had ever been received by Regional Office, Guwahati.

XXIII. PW-18, Shri Niranjan Saha is also a Branch Manager, SBI, deposed that he was in Howly branch as Branch Manager between the months of April-May, 1987. When he was in the said

branch, he sent some registered letters, vide Ext.525, Ext.527, Ext.529, Ext.531, Ext.533, Ext.535, Ext.537, Ext.539, Ext.544 to Shri Samir Paul, Shri Swapan Gope, Shri Ramesh Ghose, Shri Prabir Paul, Shri Tapan Gope, Shri Anil Paul, Shri Gopinath Kundu respectively. All those letters were returned by Post Office with endorsement refused. He sent those letters, demanding unrealized bills, purchased by Banks from those persons. Ext.541 is a letter dt. 25-7-87 from Regional Office, addressed to Branch Manager, SBI, ADB, Howly, instructing him not to negotiate any bill without approval of Controlling Officer concerned. It was also instructed that if any bill is deposited, they should be kept in Bank Sundry deposited account. Said letters were received by the then Branch Manager, Shri P.R. Bhattacharjee. During his short stay at Howly, ADB, he requested Shri Mritunjoy Ghose to influence his good office for realization of money from the persons whose bills remained unrealized as he was one of the introducers of those Account Holders from whom ADB, Howly purchased bills.

XXIV. PW-19, Shri Samarendra Nath Ganguly, an officer of SBI deposed that during the period from 1985-87, he was working as Jr. Management Accountant at Sibpur branch, SBI. M/s Inputs Corporation of India maintained one current account, in their bank, SSI/483 being the number of aforesaid account. Ext.86 is the current account opening form; the Account Holder was introduced by Shri B. Goswami, SBI, Howly branch. Ext.85 is the Ledger Sheet in respect of aforesaid account. M/s Inputs Corporation of India, issued some cheques in favour of SBI, Sibpur branch for realizing

some bills, purchased. Cheques, aforesaid, are proved as Ext.251 to Ext.258, Ext.250, Ext.546 to Ext.558. The amount were debited from the account and they were also entered in Ledger, vide Ext.85.

XXV. PW-20, Shri Krishna Das, an officer of SBI, deposed that from Sept. 1982 to 31-5-91, he was serving as Cashier-cum-Typist, ADB, SBI, Howly. Shri P.R. Bhattacharjee was the Manager of the Branch and as such, he knew his handwriting and signatures.

XXVI. PW-21, Shri M.C. Thakuria, Branch Manager, SBI, too, deposed that from 21-7-87 to 6-6-91, he was working as Branch Manager, ADB, SBI, Howly. On 16-9-89, he took over charge from his predecessor Shri N.R. Saha. During his tenure, he found some envelopes; vide Ext.525, Ext.527, Ext.529, Ext.531, Ext.533, Ext.535, Ext.537, Ext.539, Ext.544 lying in that Bank. The said envelopes were closed and sealed.

XXVII. PW-22, Shri Jawaharlal Neogi is also an officer of SBI. According to him, from 1982-86, he was serving as Accountant, Sibpur branch, SBI. Ext.86 is the current account opening form in the name of M/s Inputs Corporation of India, name of the partners are Shri Jaihind Ghose and Binoy Kr. Ghose. Ext.86(1) is the signature of introducer Shri B. Goswami, an official of SBI. Ext.86(2) is the signature of PW-22. Ext.86(3), Ext.86(4) and Ext.86(5) are the signatures of the partner, who was Jaihind Ghose. Ext.85(2) in 2 sheets is the Ledger of the account and Ext.89 is Information Sheet in respect of said account. Ext.89 was written by

one Shri Manash Ranjan Roy. Ext.87 in 2 sheets is the deed of agreements. Shri Jaihind Ghose and Shri Binoy Kr. Ghose have executed the said deed of agreement. Howly Branch of SBI, sent some bills pertaining to M/s Inputs Corporation of India to Sibpur branch of SBI for collection. The party collected some of bills by submitting current account of cheques at SBI, Sibpur branch, being drawn in favour of the bank. Ext.250 to 259 and 557 are eleven such cheques. **In his cross-examination, he deposed that the account in the name of M/s Inputs Corporation of India was opened on 30-08-85 and it was shown as a partnership firm.**

XXVIII. PW-23 is an Accountant of SBI. According to him, from 15-5-87 to 9-12-89, he was serving as Accountant, ADB, SBI, Howly. The current Account Holders of the Bank were issued cheques. The numbers of such chequebooks are recorded in the Chequebook Issue Register, maintained by that branch. Cheques numbers from 965151 to 965350 were issued on 17-10-84 against account no. CNI/5/4 in the name of M/s AFFPL. On the other hand, cheque numbers from 41285 to 412900 were issued on 09-05-86 against the account No. SIB/2/512 in the name of Shri Ramen Ghose. He was not cross-examined by defence.

PW-24, PW-34 and PW-36 are from Regional Office, SBI, Guwahati, PW-36 being the sanctioning authority.

XXIX. PW-24, Shri Lakshmi Kanta Banerjee is also an officer of SBI. He deposed that from April 1985 to September 1987, he was working as Personal Banking Division Manager, SBI. He also

stated about the procedure of opening a new account in SBI. Ext.86 is an account opening form in the name of M/s Inputs Corporation of India. Ext.86(6) is his signature, put on behalf of Branch manager. The account was opened on the introduction of Shri B. Goswami, Accountant, Howly branch. In his cross-examination, he clarified the signature of Shri B. Goswami, Accountant, SBI, Howly branch, which was available at SBI, Sibpur branch.

XXX. PW-34 is also a bank officer. He deposed that from 1985-87, he was serving as Regional Manager, Regional Officer, SBI, Bhangagarh, Guwahati, ADB, Howly, was under his jurisdiction. Ext.56 is Cash Credit Information Sheet commonly called Ledger Sheet in respect of M/s AFFPL, pertaining to account no. 5/4. Ext.637 is letter from Regional Office, addressed to Branch Manager, ADB, SBI, Howly, regarding granting of DD Bill Purchase Limit for Rs. 2 lacs in respect of M/s AFFPL. Ext.637(1) is the signature of Administrative Officer (Advance). Ext.638 is a letter from Branch Manager, ADB, SBI, Howly, addressed to Regional Branch recommending grant of DD Purchase Bill Limit for Rs.25 lacs in favour of M/s AFFPL. Ext.638(1) is the signature of Shri P.R. Bhattacharjee, the then Branch Manager.

Ext.520, Ext.522 and Ext.639 are letters written by him, rejecting a prayer of Branch Manager for extension of time and directing him to cancel DD Purchase Bill Limit immediately as well as asking him to submit compliance report with regard to direction, contained therein. Ext.641, Ext.642 and Ext.643 are various letters from

Regional Office, addressed to Branch Manager, SBI, Howly, asking for information including cancellation of DD limit, granted to M/s AFFPL. Ext.641, Ext.642 and Ext.643 are written by Shri S.S. Dey, the then Administrative Officer (Advance). In his cross-examination, he admitted that he had no personal knowledge about the contents of letters, written by Shri S.S. Dey, Administrative Officer (Advance).

XXXI. PW-36, Shri N. Mazumdar is also an officer of SBI. He deposed that on 26-6-89, he was posted as Chief General Manager, SBI Local Head Office, Guwahati. Accused Shri P.R. Bhattacharjee was posted as Branch Manager, ADB branch, SBI during the period between 1984-87. PW-36 is the appointing authority of an officer of the rank of Shri P.R. Bhattacharjee. During the time in question, CBI official had placed before him some documents and requested him to accord sanction to launch prosecution against Shri P.R. Bhattacharjee. He had very carefully gone through the aforesaid documents and come to the conclusion that prayer, made by CBI was justified and that was a fit case where a sanction, as prayed for, by CBI is to be accorded against Shri P.R. Bhattacharjee for criminal misuse of his official position. Accordingly, he accorded a sanction to launch prosecution. Ext.465 in 6 sheets is the sanctioned order. In his cross-examination, he denied the suggestion that he did not go through the documents, placed before him and that accorded sanction mechanically.

XXXII. PW-25, Shri Umendra Nath Chakravorty is also a Postal Assistant, Howrah Post Office. It is his evidence that in 1985, he

was working as Post Master at Sibpur Post Office. Shri Tapan Mukherjee was also a Postmaster and 44-Umacharan Bose Lane falls within his beat. Ext.559 is a Postman Book of Sibpur Post Office. In Ext.559, there is an endorsement to that effect that M/s Inputs Corporation of India, 44-Umacharan Bose Lane "**not found/absent**" etc. He was not cross examined.

XXXIII. PW-26, Shri Dwijen Das is a sub Post Master, Sibpur Post Office. In his evidence, he says that in October, 1988, he was a Sub Post Master, Sibpur Post Office. During that time, CBI official, came to him and seized some documents, mentioned, in seizure list, vide Ext.560. It is also his evidence that he brought those documents, so seized by CBI from him, from Shillong on the requisition, made by CBI. Ext.560(1) is his signature.

XXXIV. PW-32, Shri T.K. Ghosal is also a Postal Employee. It is his evidence that during 1988, he was serving at Sibpur Post Office, Howrah. During that time, CBI officials came to him and seized some documents from him, which are mentioned in seizure list, vide Ext.634. Documents, so seized, relates to M/s Inputs Corporation of India. In his cross-examination, he admitted that the original entries of Ext.634 were not shown to him when he was examined in the Court.

XXXV. PW-28 and PW-44 are the officials from SBI, Bongaigaon branch. From his evidence, it transpires that he served as an accountant and subsequently as Field Officer in the Bongaigaon branch, SBI from 1986 to 89. Ext. 568 dated 21-7-84, is an application for opening a current account in Bongaigaon

branch of SBI, submitted by M/s AFFPL, Sarbhog and that has been signed by A-2 on behalf of the firm in his capacity as Managing Director. Shri U.K. Barman, the then officer of Bongaigaon branch, had received that application and allowed to open an account on verification of the signature of A-2. Ext.58 in 9 sheets is the certified true copy of Ledger Sheet of account no. 5/500 in the name of M/s AFFPL. Ext.563 is a bank draft dt. 5-8-86 for Rs. 1,30,000/-, issued from SBI to Sibpur branch, Howrah, It was in favour of M/s Input Corporation of India.

Ext.564 is the application for issuance of bank draft. Ext.565 is the cheque dt. 5-8-86, signed by A-2 for Rs. 1,30,260/- for payment to yourself. Ext.82, Ext.229, Ext.566, Ext.567 are various bank drafts in favour of M/s Inputs Corporation of India, issued from Bongaigaon branch of SBI as well as Sibpur branch, Howrah. Ext.289, Ext.294, Ext.299, Ext.304, Ext.206, Ext.261, Ext.262, Ext.269, Ext.270, Ext.273, Ext.275, Ext.277, Ext.272, Ext.492, Ext.493, Ext.494, Ext.495, Ext.496, Ext.497, Ext.498, ext.499, Ext.500, Ext.568 are various bank drafts, issued by SBI, ADB, Howly to SBI, Bongaigaon branch and all those bank drafts were in favour of M/s AFFPL. The entries, relating to deposit of amount, mentioned in those drafts, were reflected in Ext.58 and amounts were deposited in account no.5/500, which stood in the name of Input Corporation of India.

XXXVI. PW-44, Shri Amiya Kr. Dhar is an employee of SBI. He deposed that during 1988 to September, 1990, he was working at SBI, Bongaigaon Branch. During that time, CBI officials came to

him and seized some documents, through various seizure list, vide Ext.562 to Ext.568. The documents, seized from him, were Ext.261, Ext.262, Ext.269, Ext.270, Ext.273, Ext.275, Ext.277, Ext.282, Ext.289, Ext.294, Ext.299, Ext.304, Ext.493, Ext.494 to Ext.499.

XXXVII. PW-29, Shri Golap Ch. Sarma is a field Officer in the ADB, SBI, Howly branch. During 1988-89, he worked as above in the aforesaid bank. Ext.86 is account opening application and it was submitted by M/s Inputs Corporation of India, Sibpur, Howrah. Ext.86(1) is the signature of Shri B. Goswami. He also stated that Ext.569 to Ext.577 are various seizure memos, prepared by CBI.

XXXVIII. PW-30, Shri Upendra Sarma is an officer of SBI. He says that he served as Clerk-cum-Cashier at Sibpur branch from 1977-78. His duty was to write Demand draft Bills Purchase Release Schedule (**in short DDBPRS**) and other related matters. DDBPRS are sent to Sibpur branch of Howrah for realization of money by the said bank. Necessary instructions, Hundis, Railway receipts were also sent along with such bills. Ext.578 is DDBP Register, ADB, SBI, Howly. DDBP has an acknowledgement foil. The receiving branch fills up the acknowledgment foil and the officer concerned, of that bank put signature on it with official impression, thereon and signed those two documents as well. Ext. 578(1) are the entries in respect of DDRB no. 10/1, made by him. Ext.578(2), the acknowledgment foil of this bill. Ext.578(3) are the entries, made by him in respect of DDRB no. 10/2.

Ext. 578(4) is the acknowledgment foil realization schedule. Similarly, Ext.578(5), Ext.578(7), Ext.578(9), Ext.578(11),

Ext.578(13), Ext.578(15), Ext.578(17), Ext.578(19), Ext.578(21), Ext.578(23), Ext.578(25), Ext.578(27), Ext.578(29), Ext.578(31), Ext.578(33), Ext.578(35), Ext.578(37), Ext.578(39), Ext.578(41), Ext.578(43), Ext.578(45), Ext.578(47), Ext.578(49), Ext.578(51), Ext.578(53), Ext.578(55), Ext.578(57), Ext.578(59), Ext.578(61), Ext.578(63), Ext.578(65), Ext.578(67), Ext.578(69), Ext.578(71), Ext.578(73), Ext.578(75), Ext.578(77) are entries in respect of bill no. 10/3, 10/4, 10/5, 10/6, 10/27, 10/28, 10/29, 10/30, 10/69, 10/70, 10/71, 10/72, 10/73, 10/74, 10/9, 10/10, 10/11, 10/12, 10/13, **10/13**, 10/75, 10/76, 10/77, 10/78, 10/79, 10/80, 10/89, 10/90, 10/91, 10/92, 10/93, 10/94, 10/23, 10/24, 10/43, 10/44, 10/45 and 10/39 respectively. Besides PW-30, those entries were made by Shri M.R. Saikia and Shri Mafizur Rahman.

He further deposed that Ext.136 is the DD Bill Purchase Schedule Register. Vide Ext.136(13), Ext.136(14), Ext.136(15), Ext.136(16), Ext.136(17), Ext.136(18), Ext.136(20), Ext.136(21), Ext.136(22), Ext.136(23), Ext.136(24), Ext.136(25), Ext.136(49), Ext.136(50), Ext.136(51), Ext.136(52), Ext.136(53), Ext.136(54), Ext.136(55), Ext.136(56), Ext.136(57), Ext.136(1), Ext.136(2), Ext.136(3), Ext.136(4), Ext.136(5), Ext.136(6), Ext.136(38), Ext.136(39), Ext.136(40), Ext.136(41), Ext.136(42), Ext.136(43), Ext.136(44), Ext.136(45), Ext.136(46), Ext.136(47), Ext.136(48), Ext.136(29), Ext.136(30), Ext.136(31), Ext.136(32), Ext.136(33), Ext.136(34), Ext.136(35), Ext.136(36), Ext.136(37) are the entries, thereon, in respect of DD bill no. 10/131, 10/132, 10/133, 10/134, 10/135, 10/136, 10/137, 10/138, 10/139, 10/140, 10/141, 10/142, 10/147,

10/148, 10/95, 10/96, 10/97, 10/120, 10/121, 10/122, 10/123, 10/124, 10/125, 10/114, 10/115, 10/116, 10/117, 10/118, 10/119, 10/126, 10/127, 10/128, 10/129, 10/130, 10/143, 10/144, 10/145, 10/146, 10/147, 10/148 respectively. In his cross-examination, he deposed that Ext.40 is a Ledger Sheet of account no. SBI/2/596 in the name of Shri Madan Mohan Kundu, which is prepared by PW-30.

XXXIX. PW-31, Shri Surendra Kr. Nandi is an Assistant Accountant, M/s Ashoke Transport Agency, Patna, being examined as witness, herein. He alone forms one set of witness. He says that he joined M/s Ashoke Transport Agency on 13-07-75 and had been serving ever since at Head Office of the Agencies, at 94-CR Avenue, Calcutta-12. He served at the Head Office during the period between "13-7-75 to 19-10-94" and then he was transferred to Patna. On being required by Secretary, Indian Bank Association, M/s Ashoke Transport Agency, furnished all the particulars, vide Ext.581 to the Secretary of the aforesaid Bank. But, as per Ext.581, there is no branch of M/s Ashoke Transport Agency either at Sarbhog town or at Howly. During the course of investigation, CBI officials, came to M/s Ashoke Transport Agency, Calcutta and seized some documents, mentioned, in seizure list, vide Ext.579.

XL. PW-33, Shri Tarun Kr. Paul is an employee of Howrah Municipality Corporation. It is his evidence that he has been working as Clerk, Howrah Municipality Corporation during 1988. Ext.635 is the Demand Register of Trades and Professional Tax of Howrah Municipality Corporation. The assessment was done on 21-

12-88 for the year of 1985-86 and it relates to one M/s Inputs Corporation of India with Shri Jaihind Ghose and others, being the partners of the firm.

Ext.636 is the copy of assessment book of land and building of Howrah Municipality Corporation, pertaining to Ward no. 4, Circle no.23. Ext.636 relates to the period from 3rd quarter of 1981 to 1988-89. He was not cross-examined by defence.

PW-43, Shri S.C. Adhikari is also a cashier of Howrah Municipality Corporation. He worked in License Department. Ext.855 is a letter, issued by Howrah Municipality Corporation. Ext.855(1) is the signature of Shri Suresh Ch. Basu, who was License Officer at the relevant time. The said letter was addressed to Shri T. Kar, Inspector, CBI, whereby some information sought for by CBI, was furnished to him.

XLI. PW-35, Shri Bhueneswari Goswami is an officer of SBI and had deposed that from 1984-87, he was posted and functioning as Accountant, ADB Branch, SBI, Howly. Ext. 86 is current account opening form. He identified one Shri Jaihind Ghose and one Shri Binoy Kr. Ghose of M/s Inputs Corporation of India. He did not know Shri Jaihind Ghose and one Shri Binoy Kr. Ghose, but still he put his signature in Ext.86, as the introducer of the applicants, mentioned therein as instructed by Shri Madan Mohan Kundu, whom he knew. He also deposed that prior to his putting signature in Ext.86, Shri P.R. Bhattacharjee, the then Branch Manager, ADB, SBI, Howly told him that some persons from M/s AFFPL had come

to him and he was asked to help them in opening some accounts at Howrah branch of SBI. On the basis of such introduction, account no. SSI/483, in SBI, Sibpur branch was opened. Ext.85 in 2 sheets is Ledger Sheet, pertaining to account no.483 in the name of M/s Inputs Corporation of India; partners were Shri Jaihind Ghose and Shri Binoy Kr. Ghose. Ext.89 is the Information Sheet in respect of above account. Ext.89(1) contains his signature as well.

In her cross-examination, she admitted that while she put signature on Ext.86, only Shri Madan Mohan Kundu was present before him and the other persons, namely Shri Jaihind Ghose and Shri Binoy Kr. Ghose did not appear before him at any point of time. Later on, he came to know that Shri Jaihind Ghose and Shri Binoy Kr. Ghose are the nicknames of Shri Mritunjoy Ghose and Shri Madan Mohan Kundu respectively.

XLII. Shri J.K. Samuel, the Assistant Director, Documents, NIC & FS, Rohmi was examined as PW-37. He was also examined as PW-40. PW-37 deposed that he is M.Sc. in Chemistry and took initial training in Document examination at National Laboratory, Calcutta in the year of 1976. Since then, he had examined hundreds of documents independently and tendered his evidence as expert witness. During the year 1988, he worked as Assistant Govt. Examiner of Question Document in the O/o GEQD, Calcutta. Vide forwarding letter Ext.646, 706, 773, 780, 787, he received some documents, pertaining to RC Case No. 17/87, 13/87, 14/87, 15/87, 16/87 respectively. All those documents are sent by SP, CBI, Shillong and he was requested to examine those documents and to

give his opinion thereon.

Accordingly, he opined as recorded in Ext.657, Ext.707, Ext.775, Ext.782, Ext.789 which corresponds to RC Case No. 17/87, 13/87, 14/87, 15/87, 16/87 respectively. Ext.658, Ext.708, Ext.776, Ext.783, Ext.790 are detail reasons in respect of opinion, rendered in Ext.657, Ext.707, Ext.775, Ext.782, Ext.789 respectively. It is also his evidence that documents were also independently examined by the then GEDQ, Shri Santosh Singh and he came to the conclusions as of PW-40 and in proof thereof, he put his signature in all the opinion, rendered by PW-40. He further states that specimen signatures of Shri Madan Mohan Kundu were marked as Ext.S1 to Ext.S106, and that of Shri Mritunjoy Ghose and Shri P.R. Bhattacharjee were marked as S107 to S159 and S160 to S199 respectively.

On the other hand, signatures of Shri B. Goswami were marked as S200 to S216. It is his evidence that question handwritings and signatures, marked as Q3, Q4, Q6, Q8, Q9(2), Q11, Q13, Q15, Q16, Q17, Q18, Q19, Q20, Q21, Q22, Q23, Q76, Q132, Q134, Q151, Q158, Q159, Q161, Q163, Q164, Q166, Q168, Q169, Q171, Q174, Q179, Q181, Q182(1), Q183, Q189, Q190, Q192, Q194, Q197, Q196, Q198, Q202, Q203, Q204, Q206, Q207, Q209, Q210, Q215, Q214, Q220, Q221, Q222, Q223, Q225, Q230, Q231, Q231, Q232, Q238, Q241, Q243, Q244, Q248, Q253, Q254, Q258, Q1, Q61, Q9, Q10, Q17(2), Q24, Q25, Q27, Q28, Q29, Q30, Q31, Q32, Q33, Q34, Q46, Q48, Q49, Q50, Q51, Q54, Q65, Q57, Q58, Q59, Q60, Q62, Q63, Q64, Q66, Q67, Q81, Q87, Q88, Q89, Q90, Q91,

Q95, Q98, Q99, Q100, Q101, Q101(2), Q107, Q124, Q125, Q126, Q130, Q131, Q133, Q135, Q136, Q137, Q139, Q140, Q141, Q142, Q144, Q145 were written by Shri Madan Mohan Kundu while question handwritings and signatures, marked as Q43(1), Q77, Q136, A186, Q187, Q188, Q191, Q193, Q199, Q200, Q201, Q260, Q233, Q236, Q237, Q239, Q240, Q248(1) were all written by Shri Mritunjoy Ghose.

XLIII. PW-41, Shri M.K. Saikia is also an officer of SBI. He deposed that from 15-9-82 to September, 1994, he was working as Cashier-cum-Clerk at ADB, Howly branch. During that time, he was in DD Purchase Section. Ext. 34, Ext.28, Ext.46, Ext.49 and Ext.37 are Ledger Sheets, pertaining to account No. 1525, 611, 599, 610 and 1524 respectively. Shri Samir paul, Shri Swapan Gope, Shri Manoranjan Ghose, Shri Tapan Gope and Shri Prabir Paul respectively are the Account Holders of all those accounts. Ext.78, Ext.79, Ext.80, Ext.147, Ext.148, Ext.149, Ext.159, Ext.160, Ext.161, Ext.180 to Ext.185 and Ext.809 to Ext.850 are the realization schedules, prepared by him.

XLIV. PW-42, Shri S. Chakravorty is also an Officer of SBI. In his evidence, he deposed that in 1988, he was working at Sibpur Branch of SBI. During that time, CBI officials came to him and seized some documents, mentioned in seizure list, vide Ext.551, Ext.552, Ext.553, Ext.554. He further deposed that Ext.85 and Ext.86 are Ledger Sheet and Specimen Signature Card, pertaining to account no. SSI/483 in the name of M/s Inputs Corporation of India. On the other hand Ext.89 is an Inspection Sheet pertaining

to account no. SSI/483.

XLV. PW-45, Shri T. Kar who was an Inspector, CBI in his deposition stated that during the period between 1984 and 1990, he had been working as Inspector, CBI. On 03-06-87, the then SP, CBI, Shri S.K. Saikia received as many as five FIR's, vide Ext.856 to Ext.860. On receiving the said FIR's Shri Saikia registered cases numbered as RC No. 13/87 to 17/87. RC Case No. 13/87 and 16/87 were endorsed to him for investigation, while other three cases were endorsed to Shri K.N. Singh, Dy. SP, CBI. During the course of investigation, he examined witnesses, conducted searches at various places including the houses and offices of accused persons, prepared search memos vide Ext.874 to Ext.880, seized numbers of documents from various places, prepared seizure memos, vide Ext.1 to Ext.19, Ext.22, Ext.503, Ext.560, Ext.569 to Ext.577, Ext.634, Ext.851 and ext.854.

He also received the statements of Shri Gopinath Kundu, Shri Manoranjan Ghose recorded by Magistrate vide Ext.881 and Ext.882. He and Shri K.N. Singh obtained specimen handwriting and signatures of Shri Bhubenewari Goswami, Shri P.R. Bhattacharjee, Shri Madan Kundu and Shri Mritunjoy Ghose in presence of witnesses and the same were sent to handwriting expert for their opinion. Ext.650, Ext.651, Ext.652 and Ext.653 are the specimen handwriting and signatures of them. Shri K.N. Singh obtained sanction order from competent authority to prosecute the accused Shri P.R. Bhattacharjee in the Court of law. On the completion of investigation, he submitted a consolidated charge

sheet in respect of all five cases and forwarded the accused Shri P.R. Bhattacharjee, Shri Madan Kundu and Shri Mritunjoy Ghose to the Court to face trial.

In his cross-examination, he deposed that though M/s Inputs Corporation of India maintained an account at SBI, Sibpur Branch, however, such firm was a bogus entity and that Shri Jaihind Ghose and Shri Binoy Kundu could not be traced in the address furnished to the bank. In his cross-examination, he further deposed that he came to know after investigation that Shri Jaihind Ghose was Shri Mritunjoy Ghose and Shri Binoy Kundu was Shri Madan Kundu. He denied the suggestion that he made effort to save Shri B. Goswami and most illegally framed Shri P.R. Bhattacharjee in the case, that he did not take specimen signature of the accused and witnesses in presence of witnesses and that witness Shri Gopinath Kundu and Shri Manoranjan Ghose did not give any statements supporting prosecution case during investigation.

XLVI. PW-46, Shri DhaniramSaikia was a Judicial Magistrate. He deposed that on 06-01-89, he was serving as Judicial Magistrate, Guwahati. On that day, on being required by the then CJM, Kamrup, Guwahati, he recorded the statements of Shri Manoranjan Ghose, and Shri Gopinath Kundu, vide Ext.704 and Ext.664 respectively. Having recorded the statements of witnesses, he returned the case record to the learned CJM for doing needful, vide his order dt.06-01-89, which was being proved as Ext.883.

17. From the materials available and the evidence recorded hereinabove, it is clear that the prosecution has projected a case that the accused No. 2 and

3 opened bank accounts in the names of fictitious eleven numbers of individuals and accused No. 1, on behalf of the bank purchased fake invoices from these fictitious individuals drawn on a partnership firm called M/s Input Corporation of India, whose partners are two individuals by name of Jaihind Ghose and Sri Binoy Kundu. It is the further case of the prosecution that these two persons are actually the accused No. 2 and 3. It is also the case of the prosecution that certain portion of money from such fake accounts was diverted to the account of M/s AFFPL. This entity had an outstanding cash credit account at the Regional Office of the State Bank of India at Guwahati and the rest of the money from this account was withdrawn using demand drafts and deposited into the current account of M/s AFFPL at Bongaigaon Branch of State Bank of India. From these accounts, demand drafts were issued and deposited in the accounts of M/s Inputs Corporation of India maintained at State Bank of India, Sibpur Branch, Howrah, West Bengal. This money was used to pay some of the outstanding invoices purchased by accused No. 1 from this fake account but a total amount around of Rs. 40 lakhs including overdraft interest remains outstanding.

18. The star witnesses of the prosecutions are PW-6, PW-12, PW-14, PW-16, PW-27, PW-29, PW-35, PW-37/40, and PW-45. Though two accused persons named in FIR was examined as approver witness being PW-38 and PW-39, however, they did not support the prosecution case and accordingly, they were declared hostile.

19. The primary charge against the accused No. 2 and 3 is of committing an offence of forgery under Section 465/467 and 471 of IPC. They have also been charged for the commission of forgery for the purpose of cheating i.e. Section 468 IPC as well as committing offences under Section 420 of IPC. All the three accused persons have also been accused of indulging in an offence under

Section 120B of IPC i.e. criminal conspiracy. The accused No. 1 i.e. the Bank Manager, had also been charged with committing an offence under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. In the aforesaid backdrop, in the considered opinion of this Court, the primary charge is the forgery, and the other offences are the result of such offences.

20. Chapter XVIII of IPC deals with cases involving falsification of written or digital records. The essential ingredients of forgery as defined under Section 463 of IPC is the intentional creation of a false document or part thereof with intent to damage or injure another person or public, to support any claim or title, to induce the transfer of property, to induce entering into an express or implied contract, or to commit fraud or that the fraud may be committed. Therefore, the primary element necessary to establish criminal liability in this regard is the creation of a fake document or electronic record. It is well settled that a person can be said to have prepared a fake document, if he/she has signed anything as someone else or with someone else signature on it, tamper with official record or got a document by lie or otherwise duping and inebriating a person. Another essential ingredient required to be proved is that the forgery must have been done with the specific intent to harm someone and to gain benefit. Under the present case, the forgery involves creating fake invoices and opening fake bank accounts with the intention of using it to deceive the bank.

21. In the case in hand, the prosecution seized and exhibited certain documents such as loan application form, cheques, bank drafts, ledger book etc. The PW-45 obtained specimen signature of PW-35 and all of the accused persons. According to the prosecution, such specimen signatures were taken in presence of witnesses. The handwriting expert was examined as PW-37 as well as PW-40 and the opinions were also exhibited.

22. According to the prosecution, the specimen signature and handwriting of the accused persons along with the PW-35 was taken in presence of four independent witnesses. Out of these four independent witnesses, only two witnesses were examined i.e. PW-6 and PW-29.

23. PW-6 was the Deputy Manager (Advance), State Bank of India. Through him, the prosecution tried to establish the procedure of opening bank account, procedure of bill pass facility and procedure of selling and purchase of bank draft. Through this witness, the prosecution have proved the financial transaction such as opening of bank account, grant of advance and that the bills/amount advanced through purchase of invoice, remained unpaid. In fact, this witness during cross examination admitted that he himself allowed opening of bank account in SBI on introduction of Sri Madan Mohan Kundu (A-1).

24. Though the prosecution projected that the specimen signature was taken in presence of this witness, however, this witness did not depose during his examination-in-chief before the Court that the handwriting specimen were taken in his presence. He even did not identify his own signature on the documents exhibited for this purpose. The other independent witness, according to the prosecution in presence of whom the specimen signatures were taken i.e. PW-29 had also not deposed that the handwriting specimen were taken in his presence nor did he depose anything identifying his own signature on the documents as witness.

25. The prosecution has relied on the evidence of PW-45 i.e. Investigating Officer, who collected the specimen signatures. Even if, it is assumed that this PW-45 was competent to collect the specimen signatures on his own for the reason that at that relevant point of time, the procedure prescribed under Section 311 A of Cr.P.C., was not enacted, however, this

witness though deposed in his evidence that the specimen handwriting and the signatures of the accused persons were taken in presence of witnesses and exhibited the specimen handwriting and signatures, however, he had not identified the handwriting of the accused persons and the other persons, whose handwriting and signatures were collected by this PW-54, though he identified the signature of other Investigating Officer, Sri K. N. Singh. Another important aspect of the matter is that the handwriting and specimen signature of PW-35 was also obtained along with the accused persons but this witness did not depose anything on this regard during his examination.

26. In the considered opinion of this Court, in the present case, the foundational fact requires to be established is that the documents were forged by the accused No. 1 and 2. For that purpose though the prosecution has collected specimen signature and handwriting of the accused persons along with some other bank officials, however, from the aforesaid, it is clear that the prosecution has failed to establish beyond reasonable doubt that the signature and handwriting collected for the purpose of comparing the same with the admitted signature of the accused are same. It is important to note here that PW-45 was the Investigating Officer in two investigations and other three investigations were carried out by Sri K. N. Singh, but he was not examined by the prosecution.

27. Yet another aspect of the matter is that though PW-45 deposed that the signatures were collected in presence of the witnesses and there are some signatures of witnesses, however, said witnesses have either not been examined and though PW-6 and PW-29 were examined, they have not testified that such signatures were taken in their presence as recorded hereinabove. As recorded hereinabove, even PW-45 did not identify the signatures and handwriting

specimens obtained by him from the accused persons, thus, though PW-45 deposed that he obtained the handwriting and specimen signatures of the accused persons and though he has exhibited the document, however, the signature and handwriting that they have collected was neither proved nor identified and / or exhibited. Therefore, mere exhibiting a piece of paper where the alleged signature and handwriting contains shall not suffice when such signatures/handwriting are not identified and marked as exhibit by the witness i.e. PW-45 even if, it is assumed that non examination of the independent witnesses in presence of whom such signatures/handwritings were obtained shall not be fatal inasmuch as the said exhibited document contained many signatures.

28. There is no doubt that opinion of a handwriting expert is a relevant fact under Section 45 of the Indian Evidence Act, 1872 (hereinafter referred to as Act, 1872). In term of Section 47 of the Act, 1872, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed is also relevant fact. As per explanation to Section 47 of the Act, 1872, a person is said to be acquainted with handwriting of another person, when he has seen that person write or when he has received documents purported to be written by the person in answer to the documents written by himself or under his authority and addressed to that person or when in ordinary course of business, documents purported to be written by the person had been habitually submitted to him. Thus, it is clear from the aforesaid provision of law that opinion of a person who is acquainted with another person is having relevance. The explanation given in this section enumerates the circumstance in which a person may be said to have substituted. In term of the aforesaid explanation, a person is said to be acquainted with the handwriting of another

person when he has seen that person write or when he has received documents purported to be written by that person in the answered documents or under his authority and address of the person or when, in ordinary course of business, documents purported to be written by the person have been habitually submitted to him.

29. In the case in hand, PW6 and PW 29 are bank officials who are projected to have such acquaintance with the signature/handwriting of the accused persons. However, he has not deposed anything as regards the signature/handwriting of the accused persons in question. Similar is the case in respect of PW-29. Not only that, none of the other witnesses who are bank officials has deposed in this regard. The PW-45 who is the Investigating Officer has identified the signature of the other inspector i.e Sri K. N. Singh, however, this witness has also not identified the disputed signature and handwriting of the accused persons. Thus, none of the persons who is acquainted with the signature/ handwriting of the accused persons were either not examined or those who were examined did not identify such signature. Though, it is the case of the prosecution that PW-45 collected the specimen signature/handwriting in presence of witnesses, however, except identifying the signature of the other Inspector i.e. the PW-24 has not testified that he has seen the accused persons writing. In the considered opinion of this court, the foundational fact is to be laid by the prosecution by adducing evidence of a person acquainted with the handwriting of the accused persons in the manner prescribed under Section 47 of the Act, 1872 and then only, an opinion can be formed that it was the accused whose handwriting was contained in the question documents as well as the specimen documents. In absence of such material, it will not be safe to arrive at a definite conclusion that it was established beyond reasonable doubt

that it was the handwriting of the accused persons on the specimen or the question documents.

30. Now, let this Court consider the evidence of handwriting expert i.e. PW-37- and PW-40.

31. It is well settled that evidence of expert is a weak type of evidence and not substantive in nature. It is also equally well settled that it is not always safe to solely rely on such an evidence and the court may seek independent and reliable corroboration in the fact of the given case inasmuch as Section 46 of the Act, 1872 expressly makes opinion evidence open to challenge on facts. It is equally well settled that it is the duty of the Court to approach opinion evidence cautiously while determining its reliability and that the Court may seek independent corroboration of such evidence as a general rule of prudence.

32. In the case in hand, as recorded hereinabove, the foundation whether the handwriting/specimen signature of the accused person and the disputed signature are of the same can be concluded once it is established that the specimen handwriting and the specimen signatures are of the accused. However, as recorded hereinabove, the prosecution has failed to bring any material through any of the witnesses that the specimen signature/handwriting signature obtained by the Investigating Officer i.e. PW-45 is actually signed/written by the accused persons. Though it is urged by Mr. Haloi, learned Special Public Prosecutor for the CBI that the accused has not raised any defence as regards the validity of such signatures, however, question of such defence will come when prosecution leads any evidence suggesting that the aforesaid signatures were duly taken and such signatures were identified during the course of evidence. When the prosecution themselves has not identified and marked the disputed signatures/specimen signatures through their witness and

though a stand has been taken that the signature/handwritings were obtained in presence of witnesses, the burden cannot be shifted to the defence in absence of examination of such independent witness and exhibits and marking such signature purportedly obtained in presence of witness. Therefore, the stand of the CBI that defence did not put any suggestion that the signatures appearing in Exhibit-650, 651, 652 and 653 are not of the accused appellants shall, not give a benefit to the prosecution in absence of prosecution not leading any evidence to that effect that Exhibit-650, 651, 652 and 653 are the specimen signature of the accused and that it was taken in presence of the independent witness inasmuch as the independent witnesses in presence of whom, the signatures/handwriting alleged to have been obtained has not deposed anything in this regard. Therefore, such argument of the learned Special Public Prosecutor for the CBI is not accepted inasmuch as it is the prosecution who is to lay at least the foundation of such materials.

33. It is seriously contended by the learned Special Public Prosecutor for the CBI that the Investigating Officer i.e. PW-45 is to be regarded as the person who is acquainted with the writing of the accused appellants as Exhibit-650, 651, 652 and 653 was written/signed before the Investigating Officer i.e. PW-45. Such contention cannot also be accepted for the reasons recorded hereinabove inasmuch as PW-35 and other officials from the Bank were examined, however, such witness has also not deposed of having any acquaintance with the signature/handwriting of the accused persons though one of the accused was the bank employee and admittedly, the alleged fake bank accounts were opened by the PW-35.

34. Yet another aspect of the matter is that though the prosecution has sought to rely upon the PW-45 as regards the signature and handwriting,

however, it is on record that out of total 5 (five) investigation, the PW-45 only conducted two investigation and rest of the three investigation was carried out by Sri K. N. Singh, who was not even examined.

35. In view of the aforesaid, in the considered opinion of this Court, the foundation of forgery by the accused No. 1, 2 and 3 has not been laid by the prosecution inasmuch as a doubt has been created as regard whether the specimen signatures/handwriting which were sent for comparison for forensic were actually of the accused persons. That being the position, the opinion of the expert shall loose relevance. Further no person who is having acquaintance with such signature/handwriting of the accused persons were also not examined. That being the position, this Court is of the view that the conditions required under Section 45 and 46 of the Act, 1872 in this regard has not been fulfilled. Therefore, the evidence of the handwriting expert shall loose its relevance.

36. Thus, the primary chain of the entire case is broken. For the reasons recorded hereinabove, this Court is of the unhesitant view that the prosecution has failed to prove the charge of forgery beyond reasonable doubt more particularly, for the reason of gross irregularities in collecting and proving the specimen signatures and handwriting due to which the opinion of the handwriting expert cannot be relied upon to convict the accused persons.

37. That being the position, this Court is also of the unhesitant view that the charge of committing forgery for the purpose of cheating and charge of cheating are directly co-related with the primary charge of forgery. Therefore, as it is held that the prosecution has failed to prove the primary charge of forgery, then the other charges such as charge of forgery for the purpose of cheating, the charge of cheating and the charge of 120 B of IPC i.e. conspiracy shall automatically failed.

38. Accordingly, for the determination made hereinabove and the reasons recorded, the present criminal appeals stand allowed by setting aside and quashing the judgment and order of conviction dated 17.05.2005 passed by learned Special Judge, CBI, Guwahati in Special Case No. 92/2004, (Old Case No. 15(c)/89), whereby the appellants were convicted under Section 120B/420/471 read with Section 465 of IPC and under Sections 13(i)(d) read with 13(2) of P.C. Act and sentenced to suffer rigorous imprisonment for 2 (two) years and also with fine of Rs. 2000/- and in default to undergo simple imprisonment for another 2 months for offence under Section 13(i)(d) read with 13(2) of the P.C. Act.

39. Accordingly, the appellants are hereby acquitted. Bail bond stands discharged. LCR be returned back.

JUDGE

Comparing Assistant