IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.177 of 2002

Against the judgment of conviction and order of sentence dated 22. 03. 2002 passed by Shri Braj Nandan Sahay, Special Judge, South Bihar, Patna, in Special Case No. 1 of 1982/ R.C. No. 55 of 1981,

===

Sri Bankey Bihari Rai, son of Late Lakhan Rai, resident of Bir Kuar Singh University Campus, Japani Farm Kalirahra, P.S. Nawada, District-Bhojpur.

.... Appellant.

Versus

The State of Bihar

.... Respondent

with

===

Criminal Appeal (SJ) No. 180 of 2002

===

Ashok Kumar Singh, Son of Sri Mukut Dhari Singh, resident of Mohalla-Kankarbagh Colony, P.S. Kankarbagh, District- Patna.

.... Appellant

Versus

Union of India through.C.B.I., Patna.

.... Respondent.

with

===

Criminal Appeal (SJ) No. 183 of 2002

===

1. Atul Kishore, son of Sri Kishore Chandra Sarkar, resident of Mohalla- Munshi Tola, Dumraon, P.S. Dumraon, District- Buxar.
2. Anil Kumar Singh, son of Late Krishna Pratap Singh, resident of Dumraon Rangarh, P.S. Dumraon, District- Buxar.

.... Appellants.

Versus

Union of India Through C.B.I.

.... Respondent.

with

===

Criminal Appeal (SJ) No. 184 of 2002

===
Anand Kishore, son of Sri Kishore Chandra Sarkar, resident of Mohalla-Munshi Tola, Dumraon, P.S. Dumraon, District- Buxar.

.... Appellant.

Versus

Union of India through C.B.I.

.... Respondent.

with

===

Criminal Appeal (SJ) No. 201 of 2002

===
==================

Naveen Kumar Srivastava, son of Late Bindya Bashani Prasad, resident of Mohalla- West of Palace, P.S. Dumraon, P.S. Dumraon, District- Buxar.

.... Appellant.

Versus

Union of India through C.B.I.

.... Respondent.

===

Appearance :

(In CR. APP (SJ) No. 177 of 2002)

For the Appellant : Mr. Sandeep Kumar, Advocate.

For the State : Mr. A. Ahmad, A.P.P.

(In CR. APP (SJ) No. 180 of 2002)

For the Appellant : Mr. Shanti Pratap, Advocate.
Mr. Pramod Kumar, Advocate.

For the C.B.I. : Mr. Sanjay Kumar, S.C./C.B.I.

(In CR. APP (SJ) No. 183 of 2002)

For the Appellants : Mr. Rajiv Kumar Verma, Sr. Advocate.
Ms. Meeta Sinha, Advocate.
Mr. Anjan Singh, Advocate.

For the C.B.I. : Mr. Sanjay Kumar, SC/CBI.

(In CR. APP (SJ) No. 184 of 2002)

For the Appellant : Mr. Rajiv Kumar Verma, Sr. Advocate.
Ms. Meeta Sinha, Advocate.
Mr. Anjan Singh, Advocate

For the C.B.I. : Mr. Sanjay Kumar, S.C./C.B.I.

(In CR. APP (SJ) No. 201 of 2002)

For the Appellant : Mr. Baxi S.R.P. Sinha, Sr. Advocate.
Mr. Rahul Nath, Advocate.

For the C.B..I. : Mr. Sanjay Kumar, S.C./C.B.I.

===

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT
Date: 23-07-2015

Five appeals having being heard together and disposed of by common order as all five appeals arise out of judgment of conviction and order of sentence dated 22. 03. 2002 passed by Shri Braj Nandan Sahay, Special Judge, South Bihar, Patna, in Special Case No. 1 of 1982/ R.C. No. 55 of 1981, by which the appellant Atul Kishore has been convicted under Section 120B read with 420, 467 and 468 of Indian Penal Code and sentenced to undergo rigorous imprisonment for six months. Further sentenced to pay fine of Rs. 30,000/- and in default of payment further sentenced to undergo rigorous imprisonment for six months. The appellant Navin Kumar Srivastava has been convicted under Section 120B read with 420, 467 and 468 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months. Further sentenced to pay fine of Rs.30,000/- and in default of payment of fine further sentenced to undergo rigorous imprisonment for six months. The appellant Anil Kumar Singh has been convicted for offence under Section 120B read with 420, 467 and 468 of Indian Penal Code and sentenced to undergo rigorous imprisonment for six months and further sentenced to pay fine of Rs. 30,000/- and in default of payment of fine further sentenced to undergo rigorous imprisonment for six months.

The appellant Ashok Kumar Singh has been convicted for offence under Section 120B read with 420, 467 and 468 of Indian Penal Code and sentenced to undergo rigorous imprisonment for six months. Further sentenced to pay fine of Rs. 30,000/- and in default of payment of fine further sentenced to undergo rigorous imprisonment for six months. The appellant Anand Kishore has been convicted for offence under Sections 120B read with 420 of Indian Penal Code and sentenced to undergo rigorous imprisonment for six months. The appellant Ashok Kumar Srivastava has been convicted for offence under Sections 120B read with 420, 467, 468 and 418 of Indian Penal Code and sentenced to undergo rigorous imprisonment for six months. Further sentenced to pay fine of Rs. 30,000/- and in default of payment of fine further sentenced to undergo rigorous imprisonment for six months. The appellant Banke Bihari Rai has been convicted for offence under Section 120B read with Sections 420, 418, 467, 468, 471 and 477A of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year. He has further been convicted under Section 5(2) read with 5(1)(d) of P.C. Act 1947 and sentenced to undergo rigorous imprisonment for one year and further sentenced to pay fine of Rs. 10,000/- and in default of payment of fine further sentenced to undergo rigorous imprisonment for six months and his sentences under Indian Penal Code and P.C.

Act has been run consecutively and sentenced to undergo rigorous imprisonment for two years besides payment of fine.

2. The prosecution case as alleged that accused Banke Bihari Rai the then Branch Manager of Central Bank of India, Muradpur Branch, Patna, entered into a criminal conspiracy with accused Atul Kishore of Kankarbagh, Patna, Navin Kumar Srivastava, Ashok Kumar Singh, Anil Kumar Singh and other co-accused persons defrauded the bank by fraudulently and dishonestly granting term loan and working loan to the tune of Rs. 7,00,000/- and odd to the non-existent firm on forged document like quotation for supply of machinery in respect of non-existent firm and fabricated book of account misusing his official position and thereby obtained undue pecuniary benefit for himself. The loans were sanctioned without verification report and without the equitable mortgage. It is further alleged that B. B. Rai sanction term loan of Rs. 70,000/- and cash credit facility to the tune of Rs. 50,000/- to Bishi Lamp a non-existent firm on forged quotation purported to be issued by Supreme Auto for starting industry on 31.08.1988. The loan application purported to have been signed by Navin Kishore Srivastava, in favour of non-existent firm of Bishi Lamp and forged quotation purported to be issued by Supreme Auto, the loan seems to be recommended by B. B. Rai on 31.08.1988, though, application dated 04.09.1981. Further the term loan of amount Rs. 70,000/- was disposed of through demand draft no. 72302 in favour of M/S Supreme Auto, Exhibition Road, Patna. Demand draft was received by Navin Kishore Srivastava in favour of M/S Supreme Auto as well as draft encahsed open an account in the name of M/S Supreme Auto. It is further alleged that cash credit of Rs. 1,18,250/- has been sanctioned by B. B. Rai in favour of M/S Nishi Diesel Centre, Kankarbagh, Patna. The term loan to the tune of Rs. 68,250/- through D.D. No. 303 sanctioned in favour of M/S Supreme Auto, Exhibition Road. The said draft was received by Shri Srivastava himself on behalf of M/S Supreme Auto, the amount was encahsed through advance mentioned in current account open in Central Bank of India.

3. Similarly credit facility of Rs. 1,57,000/- was sanction by B. B. Rai in favour of M/S Sharat Engineering Works, Kankarbagh and M/S Sabadika Engineering Works, Kankarbagh, demand draft issued for supply of machinery in favour of M/S Supreme Auto, M/S Republic Machinery Stores, S. P. Verma Road, Patna was received by fake borrowers themselves and later on encashed through current account held in the name of two firms in different banks.

4. The further case of prosecution that quotation for supply of machinery in favour of M/S Supreme Auto and M/S Republic Machinery Stores and loan sanctioned in favour of various firms which were forged and fabricated and reported to be non-existence. It is further alleged that none of the borrower firms are in existence. Shri Atul Kishore, Arbind Kumar, Shekhar Suman and Ashok Kumar forged the signature in favour of non-existent borrowing firm and also operated bank account in the name of M/S Supreme Auto and M/S Republic Machinery Stores. It is further alleged that document of the bank such as D.P. notes etc. also forged and all the above loans sanctioned on blank paper except signature of so-called borrower and their guarantor. It is further alleged that B. B. Rai not obtained equitable mortgage for sanction of loan. Atul Kishore took loan in the name of M/S Sharat Engineering Works with supplier in the name of M/S Supreme Auto. Accused Navin Kumar Srivastava alleged to have taken loan on behalf of M/S Bishi Lamps with forged supply of machinery in the name of M/S Supreme Auto. Anil Kumar Singh taken loan in the name of M/S Sabadika Engineering Works, for forged supply of machinery and took machinery from Supreme Auto, S. P.Verma Road. Accused Ashok Kumar Srivastava cheated the aforesaid bank and its staff by dishonestly and fraudulently inducing them to deliver Rs. 68,250/- in favour of M/S Pataliputra Electric Works and supply of machinery from M/S Republic Machinery Store. Accused, Anand Kishore said to be guarantor of non-existent firms, namely, M/S Bishi Lamps, M/S

Sabadika Engineering Works and M/S Nishi Diesel Centre.

5. The defence of the accused persons that the firms were in existence were registered Unit and the loan were sanctioned to those Units but they could not return the money and hence it is civil dispute and no offence is made out and except Navin Kumar Srivastava all have admitted that they had taken loan.

6. Police after investigation submitted charge sheet against accused persons who were opened account in the forged name and style of M/S Bishi Lamp, M/S Sharat Engineering Works, M/S Supreme Auto, M/S Sabadika Engineering Works, Pataliputra Electric Works. The above noted firms are non-existent, though, in their favour fake quotation and supply of materials have been shown includes M/S Supreme Auto, Republic Machinery, Nishi Diesel for illegal consideration. The charge sheet submitted against Mr. B. B. Rai who has misused his official position to unlawful pecuniary gain. After submission of the charge sheet, cognizance was taken. After framing of the charge, trial proceeded.

7. During trial 23 witnesses were examined by the prosecution. Witnesses were examined as P.W. 1 Chitranjan Verma, the then clerk of Central Bank of India and on 18.07.1989 he has come to depose that he has prepared paper in favour of M/S Nishi Diesel Cenre for which term loan to the tune of Rs. 17,000/- and cash credit of Rs. 50,000/- was sanctioned.

8. P.W. 2 Nagendra Kumar Agrawal, a businessman who claims that he was Vice President of Patna Auto and there is no shop like Nishi Diesel Centre nor he known A. K. Srivastava, owner of Nishi Diesel. P.W. 3 Vishwanath Chaudhary, he is clerk of Central Bank of India, Rajendra Nagar At the relevant time, account was opened in the name and style of M/S Supreme Auto, Exhibition Road, Patna. P.W. 4 Sheo Mistry has come to say that there was no shop in the name and style of Nishi Diesel and he ever heard in Kankarbagh. area. P.W. 5 Pradip Kumar Pandit, is the Postal Clerk and come to depose that he never delivery of letter to M/S Nishi Diesel. P.W. 6 Pradip Kumar Nagbanshi, Manager of Central Bank of India has proved loan application in favour of M/S Nishi Diesel Centre which he sanctioned term loan of Rs. 70,000/- and working capital of Rs. 50,000/-. P.W. 7 Kameshwar Prasad Singh, Chief Manager, Gramin Bank, Purnea who was then the Accountant, Central Bank of India, Muradpur Branch submits that he has proved loan application of M/S Nishi Diesel and loan was sanctioned Rs.68,250/- and cash credit limit of Rs. 50,000/- P.W. 9 Yogendra Singh, owner of Super Traders has come to depose that there was no shop in the name and style of M/S Supreme Auto. P.W.10 Manohar Lal, Senior Manager, Central

Bank of Indian the then Cashier since 1981 to 1983 and stated that he prepared financial report of M/Sharat Engineering Work marked as Exhibit 10/10/1. P.W. 11 Bala Subramaniyam, Vaidyanath Bhawan, has proved Account opening Form in favour of M/S Supreme Auto and has proved his signature on the account opening form. P.W. 12 Somnath Karkar who has come to depose that D. N. Mishra come to charge to B.B. Rai. P.W. 13, Krishna Prasad, Assistant in Post Office has come to depose that he has not sent any letter between 1981 to 1982 in the name of M/S Sharat Engineering Work, M/S Bishi Lamp, M/S Nishi Diesel for collected the loan. P.W. 14 Devendra Nath Mishra, who is retired Bank Officer has deposed that he was Branch Manager from 1979 to 1981 of Central Bank of India, Muradpur while he was going to leave, the charge was given to B. B. Rai. P.W. 15 Niranjan Haula Das has come to depose that he was Manager mainly from the period 1982 to 1983 and C.B.I. seized the document and has proved seizure list and documents. P.W. 16 Lala Prasad, shopkeeper in Exhibition Road, Patna, deposed that there is no shop or firm in the name and style of M/S Supreme Auto, Republic Machinery. P.W. 17 Dilip Kumar Srivastava, Manager of Central Bank of India has come to depose during investigation that he has handed over some paper to C.B.I. and has proved his signature in seizure Memo mark as Exhibit 10/35. P.W. 18 N. Baidyanathan is the

Senior Manager, Central Bank of India in 1983, he was officer of Central Bank of India, Zonal Office, has come to depose that specimen signature of Atul Kishore was taken before him and proved signature of Atul Kishore marked as Exhibit 18 to 18/2. but in cross-examination stated that Atul Kishore had not made specimen signature before him. P.W. 19, S. R. Sinha, is the Assistant and has come to depose that he was account in C.T.O. stated that signature of B. B. Rai was taken before him. P.W. 20 P. K. Sinha, has come to prove sanction against B. B. Rai, and the then Assistant Cashier as has given sanction for prosecution. P.W. 21 Amar Singh, G.E.Q.D. Shimla has come to prove the then Government Examiner Santosh Singh, signature, report marked as Exhibit-1 to 7 and has come to prove the report. He has proved signature on report as well as signature of Santosh Singh on the said report which has marked as Exhibit10/8. P.W. 22 J. K. Semwal, G.E.Q.D., Delhi he has proved signature of H. S. Teteha marked as Exhibit-10/81 and has deposed that S.P., C.B.I. Patna, vide letter dated 1.11.89 forwarded documents received in the office of G.E.Q.D., Calcutta, by Sri Santosh Singh, the then G.E.Q.D. (Exhibit-10/82) and after thorough scientific examination he arrived at certain conclusion and the same was forwarded to S.P., C.B.I.,Patna, vide letter dated 13.07.89, typed by Steno, J.K.Dutta bearing his signature and signature of Santosh Singh, marked as Exhibit 23. Defence has also examined Ravi Kumar D.W. 1 and Bishnu Kumar, D.W. 2.

9. Taking into consideration the evidence both oral and documentary by the prosecution and defence, the Trial Court gone into question whether the firms were in existence? and further whether the money was withdrawn in the name of non-existence firms on a fake quotation of non-existence firm shop/firms. The trial court taking into consideration the evidence of P.W. 2, 4, 5, 13 and 16, held that the firms were not in existence. The trial court further held that M/S Nishi Diesel Centre, Sharat Engineer Work, M/S Supreme Auto, M/S. Sabadika Engineering Works, M/S Republic Machinery Stores were never in existence. Further taking into consideration that accused persons have not filed any paper to suggest that their firms were ever in existence against whom loan was allowed for purchase of machinery and money advanced by Central Bank of India, Muradpur Branch and no paper has been filed in favour of their firms by which accused persons claimed to be proprietor were ever run and accused Atul Kishore, Navin Kumar Srivasstava, Anil Kumar Singh, Anand Kishore, Ashok Kumar Singh and Ashok Kumar Srivastava are alleged to have purchased material from the firm in the name of M/S Nishi Diesel, M/S Supreme Auto, M/S Republic Machinery, M/S Sharat Engineering work, but proprietor of these firm were never in existence.

10. Further taking into consideration Exhibit A the judgment in Title Suit for recovery of loan amount held prosecution failed to prove that loan was advanced but took into consideration the statement of the accused persons recorded under Section 313 of Cr.P.C. where their admission that they had received loan sanctioned by the Branch Manager, Central Bank of India, Muradpur Branch. So held that appellants had taken loan in the name of fake firms, as per the oral evidence the firms were not in existence and hence trial court convicted and sentenced the appellants as mentioned above.

11. Learned counsel for the appellant, Navin Kumar Srivastava, submits that prosecution has neither proved that he applied for a loan nor has proved that loan sanctioned to him nor his specimen signature has been proved nor I.O. has been examined in this case nor his statement under Section 313 Cr.P.C. he had admitted any loan.

12. Learned counsel for the appellants, Ashok Kumar Singh, Atul Kishore and Anil Kumar Singh submitted that loan was taken in the name of Firms which were in existence and neither quotations were forged nor the application for loan was forged and Firms, namely, Pataliputra Electrical Works, Sarat Engineering Works, Supreme Auto, M/S Republic Machinery, Nishi Diesel Shop were in existence, but no step was taken to verify that said firms were whether registered or not. The prosecution merely relied upon report and evidence of Postal Peon as well as some persons oral evidence that firms were not in existence and merely because money was not returned or repay it cannot be said that firms were forged and fictitious and there is no cogent and reliable evidence to suggest that quotations were forged. Moreover specimen signature of the appellants have also not been proved as specimen signature taken by the I.O., but the I.O. has not been examined in this case and further only evidence adduced that documents were forged.

13. Learned counsel for the appellant, B. B. Rai, however, submits that sanction order has not been properly proved and loan was sanctioned on the basis of loan application.

14. Learned counsel for the State however contends that evidence of P.W. 2, 4, 5, 9, 13 and 16 have deposed that these firms and shops were not in existence. The firms which took the loan were not in existence and the money was sanction to the non-existence firm which were not registered. The accused persons in criminal conspiracy have dishonestly and fraduluently withdrawn the amount from bank on fake firms. The accused persons had admitted under Section 313 Cr.P.C. that they have received loan sanctioned by the then Branch Manager.

15. Hence taking into consideration of respective submissions question for consideration as to whether prosecution has been able to prove the charges.

16. The prosecution case that the accused persons in collusion with B. B. Rai took the loan in the name of non-existence firms (S.S.I Unit) and forged the document for machinery for the said Unit in the name of non-existence shop and the Branch Manager, B.B. Rai granted loan in collusion and so **Navin Kumar Srivastava** cheated the bank by dishonestly/fraduluently inducing the bank and its staff to deliver Rs. 75,000/- as term loan and Rs. 50,000/- as working capital in favour of non-existent firm M/S Bishi Lamps, Kankarbagh Road, Patna, and forged quotation purported to have been issued by M/S Supreme Auto, Exhibition Road, Patna, which was a non-existent and bogus firm. **Anil Kumar Singh** had cheated the bank and its staff by dishonestly or fraduluently by inducing for delivery of Rs. 75,000/- as term loan and Rs. 50,000/- as working capital in the name of bogus and non-existent firm M/S Sabadika Engineering Works, Kankanbagh, Patna, purported to be issued by M/S Republic Machinery Stores, S.P. Verma Road, Patna. **Anand Kishore** had cheated the bank as a guarantor of non-existent firm, namely, M/S Bishi Lamps, M/S Sabadika Engineering Works and M/S Nishi Diesel Centre, Kankarbagh Road, Patna and induced the aforesaid bank to deliver Rs.75,000/- as terms and Rs. 50,000/- as working capital each to M/S Bishi Lamps, M/S Sabadika Engineering Works and Rs. 68,250/- as terms loan and Rs. 50,000/- as cash credit limit to M/S Nishi Diesel Centre, Kankagbagh, Patna. **Ashok Kumar Singh** cheated the bank and its staff by dishonestly and fraudulently inducing them to deliver Rs. 60,000/- as term loan and Rs. 50,000/- as working capital in favour of M/S Patliputra Electric Works a bogus and non-existent firm and purported to have been issued by M/S Republic Machinery Stores, S.P. Verma Road, Patna, which is a bogus and non-existent firm. **Atul Kishore** cheated the bank and its staff by dishonestly and fraudulently inducing them to deliver Rs. 75,000/- as term loan and Rs. 50,000/- as working capital in favour of M/S Sabadika Engineering Works, Kankarbagh, Patna, a bogus and non-existent firm and purported to have been by M/S Supreme Auto, Exhibition Road, Patna a bogus and non-existent firm. **Ashok Kumar Srivastava** cheated the bank and its staff by dishonestly and fraduluently inducing them to deliver Rs. 68,250, as term loan and Rs. 50,000/- as cash credit limit to M/S Nishi Diesel Centre, Kankarbagh, Patna, which was a bogus and fictitious firm issued by M/S Supreme Auto, Exhibition Road, Patna, a bogus and non-existent firm.

17. However, I proceed to take into consideration the evidence of the witnesses in the submission made by the parties. P.W. 2 is the business man has stated that in 1999 he used to do business at Kankarbagh, though, he is at the time of evidence was residing at Delhi and he has stated that in his knowledge, there was no shop like M/S Nishi Diesel in Kankarbagh. Further in his cross-examination, he has stated that he cannot say whether there was any shop in the name of M/S Nishi Diesel besides his motor company, though, he claims to be Vice President of Patna Auto Diesel Association. P.W. 4 is Sheo Mistry and has stated that he has not seen any shop like M/S Nishi Diesel in Kankarbagh. P.W. 5 is a retired Post Office employee and has stated that he was postman in between 1982-93 and he never delivered any letter in the name of M/S Nishi Diesel. Further he has stated that he cannot say any shop in the name of M/S Nishi Diesel, Kankarbagh. P.W. 9 is a business man and has stated that he known Super Trader, Exhibition Road, Patna. However, he has stated that no any shop in the name of Supreme Auto, in between Exhibition Road or S.P. Verma Road nor any shop like Republic Machinery Stores and claims he known almost all the shops. P.W. 13 is an Assistant in the Post office claim that he was a Postman from 1981 to 1983 and during that period he had not delivered any letter to M/S Sarat Engineering Works, M/SBishi Lamp, M/S

Sabadika Engineering, M/SPatliputra Electrical Works, M/SNishi Diesel, M/S Trishul Engineering and M/S Quality lamp either registered or non-registered. P.W.16 is shopkeeper since 1973 and in between 1982 to 1983, there was no shop in the name and style of M/S Supreme Auto, M/S Republic Machinery and question arises on the basis of this evidence whether it can be held that these firms were non-existent or not. The evidences are with regard to the existence on non-existence of these firms and whether it can be held on the basis of these evidences that that these firms were fake, forged and non-existence. If a person says that he has not seen a shop does it mean that it is not in existence. It may mean that the person may not have the knowledge of that shop.

18. However, second set of evidence available in evidences of P.W. 6, 7, 10, 12, 14, 15, 17, 18 and 19 are the evidence of Bank officials and they have come to depose that procedure for grant of loan has not been properly followed as well as their evidences to the effect that loan was sanctioned and money was paid to these accused persons. However, on the basis of these evidences, it cannot be held or draw an inference that the firms were fictitious and bogus. P.W. 1 has come to depose that entry shows proposal for sanctioning loan in favour of M/S Nishi Diesel for term loan and cash credit loan of Rs. 50,000/- and Rs. 75,000/- respectively and Branch Manager

issued term loan of Rs. 68,250/- and cash credit loan of Rs.50,000/-. He has also issued D.D. in the name of M/SSupreme Auto. P.W. 6 and 7 have come to depose that loan was sanctioned on the loan application of M/S Nishi Diesel of Ashok Kumar Srivastava of Fuel Pump Service and Repairing and in the said loan proposal M/S Nishi Diesel has also been received of cheque by Ashok Kumar Srivastava. P.W. 7 is also a Government employee has proved the loan application of M/SNishi Diesel Shop and term loan and cash credit loan. P.W. 10 has come to say about preparation of financial report and he prepared financial report for M/SSarat Engineering Works marked as Exhibit-10. P.W. 11 is a also a Bank official and he has also proved the account of M/S Supreme Auto. P.W. 12 is a retired employee of Central Bank come to depose that B. B. Ram, Sub-Accountant was given the charge to D. N. Mishra on his transfer and has stated that B. B. Rai was next senior was taken charge. P.W. 14 has stated that when he used to take leave he handed over the charge to B. B. Rai. P.W. 15 has come to depose that document was seized by C.B.I. and has proved the specimen of Atul Kishore when account was open in his name. P.W. 17 has come to depose that he was technical officer of the Regional Office of Central Bank in 1982 and he has handed over the case to C.B.I. to investigate this case. P.W. 18 has come to depose that specimen signature of accused was taken before him. P.W. 19 is Assistant Accountant and he has stated that specimen signature of B.B. Rai was taken before him. P.W. 20 and 22 are G.E.Q.D. and has proved signature on the firms and other document by the accused persons, but I.O. who took the signature of the accused persons has not been examined to prove the prosecution.

19. However, P.W.8 is the most relevant witness in the case and he is a retired Central Bank employee and has stated that he was Assistant Branch Manager at Central Bank of India, Dakbunglow Branch from 1982 to 1986. He has stated that during the period he had inspected the Muradpur Branch on the direction of the Regional Office. He has come to depose that loan documents were blanks. Application forms were incomplete. The deed which were taken for security of the loan were not mentioned in the Memo Book. Further he has stated that during the period from 01.09.19812 to 31.12.1981 there was squeeze in sanctioning the loan and at that time B. B. Rai had sanctioned huge advance during that period. He has further stated that he verified it from the loanees. He has further stated that he could not trace out the unit of 10 parties (borrowers). He has further stated that R. K. Rudra the then Deputy Chief officer was assisting him in the inspection. He has further stated that accused B.B. Rai was also present on 27.01.1982 during course of his inspection. He has stated

Nishi Diesel, Bishi Lamps, Sabadika Engineering Works, Sharat Engineering Works and Quality Lamps etc. were non-existent firms and loanees were not found at the addresses on which the loans were sanctioned. He has proved the signature of accused B. B. Rai on the Financial Report, project report, account opening forms, specimen cards. He has further stated that there is principle for priority for grant of loan of small scale unit and M/SNishi Diesel, M/S Sabadika Engineering, M/S Sarat Engineering Works, M/S Quality Lamp are small scale unit. He has stated on the address on which loan was granted to the loanees were not found. The units were non-existent. He has stated that during inspection he has inspected the loan document of Sarat Engineering, he has stated that loan was sanctioned to the tune of Rs. 50,000/- cash credit and Rs.1,00,000/- term loan were signature of B. B. Rai on financial report. He has also proved cash credit and term loan. He has also proved document of M/S Nishi Diesel in sanctioning loan. He has also proved signature of B. B. Rai on account opening form of M/S Bishi Lamp, M/SSabadika Engineering, loan document of Pataliputra Electrical Works in which loan has been sanctioned. He has also proved term loan, working loan of M/SQuality Lamp, M/S Nishi Diesel and Pataliputra Machinery Units and D.D. voucher issued. In his further cross examination he has stated at the time of grant of loan to the borrower all the related documents were kept in one set. He has further stated that M/S Sarat Engineering has granted provisional registration bearing registration no. 3/10/05/96 dated 21.09.1981. He has further stated in his evidence that he did not enquire from the Director of Industries as to whether these firms were registered or not. He has stated that in loan application form some columns are vacant. Further he has stated he did not know whether any case has been filed in the court of Sub Judge V against M/S Sarat Engineering. In his further cross-examination he has stated that registration of Auto Diesel is not amongst paper person. However, he has stated that paper of registration of provisional registration of M/S Quality Lamp was attached. Photo copy of registration of M/S Pataliputra Electrical Work, provisional registration of M/S Sabadika Engineering has also attached. Registration paper of M/S Trishul Engineering was also attached and there is application of M/S Nishi Diesel, but papers of registration were not attached. However, registration of M/S Bishi Lamp was also attached. He has further started that his inspection report was not on record. He has further stated explanation of B. B. Rai was not taken at the time of inspection.

20. Hence going into the entire evidence that there are four sets of evidence. The first set of evidence is evidence of P.W. 2,4,9 and 16 the business men who deposed that they had not seen the firm/shop and there were no firm/shop who took loan for supply of article. P.W. 5 and 13 are the postman who deposed that they had not delivered any letter in the names of those firms. On the basis of this evidence, it is held that the firms were non-existence and so the application for loan on their behalf and the quotation given by the shops or firms are forged as they were non-existent.

21. The second set of evidence are the evidence of Bank officials, P.W. 6,7,10,12,14, 15, 17, 18 and 19 who have come to depose that applications were filed for grant of loan, the same was processed. Formal report prepared, loans were sanctioned and money was paid by cheque. The signature of the accused persons have been proved on loan document on the cheque issued. The money has been given by cheque to the firms and the procedure for grant of loan has been properly followed and the accused persons received the amount which was not returned by the accused.

22. However the third set of evidence is the evidence of P.W.8 who deposed that he inspected the Muradpur Branch during the relevant period on the direction of Regional Office. He deposed that the loan document was incomplete. The forms were not wholly filled as some columns were blank. He could not trace out the S.S.I Unit of ten borrower and the loanee were not found on the address given. But in cross-examination, he

admitted that he found papers with regard to the registration of the firms of Sarat Engineering, M/S Quality Lamp, Patliputra Chemical, M/S Sabadika Engineering and M/S Nishi Diesel. He further deposed that he did not enquire from the direction of industries as to whether these firms were registered under the Industries Department.

23. The fourth set of evidence is the evidence of Government Examiner of question document to prove the signature of the accused persons on loan document and receipt of the cheque and withdrawing the amount by cheque in their account. However, the I.O. who took the specimen signature of the accused has not come to depose and prove the specimen signature of the accused taken by him.

24. Hence first set of evidence only show that they have no knowledge about the existence of these firms as they have neither seen nor have deliver any letter to those firms. This is one aspect of the matter. The second set of the evidence is evidence of Bank Officer that loan applications filed and money sanctioned.

25. However to the contrary, though, P.W.8 has come to support the evidence of first and second set of the evidence that loan applications filed but columns were vacant and address on which loan was granted to the loanee were not found. The Unit were non-existent. The evidence of P.W.8 in

cross examination has deposed that there were papers regarding the provisional registration of the firms to whom the loan were sanctioned and those papers were attached with loan document. He has stated that the paper of registration of M/S Quality Lamp, Patliputra Electricals, M/S Sabadika Engineering, M/S Trisul Engineering and M/S Bishi Lamp and he did not enquire from Industries Department about their registration nor there is any evidence that those papers were forged.

26. However, this part of evidence of P.W.8 has not been challenged by prosecution nor P.W. 8 has been declared hostile and accepting this evidence, it is apparent that these firms who applied for loan and their loan proceeds with the papers regarding the registration was on record of loan document prima facie evidence of their existence as S.S.I Unit being registered under Industries Department and this documentary evidence shall prove on the oral evidence of the witness that they have not seen the firm to held it non-existent.

27. P.W.8 has specifically stated about the existence document of registration of those firms. He found that record during his inspection of the Muradpur Branch. His further evidence that he did not enquire from the Industries Department about the registration of these firms as S.S.I Unit in the Industries Department. There is also no evidence that those papers regarding the registration of firms by Industries

Department were forged. There is neither any investigation or enquiry about the genuinety of the papers found regarding the registration of those firms from Industries Department prima facie proved their existence.

28. The argument that the firms were non-existence on the basis of first set of evidence of P.W. 2,4,5,9,13 and 16 without consideration of the fact and the evidence of P.W.8 that there were papers regarding registration of those firms by Industries Department and without any evidence regarding the genuinety of those documents being enquired, the possibility of the firm being non-existent or without evidence that those papers were forged, any finding, that firms were non-existence, is perverse as merely on conjecture and surmises. Once the decision drawn on the basis of evidence of first set of witness is doubted as no prudent conclusion is drawn, it cannot be held that firms were non-existence.

29. If the finding that firms were non-existence is ousted and held that firms were in existence with its registration as Small Scale Unit then in the light of the finding neither an offence under Section 420 or offence under Section 468 and 471 of Penal Code is made out.

30. Section 420 I.P.C. is cheating is defined that if a person deceiving dishonestly and fraudulently by inducing a person to do or omit to do i.e. to deliver any property is said to

be cheat. Here the allegation that the fraudulent inducement is non-existence of the firm on which loan applied but once the existence of firm is establish fraudulent inducement vanish.

31. The forgery has been defined under Section 463 of Indian Penal Code. Whoever makes any false document with intent to cause damage to the public or to any person or to support a claim or to part with property with intent to commit fraud may be committed.

Hence the forgery is mainly concern with making of false document to deceive a person to part with property.

32. Making of false document is defined in Section 464 of Indian Penal Code. A person is said to make a false document—

Firstly.--- Who dishonestly or fraudulently makes, sign, seals or executes a document or part of a document, or makes any mark denoting the execution of a document with the intention or causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

Secondly.--- Who, without lawful authority,

dishonestly or fraudulently by cancellation, or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—who dishonestly or fraudulently cause any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or the nature of the alterations.

33. However here under the fact and circumstance of the case, if the firms were registered as S.S.I Unit and loan were applied for the Unit and loan after process is sanction and cheque issued to the firms in presence thee of, then no offence is made out unless shown that loan was taken fraudulently under a false document. There is specific evidence that P.W.8 did not go to enquire from the Industries Department whether the firms were registered nor he proceed to enquire whether the papers for registration filed with loan form were forged, neither the evidence is that the firms were provisionally registered. Once this evidence is taken into consideration which is based on documentary evidence, the evidence of first set of witness cannot override it to conclude that firms were not in existence to hold that appellants commit cheating or forgery.

34. However, the trial proceeded on presumption that the since the firms were not in existence as per evidence of first set of witnesses, so the loan application were forged as firms were non-existence and on this fraudulent misrepresentation the loan was sanctioned by B.B.Rai to the non-existent firm and hence offence of cheating and forgery is establish.

35. However having regard to the fact as per the evidence of P.W.8 that firms were registered and documents were there in record of loan applications and there is no evidence that the papers attached with the forms were forged nor any enquiry from Industries Department about their existence of being registered, then the investigation itself appear to be perfunctory and in the fact and circumstance when there is conclusive evidence about non-existence of those firms the conviction cannot be recorded for offence of cheating or forgery.

36. The trial court misdirected itself is not consider the evidence of P.W.8 who inspected the loan document and gave a report. He found that document regarding registration of firm, but he did not go into the question to enquire whether these units were registered under Small Scale Unit by Industries Department. The evidence of P.W. 8 is most important. The

Investigating Officer also did not go into the question whether Units were registered under the Small Scale Unit and there is no evidence to the effect that these firms were not registered at all nor there is any evidence that the paper regarding registration of firm found on record was forged as not signed by the person whose signature was on those document. Hence it cannot be said that accused persons cheated the bank for term loan on the ground that loan was applied for non-existence firm nor it has been established that quotations were prepared in favour of the persons against whom signature made by different firms and hence it is not proper to convict the accused persons under Sections 468, 471 and 420 of Indian Penal Code on the basis of oral evidence that these firms were not in existence without going into the question whether these firms were registered under Small Scale Industries Department. However, question arise that loan was sanctioned without verification of the existence of the firm or loan was granted without equity mortgage that may be negligent and on that basis, it cannot be held that these accused persons cheated the bank and bank was in collusion or under conspiracy sanctioned the loan. Moreover, there is no evidence regarding the fact that B.B. Rai sanctioned loan on pecuniary gain It is mere presumption that B.B. Rai in collusion with other accused persons for economic gain granted loan to the accused persons in the name of non-existence firms, it is based on conjecture and surmises without any evidence to that effect that loan was granted under conspiracy and without any evidence mere on the basis of conjecture and surmises to the evidence of Postal Peon or shopkeepers that such shops were not existence, it is not proper to convict the accused persons for offence under Section 468 of Indian Penal Code. Further mere applying loan under Small Scale Unit, it cannot be said it was false and inducement for attract under Section 420 of Indian Penal Code, if the accused persons were owner of registered firm under Small Scale Unit and they applied for loan and loan form process and loan sanction, then it cannot be said it is dishonest inducement for grant of loan. If the Small Scale Unit was registered and applied for loan which was sanctioned, it cannot be said to be dishonest inducement to deliver money and in this background it is not held that these firms were non-existence and there is no report that firms were not registered as Small Scale Industry that these firms were not in existence and merely on the basis of evidence of some of the shopkeepers and Postal Peon that firms were not in existence, it is not proper to convict the accused under Section 420 of Indian Penal Code.

37. Hence taking into consideration the entire circumstance, the trial court did not go into the question whether these firms were registered or not and merely on the basis of evidence of the shopkeepers and Postal Peon hold that these firms were not in existence is not sustainable for conviction under Sections 420, 467, 468 and 471 of Indian Penal Code. **Hence, order of conviction and sentence recorded by the trial court is hereby set aside and all appeals are allowed.** The appellants of Cr. Appeal (SJ) No. 177 of 2002, Sri Bankey Bihari Rai, Cr. Appeal (SJ) No. 180 of 2002, Ashok Kumar Singh, Cr. Appeal (SJ) No. 183 of 2002, Atul Kishore and Anil Kumar Singh, Cr.Appeal (SJ) No. 184 of 2002, Anand Kishore and Cr.Appeal (S) No. 201 of 2002, Naveen Kumar Srivastava are discharged from their liability of their bail bonds.

(Gopal Prasad, J)

m.p.
NAFR

U		T	