

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE G BASAVARAJA

CRIMINAL APPEAL NO.2114 OF 2016

BETWEEN:

STATE BY CENTRAL BUREAU OF INVESTIGATION,
(ANTI CORRUPTION BRANCH)
NO.36, BELLARY ROAD,
GANGANAGAR, BANGALORE-560032
REPRESENTED BY ITS INSPECTOR OF POLICE.

...APPELLANT

(BY SMT. K.S. HEMA, ADV.)

AND:

1. SRI B V ISLUR
S/O SRI B H ISLUR
'PRAJWAL' NO.74
1ST FLOOR, 3RD MAIN ROAD,
AGB 2ND STAGE, MAHALAXMIPURAM,
BENGALURU-560086.
2. SRI J N PRABHAKAR
S/O LATE DJR NAGABUSHANA RAO
NO.74, 7TH MAIN, ITI LAYOUT,
MARAPPA GARDEN, BENGALURU-560046
3. SRI A D KULKARNI
S/O LATE SH D V KULKARNI
PROPERTY VALUER
NO.39A, 146TH D MAIN, 1ST BLOCK,
RAJAJINAGAR, BENGALURU-560010

4. SRI J N RAMESH
S/O LATE DR JR NAGABUSHANA RAO
DIRECTOR
M/S MANX AUTO LTD.,
NO.16/A, KKMP BUILDING,
MILLER TANK BUND ROAD
VASANTHNAGAR, BENGALURU-560052
5. M/S MANX AUTO LTD.,
NO.16/A, KKMP BUILDING
MILLER TANK BUND ROAD
VASANTHNAGAR, BENGALURU-560052
REPRESENTED BY ITS
M. D. SH JN PRABHAKAR
6. SRI N J JAGIRDAR
S/O SRI LN JAHAGIRDAR
NO.8-C, 25, 8TH CROSS
7TH MAIN, SRINIDHI LAYOUT
KONANKUNTE, BENGALURU-560062.

...RESPONDENTS

(BY SRI. B. VENKAT RAO A/W
SRI. CHIDANANDA H. M., ADV'S FOR R3,
SRI. N. S. SAMPANGI RAMAIAH, ADV. FOR R4 - (V/O DATED
19/08/2024 APPOINTED AS AMICUS CURIAE)
SRI. C. G. SUNDAR, ADV. FOR R5,
SMT. LATHA S. SHETTY A/W
SRI. JEEVAN GOPAL, ADV'S FOR R6,
V/O DATED 03/03/25 APPEAL AGAINST R1 - ABATED.)
V/O DATED 22/06/26 APPEAL AGAINST R2 - ABATED.)

THIS CRL.A IS FILED U/S.378(4) CR.P.C BY THE CBI
PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED
16.02.2016 PASSED BY THE XXI ADDL. CITY CIVIL AND
SESSIONS JUDGE AND PRL. SPL. JUDGE, FOR CBI CASES,
BANGALORE IN SPL.C.C.NO.150/2005 - ACQUITTING THE
ACCUSED NO.1,2,5 AND 7 TO 9 FOR THE OFFENCE P/U/S
120(B), 420, 467 AND 468 OF IPC AND FURTHER ACCUSED
NO.1 AND 9 FOR THE OFFENCE P/U/S 13(2) R/W 13(1)(d) OF
PREVENTION OF CORRUPTION ACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 04.08.2026 AND COMING ON FOR "PRONOUNCEMENT OF ORDERS" THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
and
HON'BLE MR. JUSTICE G BASAVARAJA

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE G BASAVARAJA)

This appeal is preferred by the CBI, against the Judgment of acquittal dated 16.01.2016 passed in Spl.C.No.150/2005 by the XXI Additional City Civil & Sessions Judge and Principal Special Judge for CBI cases, Bengaluru (for short the "trial Court").

2. For the sake of convenience, the parties herein are referred to with their status and rank before the trial Court.

3. Facts in brief leading to this case are that, the accused No.9-Sri N.L. Jagirdar, functioning as public servant in the capacity of Deputy Manager (Credit), Bank of India, Richmond Town Branch, Bangalore, received the security documents along with encumbrance certificate dated 22.12.2001 from accused No.3-Sri Srinivas Jagirdar

on 28.12.2021, with the knowledge of accused No.1-B.V.Iskur, as collateral security by accused No.8 for availing credit facilities. Accused No.1 failed to verify the said encumbrance certificate and also failed to inspect the site purportedly belonging to accused No.3, prior to disbursement of cash credit limit to accused No.8-Company, whereas the said property was originally allotted by CITB to Smt. Shamala Jagirdar and the major portion of the said property i.e. 130 feet x 250 feet, had already been sold by Karnataka State financial Corporation to M/s. Gokuldas Exports Pvt. Ltd. as early as on 12.07.1988 due to default in repayment of loan availed by the brother and sister of accused No.3 viz. Sri Kishan Jagirdar and Smt. Shamala Jagirdar. The accused No.3, and his wife had again mortgaged the same property for Rs.50 lakhs with Grain Merchants Co-operative Bank Limited, Bangalore. They had, thereafter, created forged documents of the same property and had furnished them to the Bank of India facilitating accused No.8-Company, to avail huge loans on the strength of fake documents. Accused No.1,

failing to verify the said forged encumbrance certificate and without making the field visiting of the said property, has extended the credit facilities to accused No.8-Company. Accused No.1, by violating the instructions of the Zonal office, had permitted excess drawings on 27 occasions of more than Rs.50 lakhs without financial powers and had failed to intimate the Zonal Office about the exceeding until 26.06.2022, whereby he kept the Zonal office in dark for almost 5 months. Accused No.1 failed to supervise and have control over accused No.9, even though he did not have any financial power to permit such overdraws in excess of sanctioned limits in CC account of accused No.8-Company. Without any delegated authority, accused No.1 had signed and passed 18 cheques.

4. Accused No.1 failed to supervise and have control over accused No.9 who passed three cheques without obtaining second officers passing signatures, by violating circular number 90/9 dated 17.04.1998 and 94/113 dated 13.09.2000, issued by Head Office of the Bank. Accused

number No.1 allowed over-drawings in the cash credit account of accused No.8 on three instances, even after the Zonal Office refused to accord approval to the proposal submitted by accused No.1 for sanction of ad-hoc cash credit limit of Rs.50 lakhs to the accused No.8-company.

5. Accused No.1 also failed to comply with the terms and conditions of sanction accorded by Zonal office and also kept his controller in dark about the facilities extended to accused No.8. Accused No.1, being the Manager of the Bank, had failed to maintain the Temporary Over-limit Register and also failed to control his subordinates from allowing Temporary Over-limit to accused No.8, without delegated authority and by violating the norms and the audit observations.

6. Accused 2, 4 and 7, the Directors of accused No.8-Company did not visit and verify the property purportedly belonged to accused No.3 and have failed to verify the encumbrance on the property offered as collateral security for the credit facilities sought from the Bank in the name of accused No.8-Company. Accused 4

and 5, without the presence of any officials of Bank, inspected a different property and submitted a wrong valuation report to the Bank.

7. The accused No.5-Property Valuer, was empowered to value property worth up to Rs.15 lakhs. He had valued wrong property and had furnished valuation report stating the value of the property as Rs.5.22 crores. Though accused No.3 was the owner of the property at number 60, Industrial Suburb, Rajajinagar II Stage, Bangalore, and that it was already sold by KSFC to M/s. Gokuldas Exports Limited, and the said property was already mortgaged by him and his wife to Grain Merchants Co-operative Bank Limited, he had created fake documents in respect of the property, such as original sale deed dated 31.08.1988, encumbrance certificate dated 22.12.2001, etc. forging the signatures of the officials, Bangalore Development Authority and Revenue department.

8. Accused No.4 had applied for encumbrance certificate, collected the same from the office of Sub-

Registrar, Rajajinagar, and along with accused No.3, furnished the same to the Bank after forging its contents, in return for providing the property as collateral security for credit facilities sought by accused No.8-Company from the Bank. Accused No.2 and his younger brother accused No.7, Managing Director and Director of accused No.8-Company, had paid commission of Rs.25,00,000/- to accused No.1. Accused No.1 functioning as public servant in the capacity of Deputy Manager, during the period from August 2001 to January 2003, by abusing his official position, had failed to verify the security documents and had failed to visit the property that was being offered as collateral security from accused No.3 towards sanction and disbursement of Rs.1.00 lakh as cash-credit limit, Rs.50,00,000/- as working capital term loan limit and Rs.300 lakhs as bank guarantee limit to accuse No.8-Company and without paying heed to the audit observations, and the office instructions contained in the Circulars, and had allowed Temporary Over-limit, without financial powers and extended credit facilities to accused

No.8-company, without complaining the observations and also allowed excess drawings on 18 occasions and failed to intimate the same to the Zonal Office, though Zonal Office refused to accord permission to the proposal submitted by accused No.1 for sanction of ad-hoc, CC limits of Rs.50.00 lakhs to accused No.8. Thus, the accused 1 to 9 conspired together to cheat the Bank and have committed the offences punishable under Sections 120-B, 420, 467 and 468 of Indian Penal Code and under sections 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

9. After filing the charge-sheet, cognizance was taken against accused 1 to 5 and 7 to 9. In response to summons, accused appeared before the Court and were enlarged on bail. After hearing the arguments before charge, charges were framed against the accused. Thereafter, accused 3 and 4 expired and case against them came to be abated.

10. To prove its case, prosecution, in all, examined 37 witnesses as PWs1 to 37 and got marked 251 documents as Ex.P1 to P251. On closure of prosecution

side evidence, statement of accused under section 313 of Code of Criminal Procedure was recorded. Accused have totally denied the incriminating circumstances appearing against them. Accused 2 and 5 submitted their written statement. During the evidence of prosecution witnesses, Exhibit D1 was marked. Having heard the arguments on both sides, the trial courts framed questions for consideration and answered all the questions in negative and acquitted the accused 1, 2, 5 and 7 to 9 for the offence punishable under Section 120-B, 420, 467 and 468 of Indian Penal Code. Further, accused 1 and 9 were also acquitted for the offence punishable under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. Being aggrieved by the impugned Judgment of acquittal, CBI has preferred this appeal.

11. Learned Counsel appearing for the appellant-CBI, would submit that the impugned Judgment of acquittal is contrary to law, facts and evidence available on record. The reasons assigned by the trial Court are erroneous resulting in substantial miscarriage of Justice.

He would submit that the material on record clearly establishes that the property offered by accused No.3 as collateral security on behalf of accused 2, 4, 7 and 8, was already auctioned by Karnataka State Financial Corporation in the year 1986 in favour of third parties, since PWs10 and 11 failed to repay the loan due to KSFC. The prosecution has placed the material to indicate that accused No.3 and his wife (CW50) who had offered property to the Bank on behalf of accused 2, 4, 7 and 8, had already mortgaged the very same property in favour of Grain Merchants Co-operative Bank Limited. The prosecution had placed documentary, as well as, oral evidence in order to substantiate the said charge. The learned Special Judge in the course of Judgment has observed that accused No.3 who had offered property as collateral security to the bank, was, in fact, not the owner of the property which was offered as security and the learned Special Judge has observed that accused No.3 had furnished fabricated documents to the Bank. Having accepted the said part of the case of the prosecution, the

learned Special Judge is not justified in acquitting the accused without any reason.

12. The accused 1 and 9 had no financial powers to grant such a huge assistance to accused 2, 4, 7 and 8. The accused 1 and 9 violated the instructions of Zonal Office of the Bank and the Banking Regulations, Rules and norms and acted contrary to their financial powers.

13. The oral and documentary evidence against accused No.5-Property Valuer, clearly indicates that the said respondent, in collusion with accused No.2, 4, and 7, though was very much aware of the fact that the property offered as collateral security do not belong to accused No.3 and though was aware of the fact that accused 2, 4 and 7, in conspiracy with accused No.3, had taken accused No.5 to a different property, had submitted false report to the Bank stating that he in fact had visited the property offered as collateral security. The fact remains that accused 2, 4, 7 and 8 had availed financial facility from the Bank on the basis of fabricated documents submitted by them in collusion with accused No.3 and have

misappropriated total sum of Rs.4.22 crores. He would submit that for the conspiracy hatched in secrecy, there cannot be any direct evidence to prove the conspiracy. He would submit that the Hon'ble Apex Court, has time and again held that conspiracy has to be inferred from the fact and circumstances placed by the prosecution on record.

14. The learned counsel would submit that the learned Special Judge has passed the Judgment of acquittal, giving one of the reasons that accused No.1 being the Head of the Branch has faced the departmental enquiry on account of dereliction of duty and the Disciplinary Authority has dismissed him from service. Having held so, the special Judge has erred in acquitting the accused No.1. With respect to accused No.5, the learned special Judge holds that he has already been punished by the Bank, and there is no need to prosecute him further under criminal proceedings. She would submit that the said observation by the Special Judge, is illegal.

15. The learned counsel would submit that the special Judge has held that there is no evidence on record

to indicate that the valuation report submitted by accused No.5 as per Ex.P31 is a forged document. The prosecution case is that the report submitted by accused No.5 is not based on record nor on facts. The documentary evidence would clearly establish that the property which the accused No.5 was supposed to visit was attached by KSFC and further, KSFC had also sold the said property in auction, as PWs10 and 11 who were the original owners of the said property, had failed to repay the amount due to KSFC.

16. Learned Counsel would submit that, viewed from any angle, the impugned Judgment of acquittal passed by the Special Judge is erroneous, contrary to law and materials available on record and the same is liable to be set aside. Accordingly, he prays for allowing the appeal.

17. On behalf accused No.5-Property Valuer, written submission is filed. It is submitted that accused No.5 valued the property as per the instruction given by the Bank. The value of property arrived at by accused No.5 has been calculated in detail. Further it is clarified that

the documents of the property was collected by accused No.4-Mr. Dhananjay Chauhan and had inspected the property at No.60 and identified by him. The same is clarified by accused No.5 as per Ex.P32. It is submitted that the learned Sessions Judge, at paragraphs 129, 131 and 132 of the judgment, following the decisions of Hon'ble Supreme Court, has observed that the negligence will not amount to an offence under Indian Penal Code. Therefore, it is submitted that the findings of the trial Court is based on sound principles of the judgments of Hon'ble Supreme Court. To fortify his submissions, he has relied on the following decisions:

- i. BABU VS. STATE OF KERALA - (2010)9 SCC 189;
- ii. H. D. SUNDARA & ORS., VS. STATE OF KARNATAKA - (2023)9 SCC 581;
- iii. MOHAN @ SRINIVAS @ TAILOR SEENA VS. STATE OF KARNATAKA - (2022)12 SCC 619;
- iv. BABU SAHEBAGOWDA RUDRAGOWDA & ORS., VS. STATE OF KARNATAKA - (2024)8 SCC 149
- v. RAMESH & ANR., VS. STATE OF KARNATAKA - (2024)9 SCC 169.

18. Having heard the arguments on both sides and on perusal of material placed before us, the following points would arise for our consideration:

- i. Whether the appellant-CBI has made out a ground to interfere with the impugned judgment of acquittal passed by the trial Court?
- ii. What Order?

19. Our answer to the above points are:

Point No.1: in the negative;

Point No.2: as per final order

20. We have examined the materials placed before this Court. Before appreciation of evidence and records, it is necessary to mention the judgments of the Hon'ble Apex Court in the case of CONSTABLE 907 SURENDRA SINGH AND ANOTHER v. STATE OF UTTARAKHAND reported in (2025)5 SCC 433; BABU SAHEBGOU DA RUDRAGOUDAR AND OTHERS v. STATE OF KARNATAKA reported in (2024)8 SCC 149; CHANDRAPPA v. STATE OF KARNATAKA reported in (2007)4 SCC 415; and in the case of H.D.

SUNDARA v. STATE OF KARNATAKA reported in (2023)9 SCC 581. The principles governing exercise of appellate jurisdiction while dealing with an appeal against judgment of acquittal under section 378 of Code of Criminal Procedure are, the acquittal of the accused further strengthens the presumption of innocence; the appellate court, while hearing an appeal against acquittal, is entitled to re-appreciate the oral and documentary evidence; the appellate court, while deciding an appeal against acquittal, after re-appreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record; if the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and the appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.

The interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised only if the judgment of acquittal suffers from patent perversity; the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

21. In the case on hand, CBI submitted charge-sheet against accused 1 to 5 and 7 to 9 for commission of offence under Sections 120-B read with 420, 467, 468 and 471 of Indian Penal Code and under sections 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. During the pendency of the case before the trial Court, accused No. 3 and 4 reported to be dead and accused No.6 was dropped from the charge-sheet. During the pendency of the Appeal before this Court, as per the order dated 03.03.2025, appeal against R1 abated as he was reported to be dead. Accused No.8/respondent No.5 is M/s. Manx Auto Limited Company represented by

Managing Director J.V. Prakash. Vide Order dated 22.06.2026, appeal against respondent No.2 was also abated, as he was reported dead during the pendency of this appeal. Now the appeal is pending against accused No.5, 7, 8 and 9.

22. With regard to offence against accused No.5 who is respondent No.3-A.D. Kulkarni is concerned, charge was framed that accused No.5 who is the then Property Valuer of Bank of India, valued a different property resulting in wrongful loss of Rs.4,22,87,059 and corresponding gain to M/s. Manx Auto Limited and thereby committed the offence under Section 120-B read with 420 of IPC. The specific charge against accused No.5 is viz. "Eighteenth, twentieth and twenty-first". The same read thus:

23. To prove the case of the prosecution, 37 witness were examined as PWs1 to 37, 251 documents were marked as Ex.P1 to P251.

24. PW1-S. Shekhar, has deposed that Mr. U.L. Somappa has given his opinion as per Ex.P15. The

valuation report dated 14.11.2001 issued by Sri A.D. Kulkarni, is marked at Ex.P31. The copy of the letter dated 10.07.2003 written by A.D. Kulkarni to Bank of India, KG. Road Branch, is marked as Ex.P32. Ex.P6(a), is the inspection report dated 25.11.2001 given by Sri B.V. Islur-Accused No.1. Ex.P6(c) is his detailed report, which was given on or after valuation report dated 14.11.2001 given by Accused No.5. Accused No.5 valued the property as per the instructions given by Bank of India, Cantonment Branch. The location of the property is Site No.60, 1st Main, II Stage, Rajajinagar Industrial Area, Bengaluru. The valuation arrived at by him has been calculated in detail. Further, he has clarified that the documents of the property was collected by Mr. Dhananjaya Chauhan-Accused No.4 and inspected property No.60, identified by him. In this regard, Accused No.5 has clarified as per Ex.P32. Ex.P79 is the letter dated 14.07.2003 of Mr. N.G. Sheshagiri Rao, Panel Valuer of Bank, who inspected the property No.60, which was earlier valued by Mr. A.D. Kulkarni-Accused No.5, as per Ex.P31. Accordingly,

PW16-N.G. Sheshagiri Rao, has given the evidence before the Court. On perusal of the cross-examination, he has admitted that the property was examined by Sri Srinivas Jagirdar and the description of the property tallied with Exhibit P31 and expressed ignorance.

25. The actual value of the property and valuation for registration of property, will be different. He also expressed that he has not perused the valuation at Ex.P31 before giving his valuation report. According to the valuation report, it bears the date 18.07.2002, wherein he has given the report on 14.07.2003, one year from the date of inspection as per Ex.P79. This aspect clearly indicates that the conduct of witnesses has been considered by the trial Court.

26. Ex.P166 are six photographs pertaining to Plot No.60 and proceedings drawn by investigating Officer in presence of both valuer and other as Exhibit P177. The valuations done by Sri N.G. Sheshagiri Rao and the boundaries with valuation given on 19.07.2003.

27. Regarding valuation exceeding Rs.15.00 lakh is concerned, Accused No.5 has explained that on or after entrusting the valuation of property to Accused No.5, he has submitted valuation reports in most of the cases. In this regard, he has explained the same and has produced documents during 313 Statement. The Bank of India accepted all these reports, acted upon the reports and CBI has also shown him as witness where his valuation report was exceeding Rs.15.00 lakh.

28. Sri U.L. Somappa, Advocate-PW26, has given opinion in respect of same property as per Ex.P15 dated 26.12.2001. Though he was accused in FIR, subsequently, he has been made as a witness and examined as PW26. Subsequently, Mr. H.R. Katti, Advocate-PW23, has also given another legal opinion in respect of same property as per Ex.P77. There are two contradictory opinions in respect of the property.

29. The trial Court, in its judgment at paragraphs 102 to 108, has observed as follows:

"102. It is alleged by the prosecution that accused No.5 being the approved valuer of property on the panel of Bank of India, without inspecting property No.60 by inspecting some other property has given report to the Bank of India, as per Ex.P.31. It is further alleged that accused No.5 was competent to value the property worth Rs.15 Lakhs but in the present case he has exceeded his limit and submitted his report for valuation of Rs.5,22,65,000/-. It is the specific defence of accused No.5 that he visited property No.60 along with deceased accused No.4 and valued the same and given his report to Bank of India as per Ex.P.31.

103. PW.1 has deposed about the valuation report given by accused No.5 as per Ex.P.31 for processing the proposal of accused No.8. PW.16 has deposed about the inspection of property No.60 and valuation report prepared by him as per Ex.P.79(a) on 18/07/2002. Further, he has deposed about proceedings conducted in his presence as per Ex.P.167 and 168 and photographs taken as per Ex.P.166 and 169 for property No.60 and 66 respectively. Further, in his evidence PW.37 has deposed about the proceedings conducted by him in the presence of accused No.4,5, PW.1 and 16 as per Ex.P.167 and 168 and photographs as per Ex.P.166 and 169. As seen from the evidence of PW.16 there is no dispute that as per Ex.P.79(a) he has valued

property No.60 and noted the measurement and the structure prevailing on that property during 2002. His evidence also proves the proceedings on 15/04/2005 as per Ex.P.167 and 168 in respect of property No.60 and 66. In the light of the evidence of prosecution it is proper to analyze the report of accused No.5. There is no dispute that Ex.P.31 is the valuation report submitted by accused No.5 and bears his signature.

104. It is pertinent to note that introduction mentioned in Ex.P.31 which reads as follows:

INTRODUCTION:

As per the request of Bank of India Manager, Cantonment branch, we met Mr. Srinivas Jagirdar & Mr. Dhanajaya Chavan Director of MANX AUTO LTD & together we inspected the Shed (Land & Shed) belonging to Mr. Srinivas Jagirdar, situated @ #60, 1st main, 2nd stage, Rajajinagar Industrial Suburb Area, Yeshwanthapur, Bangalore-22, Ph- 2264774. We have collected the details given by Mr. Dhananjaya Chavan & the same has been considered.

105. Further, it is pertinent to note that the brief description of the property described in Ex.P.31 which reads as follows:

BRIEF DESCRIPTION OF THE PROPERTY:

Mr. Srinivas Jagirdar owns the Property (Land & Shed), The total area of the land is 43,560 Sq. feet. The total built up area of the Shed is 32,396 Sq. feet (G.F., RCC & AC Sheet). It is an Industrial property, which is located in a developed Rajajingar Industrial Suburb Area & near to peenya, Mahalakshmi layout & Yeshwanthapur. The property is 01Kms away from Bangalore-Pune High way. The property is 03Kms away from Yeshwanthapura Railway Station. All the infrastructure facilities are available with in the radius of 01Kms. From the property. This property has been converted as Go-down/work shop & has been rented.

106. On perusal of the evidence of the witnesses none of the witnesses of prosecution have deposed in their evidence that accused No.5 visited property No.66 and given valuation report in respect of property No.60. In the absence of tangible evidence it is difficult to believe that accused No.5 visited property No.66 and given report in respect of property No.60. The evidence of the witnesses is not consistent, corroborative to each other. The same cannot be presumed by the court when no evidence is forth coming. No evidence is forth coming to show that the valuation report given by accused No.5 as per Ex.P.31 is a false report.

107. Admittedly, accused No.5 is a qualified Engineer who is valuating the properties since 1998 for Bank of India. It is further admitted that in the year 1998 Bank of India authorized him to value the property and to submit report to the extent of having the value of 15-lakhs. It is further admitted that accused No.5 after his appointment as approved valuer for Bank of India valued number of properties and submitted his report every year. It is also admitted that he has valued properties having value of more than 15-Lakhs and given his report. He has produced records during his 313 statement which show that he has valued several properties and submitted report having value of more than 15-Lakhs and Bank of India has accepted all those reports and acted upon those records. When the reports of accused No.5 for the properties having value of more than 15-Lakhs have been accepted by the Bank of India in the several cases how the valuation report of present case Ex.P.31 can be said beyond his power. The record produced by the accused No.5 show that in this case he has been arrayed as accused and in other cases filed by CBI he has been shown as a witness where his valuation report was exceeding the value of 15-lakhs. There cannot be any hot and cold at the same time in respect of the valuation reports submitted by accused No.5 by valuating the properties. Therefore, there is no substance in the allegation of the prosecution regarding the value of

the property made by accused No.5. When the Bank of India has acted upon the reports of accused No.5 it means that impliedly he has been authorized the value property having value of more than 15- lakhs.

108. There is no evidence forth coming from the mouth of the witnesses that the valuation report of accused No.5 Ex.P.31 is a forged document and the same has been forged for the purpose of cheating the Bank of India. No-doubt accused No.5 has given his valuation report does it amount to an offence under Criminal Law? No evidence to prove that before or after giving his report there was any collusion between the accused No.5 and other accused persons of this case. Even if the report given by accused No.5 is not correct it amounts to negligence or professional misconduct on his part, but the same does not constitute an offence under the penal law. It has been mentioned in Ex.P.31 that deceased accused No.3 and 4 took him to the property No.60 and he has valued it. Even if the deceased accused No.3 and 4 taken him to a wrong property it is their deceitful act and accused No.5 was duty bound to verify the property and if he has not properly verified the property Number, measurement and boundaries it is a professional negligence on his part."

30. At paragraph 129 to 132 of the judgment, the trial Court has observed as follows:

*"129. Secondly, the Learned Counsel for the accused No.5 relied on the decision reported in **(2005) 6 Supreme Court Cases in the case of Jacob Mathew Vs. State of Punjab** - wherein in para No.18, it is held as follows :*

"Negligence by Professionals-

In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skill or skilled persons generally. Any task which is required to be performed with a special skill would generally be admitted or undertaken to be performed only if the person possesses the requisite skill for performing that task. Any reasonable man entering into a profession which requires a particular level of learning to be called a professional of that branch, impliedly assures the person dealing with him that the skill which he professes to possess shall be exercised with reasonable degree of care and caution. He does not assure his client of the result. A lawyer does not tell his client that the client shall win the case in all circumstances. A physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be understood to have given by implication is that he is

possessed of the requisite skill in that branch or profession which he is practicing and while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence. This is all what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of the two findings; either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices. In Michael Hyde and Associates Vs-J.D.Williams & Co.Ltd.Sedley, L.J said that where a profession embraces a range of views as to what is an acceptable standard of conduct, the competence of the defendant is to be judged by the lowest standard that would be regarded as acceptable”.

It is further held by the Hon’ble Supreme Court in the above decision that:

“Therefore the liability against an opining advocate arises only when the lawyer was an active participant in a plan to defraud the bank. In the given case, there is no evidence to prove that A-5 was abetting or aiding the original conspirators. However, it is beyond doubt that a lawyer owes an “unremitting loyalty” to the interests of the client and it is the lawyer’s responsibility to act in a manner that would best advance the

interest of the client. Merely because his opinion may not be acceptable , he cannot be mulcted with the criminal prosecution, particularly , in the absence of tangible evidence that he associated with other conspirators. At the most, he maybe liable for gross negligence or professional misconduct, if it is established by acceptable evidence, and cannot be charged for the offence Under Sections 420 and 109 of IPC along with other conspirators without proper and acceptable link between them. It is further made clear that if there is a link or evidence to connect him with other conspirators for causing loss to the institution, undoubtedly the prosecuting authorities are entitled to proceed under criminal prosecution. Such tangible materials are lacking in the case of the respondent herein”.

130. Thirdly, the Learned Counsel for Accused No.5 produced the decision rendered by the Hon'ble Supreme Court in **Appeal (Cri) 52-105 of 1993** – in the case of C. Chenga Reddy and ors Vs- State of Andhra Pradesh- wherein it is held as follows:

“The conclusion arrived at by the courts below that the official appellants did not follow the codal provisions and that they have committed gross financial irregularities and administrative lapses in the matter of clearance of the prickly pier jungle under the Kudimaramathu Rules and other relevant provisions cannot be faulted with but nonetheless, the same cannot be construed as “incriminating circumstances” to fasten criminal liability on the appellants.

In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case, the Courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence.

However, as we have agreed with the findings recorded by both the Courts below with regard to the violation of the codal provisions and administrative lapses by the department officials, it appears to us that a departmental enquiry may be justified but in this fact situation”.

It is further held that administrative lapses cannot constitute as criminal offence.

*131. Fourthly, the Learned Counsel for Accused No.5 produced the decision rendered by the **Hon'ble High Court of Madras in Crl.R.C.No.1063 of 2008**, in the case of **L.N. Rajagopalan v. State by Additional Superintendent of Police** wherein it is held as follows:*

"Firstly, the Valuer is not associated with the business transaction when the application for loan is submitted by the borrower. Therefore, there is no occasion for the valuer to see the persons who appear before the Bank. Some of the

properties might have been Government properties. It is not the duty of the Valuer to go to the Registrar's Office to verify whether the lands belong to the Government or private individuals".

132. There is no evidence to prove that accused No.5 associated with deceased accused No.3 and 4 to cheat the Bank of India. Merely because his valuation report was alleged to be wrong. He cannot be mulcted with the criminal prosecution. Therefore, the prosecution has failed to prove the ingredients of the offence of cheating and dishonestly inducing delivery of property."

31. The trial Court, relying upon the decisions of Hon'ble Supreme Court and decision of other Courts, has properly appreciated the evidence on record in accordance with law and facts and has come to the conclusion that there is no evidence to prove that Accused No.5 has associated with deceased accused 3 and 4 to cheat Bank of India. Merely because, his valuation report was alleged to be wrong, he cannot be mulcted with criminal prosecution.

32. We have independently re-appreciated the evidence on record and on re-appreciation, re-

consideration and re-examination of the entire evidence on record, we do not find any factual or legal error in the finding given by the trial Court against Accused No.5.

33. With regard to offence against Accused No.7-J.N. Ramesh, is concerned, the trial Court has framed charge against the said accused that Accused 2 and 7 being the Managing Director and Director, respectively of M/s. Manx Auto Limited, in pursuance of criminal conspiracy, paid commission of Rs.25.00 lakh to Sri Srinivas Jagirdar, vide Cheque No.490301 dated 09.01.2002 and Cheque No.35416 dated 10.01.2002 for purporting false collateral security for the credit facilities sought by M/s. Manx Auto Limited from Bank of India, Richmond Town Branch, Bengaluru thereby committed offence punishable under Section 120-B read with 420 of Indian Penal Code. A careful examination of the entire evidence on record, we find no evidence against accused No.7 to prove the criminal breach of trust and misappropriation as alleged by the prosecution. The learned counsel for the appellant has also not pointed any factual or legal error committed by

the trial Court. At paragraph 109 of the Judgment, the trial Court has observed as under:

"109. Coming to the allegations against accused No.2, 7 and 8. It is an admitted fact that accused No.2 is a Managing Director and accused No.7 is the Director of accused No.8 Company. The evidence of the prosecution shows that it is the master mind of deceased accused No.3 and 4 and brain behind for all the deceitful acts involved in this case. None of the witnesses have deposed any evidence showing the involvement of accused No.2 and 7. Further, there is no evidence forth coming against accused No.8 Company to make it responsible for the allegations made. No-doubt accused No.2 as a Managing Director has signed on the documents and no role played by him in the alleged fraudulent creation of documents and offering a security for the Credit Facilities of accused No.8 is forth coming in any manner. The accused No.7 as a Director of accused No.8 has given his personal guarantee and no evidence to show his any illegal acts in the sanction and offering of property of accused No.3 as security for the loan transaction. Admittedly, accused No.8 is a company and for the business of accused No.8 the loan was applied and no evidence is forth coming to show that the company acted illegally and involved in any criminal activities. It is accused No.3 and 4 who have played

active role for submitting the application and disbursement of the amount in the name of accused No.8. Without there being any evidence forth coming it cannot be said that accused No.2,7 and 8 have played role as alleged by the prosecution which is punishable under Criminal law."

34. On re-appreciation of entire evidence on record, we do not find any legal or factual error in the finding given by the trial Court against accused No.7. Accordingly, the prosecution has failed to proved the guilt of the accused No.7, beyond all reasonable doubt.

35. With regard to accused No.9-N.L. Jagirdar, is concerned, the charge is framed against him at items 15, 16 and 17. The same reads as follows:

"Fifteenthly, A9 of you in furtherance of criminal conspiracy passed two cheques without obtaining Second Officers passing signatures.

a. Cheque bearing No.17006 dated 27.03.2002 for Rs.7,96,095-08

b. Cheque bearing No.23042 dated 09.08.2002 for Rs.4,17,681=04

and thereby committed offence under Sec. 120B r/w 420 of IPC and within my cognizance.

Sixteenthly, that A9 of you failed to comply with the terms and conditions and kept the Zonal Office in the dark about the facilities extended to M/s. Manx Auto Ltd., and that you informed the Zonal Office for the first time on 28.6.2002, after a lapse of almost five months even though TOL was allowed by you to M/s. Manx Auto Ltd., w.e.f. 27/3/2002, in excess of the sanction limit and thereby committed offence punishable under Sec. 120 B r/w 420 IPC and within my cognizance.

Seventeenthly, that both A1 and A9 of you while functioning as public servants in the capacity of Branch Manager and Deputy Manager (Credit) Bank of India, Richmond Town Branch, Bangalore, respectively, abused your official position to defraud the Bank by entering into conspiracy with other accused for the purpose of causing wrongful loss to Rs.4,22,87,059=69 to Bank of India and corresponding gain to M/s. Manx Auto Ltd., and thereby committed offence punishable under Sec. 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and within my cognizance."

36. The trial Court, in the course of judgment at paragraphs 110 to 113, has observed as under:

"110. Lastly, coming to the allegations against accused No.9. It is an admitted fact that he was Deputy

Manager (Credit) Bank of India, Richmond Town Branch, Bengaluru and working at the time of the present transactions of accused No.8. The learned public prosecution for CBI fairly submitted that no case is established against accused No.9. As seen from the evidence accused No.9 was not having any independent powers. Whatever he has acted and made payment have been done as per the instructions of Head of Branch, accused No.1. When the accused No.9 acted as per the instructions of accused No.1, it cannot be said that he has exceeded his authority in discharge of his duty.

111. None of the witnesses examined by the prosecution have spoken any evidence against accused No.9 stating that he has committed wrong in the transactions done by him for passing of the cheques. No cogent evidence is forth coming to make the accused No.9 responsible for the allegations made against him. As per the evidence accused No.1 was required to submit report to the Zonal office for ratification of over drawls within the time but he has failed in his duty. Further, the evidence shows that after 5-6 months he has reported the matter to the Zonal office at that time the Zonal office refused to ratify the over drawings allowed in the account of accused No.8. As per the circular of the bank the over drawls have to be reported to the Zonal office immediately and under such circumstances, if there is no rejection from the Zonal office received within the stipulated time, then the over drawls are deemed to be ratified by the Zonal office. In this case, it was the duty of accused No.1 to take immediate action for reporting and to obtain ratification from the Zonal office, but he has

failed in his duty for which he has been already severely punished on the report of departmental enquiry. As stated earlier, the dereliction of duty cannot be termed as an offence under the Criminal Law.

112. The allegation of accused No.9 passing some cheques without the signature of second officer, during the presence of accused No.1 and even after refusal of ratification from the Zonal office is a dereliction of duty on his part. It is the duty of the Branch Head to authorize the payments and when accused No.9 acted as per the instructions of Branch Head it cannot be said he was responsible for over draws.

113. The learned public prosecutor submitted in his written argument that the allegation against accused No.9 is that he had allowed over draft by passing the cheques through which the said over draft was drawn. But it was confirmed by accused No.1, who was the Superior Officer to accused No.9 (Ex.P.103 dated:20/12/2002). More over as such, the irregularity amounting to criminal offence, if any gets validated as per the ruling of the Hon'ble Supreme Court. Rather, such acts of accused No.9 are automatically attracted to be ascribed to accused No.1. He further submitted that according to his firm conviction, there is no case against accused No.9 N.L.Jagirdar who was never an independent decision taking authority in the disbursement of loan accounts."

37. The learned counsel for the appellant before this Court has not made out any grounds to interfere with the finding given by the trial Court.

38. On careful examination and re-appreciation of the evidence on record, we find that the trial Court has properly appreciated the evidence on record in accordance with law and facts, relying upon the judgments of Hon'ble Supreme Court. We do not find any factual or legal error in the impugned judgment of acquittal passed by the trial Court. Considering the facts and circumstances of the case and also keeping in mind the decisions of the Hon'ble Supreme Court as to the limited scope of interference by the appellate court in the case of judgment of acquittals, we answer point No.1 in the negative.

Regarding Point No.2:

39. For the reasons and discussions made above, we proceed to pass the following:

ORDER

Appeal is dismissed.

**Sd/-
(MOHAMMAD NAWAZ)
JUDGE**

**Sd/-
(G BASAVARAJA)
JUDGE**

Inn