IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.494 of 2002

Arising out of Special Case No. -20 Year- 1996 (R.C. 30/A-96) District- PATNA

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Lalit Kishore Prasad Srivastava, son of Late Mangal Prasad, resident of Mohalla-Balughat, P. S. Sadar Buxar, District-Muzaffarpur.

.... Appellant/s

Versus

The C.B.I. through Informant, Gyanendra Prasad Singh

.... Respondent/s

with

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Criminal Appeal (SJ) No. 510 of 2002

Arising out of Special Case No. -20 Year- 1996 (R.C. 30/A-96) District- PATNA

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Rama Ballabh Choudhary, son of Late Ram Khyali Choudhary, resident of village Sahasram, P. S. Biraul, District-Darbhanga.

Poonam Devi, wife of late Rama Ballabh Choudhary, substituted vide order dated-09.02.2015)

.... Appellant/s

Versus

The State, through C.B.I.

.... Respondent/s

with

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Criminal Appeal (SJ) No. 514 of 2002

Arising out of Special Case No. -20 Year- 1996 (R.C. 30/A-96) District- PATNA

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Naresh Choubey, son of Late Pandit Viveki Choubey, resident of Mohmada, P. S. Maheshi, District-East Champaran.

.... Appellant/s

Versus

C.B.I. through Gyanendra Pd. Singh

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No. 494 of 2002)

For the Appellant/s : Mr. Patanjali Rishi-Amicus Curiae
Mr. Dilip Kumar Sinha 2

For the Respondent/s : Mr. Sanjay Kumar-Advocate for C.B.I.

(In CR. APP (SJ) No. 510 of 2002)

For the Appellant/s : Mr. Patanjali Rishi-Amicus Curiae
Mr. S.Nath 1

For the Respondent/s : Mr. Sanjay Kumar-Advocate for C.B.I.

(In CR. APP (SJ) No. 514 of 2002)

For the Appellant/s : Mr. K.C.K.Sinha
Mr. Gaurab Agrawal

For the Respondent/s : Mr. Sanjay Kumar-Advocate for C.B.I.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date:10-03-2015

Criminal Appeal No.494 of 2002 wherein Lalit Kishore Prasad Srivastava is the appellant, Criminal Appeal No.510 of 2002 wherein Rama Ballabh Chaudhary is the appellant and Criminal Appeal No.514 of 2002 wherein Naresh Choubey is the appellant commonly originate against the judgment of conviction dated 16.08.2002 and sentence dated 19.08.2002 passed by the Special Judge, Central Bureau of Investigation, Animal Husbandry, Patna in Special Case No.20 of 1996 (R. C. Case No.30/A-96) convicting all the appellants for the offences punishable under Section 120B read with Sections 420, 467, 468, 471 I.P.C. and Section 13(1)(c)(d) punishable under Section 13(2) of the P. C. Act, Rama Ballabh Chaudhary for the offences punishable under Sections 420, 467, 468, 471 read with Sections 465, 420 I.P.C. and Section 13(1)(c)(d) of the P. C. Act, Lalit Kishore Prasad Srivastava for the offences punishable under Sections 420, 471 read with Section 465 I.P.C. and Section 13(1)(c)(d) of the P. C. Act, Naresh Choubey for the offences punishable under Sections 420, 471 read with Section 465 of the I.P.C. and Section 13(1)(c)(d) of the P.C. Act as well as directing each one of the appellants/ convict to undergo rigorous imprisonment for three years under first head, appellant Rama Ballabh Choudhary to undergo rigorous imprisonment for two years-three years fine of Rs.5,000/- in default thereof, undergo Simple Imprisonment for three months, rigorous imprisonment for one year, rigorous imprisonment for two years as well as fine of Rs.5,000/- in default thereof, to undergo Simple Imprisonment for three months, rigorous imprisonment for one year, rigorous imprisonment for two years respectively, Lalit Kishore Prasad Srivastava to undergo rigorous imprisonment for two years, one year, rigorous imprisonment for two years fine of Rs.5,000/- in default thereof, simple imprisonment for three months respectively, Naresh Choubey to undergo rigorous imprisonment for two years, rigorous imprisonment for one year, rigorous imprisonment for two years, fine of Rs.5,000/- in default thereof to undergo simple imprisonment for three months respectively, have challenged the same under instant appeal, on account thereof, have been heard analogously and are decided by a common judgment.

2. During course of pendency of instant appeal, appellant Rama Ballabh Choudhary died and as there also happens to be imposition of fine sentence, substitution has been allowed in terms of Section 394(2) of the Cr.P.C. through his wife, Poonam Devi vide order dated 09.02.2015.

3. PW-15, Gyanendra Prasad Singh filed written report alleging inter alia that in the night of 17.11.1995, he came to know regarding unsuccessful attempt to withdraw the government money on forged bill and on account thereof, he became suspicious and directed to verify the genuineness of the bill from Financial Year 1990-91 to 1994-95. While the process is going on, on the basis of preliminary report defalcation of Rs.6,00,000/- (six lacs) have been detected. It has further been disclosed that Assistant, Rama Ballabh Choudhary happens to be entrusted with preparation of bill, receiving cash from the bank after passing of the bill, deposit of the bill, tendering of the bill at Treasury Office. Furthermore, the details thereof, has been given.

4. After having been registered as Sadar P. S. Case no.209 of 1995, the investigation proceeded, however, during midst thereof, as per order of the Hon’ble High Court confirmed by the Hon’ble Apex Court, the matter relating to siphoning of government money under Animal Husbandry Department was considered under Public Interest Litigation followed with directing the C.B.I. to register case with regard to respective offences, investigation as well as proceeding with the trial and on account thereof, instant case was also taken over by the C.B.I. whereupon R.C. Case no.30/A-96, Special Case no.20 of 1996, was registered, investigated, followed with

submission of chargesheet and that happens to be reason behind conduction of trial by a Special Court so designated and ultimately, meeting with result, the subject matter of instant appeal.

5. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial of occurrence as well as false implication. Further been, as is evident, pleaded that all sorts of defalcation has been made by the Superior Officials. However, they have been made scapegoat.

6. While assailing the judgment of conviction and sentence, manifold points have been raised by the learned counsels. The first and foremost happens to be, all the appellants have been victimized at the end of C.B.I. in connivance with the Superior Officials otherwise, there was no scope or opportunity for them to indulge in such kind of activity nor there was any scope for them. In order to support such plea, it has been submitted that specimen signature of respective drawing and disbursing officer, as per Treasury Rules remained with Treasury Officer under Guard File, so that Treasury Officer be able to compare while passing the bill. Unless and until, bill happens to be passed by the Treasury Officer, it happens to be worthless. Furthermore, the Dealing Clerk, according to duty chart was expected only to see whether bill happens to be in order and then,

its minute scrutiny was to be carried out by the Accountant and then thereafter, bill was to be passed by the Treasury Officer. Hence, it was the Treasury Officer, who on account of inpossession of specimen signature of drawing and disbursing officer, was competent to judge the authenticity of the signature of the drawing and disbursing officer. There is complete absence of material on behalf of prosecution to the effect that appellants have had mis-represented the fact nor the Treasury Officer was duped to sign.

7. Treasury Officer has been examined as PW-18, who had accepted the aforesaid norms to be followed during course of passing of bills in accordance with Treasury Rules, but only to safeguard himself stated on his own that specimen signatures were provided to the respective Dealing Clerk (as per existing norms) which has not been substantiated, even during investigation. After all, it happens to be the Treasury Officer, who could be held responsible for passing of bill, being the competent authority, and none else.

8. The Investigating Officer, PWs-21, 22 have failed to investigate on that very score and on account thereof, there happens to be partial as well as collusive investigation which has purposely been followed to save the respective drawing and disbursing officer as well as the Treasury Officer.

9. It has further been submitted that bill is to be prepared

in terms of desirability by the respective department which has to be passed by the drawing and disbursing officer followed with issuance of sanction order and then thereafter, through Messenger Book, it requires to be placed before Treasury Office. That means to say, firstly the bill has to be passed by the drawing and disbursing officer followed with sanction order. Therefore, the drawing and disbursing officer has got two occasions for scrutiny of the bill. Had there been forgery committed in preparation of the bill, it would not had happened unless there happens to be active hand of drawing and disbursing officer. In the aforesaid background, the evidence of drawing and disbursing officer, PW-19 is there and after perusal of the same, it is evident that fault is found at his end.

10. It has further been submitted that, that happens to be reason behind conduction of collusive investigation by the Investigating Officer which is apparent from the fact that the I.O. failed to take signature of appellants as well as PW-19 before the Magistrate nor the respective signatures were sent in sealed cover under the order of Magistrate to the expert, who also happens to be an establishment associated with C.B.I., and being so, direct influence of I.O. could not be ruled out. Once, there happens to be fragrance of collusiveness in order to hide the real culprits, then in that event, the mode of partial investigation causing prejudice to the appellants is

duly found exposed and happens to be sufficient to annul the finding recorded by the lower Court.

11. Then, it has been submitted that handwriting expert has been examined as PW-20. After going through his evidence, it is apparent that he had shown himself as puppet of I.O. as well as the report submitted by him, duly suffused.

12. It has further been submitted that Dealing Clerk is not at all concerned with passing of bill rather he is expected to check the bill, prima facie, to find it in order and then is passed to Accountant, who is under obligation to see its genuineness, and then to Treasury Officer, who would pass the same after getting the signature of drawing and disbursing officer compared with specimen signature. When a bill is found suspicious, then in that event it happens to be the responsibility of Accountant as well as Treasury Officer to verify the same, being so authorized. However, in the present episode, the reason best known to the prosecution, the Accountant as well as Treasury Officer have not been arrayed as an accused though their active involvement is crystal clear. Furthermore, it is evident that in absence of having been arrayed as an accused, and as their active involvement were found during course of passing of bill and as the Investigating Officer failed to investigate properly over presence of specimen signature of drawing and disbursing officer with dealing

clerk contrary to Treasury Rules, in the aforesaid background, the evidence of aforesaid witnesses could not be accepted as pious one and being so, their evidences are fit to be rejected.

13. In likewise manner, it has been submitted on behalf of substituted heirs of appellant Rama Ballabh Choudhary that the witnesses so examined, more particularly that of his Department (Animal Husbandry) have got no occasion to visit the place nor were deployed in the office along with Rama Ballabh Choudhary and consequent thereupon, whoever been examined, are formal in nature, incompetent to pin-point culpability of deceased-appellant Rama Ballabh Choudhary by way of exhibiting writing of deceased Rama Ballabh Choudhary. So, it has been submitted that prosecution had miserably failed to substantiate its case by cogent, reliable, independent witnesses.

14. Per contra, while supporting the finding recorded by the learned trial Court, it has been submitted on behalf of learned counsel representing the C.B.I. that there happens to be no intervening circumstance to consider otherwise than whatsoever been recorded by the learned trial Court. To support the same, it has been submitted that the procedure of preparation of bill followed with sanction order as well as tendering of bill before the dealing clerk at Treasury Office through messenger book is found duly explained by the witnesses.

Furthermore, it is also evident from the evidence of the witnesses that three bills which were received by the appellant Lalit Kishore Prasad Srivastava as well as Naresh Choubey, so produced by Rama Ballabh Choudhary have got no reference in the messenger book. Therefore, connivance of Lalit Kishore Prasad Srivastava as well as Naresh Choubey with Rama Ballabh Choudhary is apparent.

15. Because of the fact that there happens to be no denial at the end of appellants while cross-examining the Investigating Officer as well as PW-19 Birendra Kumar Sinha, over obtaining specimen signature of PW-19 is indicative of the fact that the aforesaid incidence was properly executed followed with opinion of the handwriting expert, PW-20. So submitted that from the exhibits having been placed as well as duly proved on behalf of prosecution clearly suggest connivance of all the three appellants enabling them to withdraw the amount on the basis of forge and fabricated bill, sanction order and on account thereof, have rightly been convicted and sentenced.

16. In order to substantiate its case, the prosecution had examined altogether twenty two (22) PWs, out of whom, PW-1 R. B. Mistri, PW-2 Nandan Prasad Sinha, PW-3 Birendra Prasad, PW-4 Vijay Kumar Srivastava, PW-5 Devendra Kumar, PW-6 Ram Sunder Shukla, PW-7 Ganesh Sharma, PW-8 Indrajit Prasad, PW-9 J. C.

Prasad Verma, PW-10 Shambhu Prasad Singh, PW-11 Raj Mangal Kunwar, PW-12 Jagdish Prasad Srivastava, PW-13 Awadhesh Kumar Singh, PW-14 Md. Faruque Azam, PW-15 Gyanendra Prasad Singh, PW-16 Abu Bakar, PW-17 Bharat Narain Singh, PW-18 Md. Ayub Sabir, PW-19 Birendra Kumar Sinha, PW-20 V.G.S. Bhatnagar, PW-21 Ramji Rai and PW-22 J.P. Mishra as well as had also exhibited the documents as Exhibit-1 signature of Sri Beck Julius on the letter dated 28.05.1996, Exhibit-2 endorsement and signature of Shri J. P. Mishra on the letter dated 28.05.1996, Exhibit-3 to 3/7 eight bills, Exhibit-4 to 4/7 eight sanction order, Exhibit-5 to 5/3 short signature of Rama Ballabh Choudhary on certificate, Exhibit-6 to 6/7 signature of Rama Ballabh Choudhary on payment receipts, Exhibit-7 certificate written and signed in short by Rama Ballabh Choudhary on ext.-3, Exhibit-8 Payment Register from 29.06.90 to April, 1992, Exhibit-8/1 signature of Satishwar Nath on revenue stamps on bill no. 40/90-91, Exhibit-9 Treasury Messenger Book, Exhibit-9/1 signature of Rama Ballabh Choudhary on bill no.40/90-91 at page 000072 in Treasury Messenger Book, Exhibit-10 bill book, Exhibit-10/1 entries at page-3 bill no.40/90-91 in bill book, Exhibit-10/2 entry no.19/92-93 in bill book, Exhibit-9/2 entry no.19/92-93 in messenger book, Exhibit-11 payment register, Exhibit-11/1 entry on page 23 in payment register, Exhibit-10/3 entry no.23/92-93 on page 18 in bill book written by Rama

Ballabh Choudhary, Exhibit-9/3 entry no.23/92-93 on page 96 in messenger book written by Rama Ballabh Choudhary, Exhibit-9/4 entry on page 95 in messenger book written by Rama Ballabh Choudhary, Exhibit-5/6 signature of Rama Ballabh Choudhary below Ext 9/4, Exhibit-11/2 entry on page 65 of payment register, Exhibit-5/7 signature of Rama Ballabh Choudhary below Ext.11/2, Exhibit-12 certificate written by Rama Ballabh Choudhary on Bill no.26, Exhibit-10/4 bill no.26/94-95 on page 35 of bill book, Exhibit-11/3 entry no.26/94-95 from page 183 to 185 of payment register, Exhibit-5/8 short signature of Rama Ballabh Choudhary on Ext.11/3, Exhibit-13 signature of Dr. B. K. Sinha on entry no.26/94-95, Exhibit-11/4 entry on page 169 of payment register, Exhibit-5/9 short signature of Rama Ballabh Choudhary on page 169 of payment register, Exhibit-13/1 signature of B. K. Sinha on page 169 of payment register, Exhibit-5/10 short signature of Rama Ballabh Choudhary on Ext.3/4, Exhibit-5/11 short signature of Rama Ballabh Choudhary on sanction order (Ext.4/4), Exhibit-5/12 short signature of Rama Ballabh Choudhary on page 32 of payment register, Exhibit-13/2 to 13/4 signature of Sri B. K. Sinha on page 32 of payment register (Ext.11), Exhibit-5/13 to 5/15 short signature of Rama Ballabh Choudhary on Ext.3/5 and 4/5, Exhibit-6/8 to 6/10 signature of Rama Ballabh Choudhary on Ext.3/5, Exhibit-5/16 and 5/17 short signature of Sri Rama Ballabh Choudhary on Ext.3/6, Exhibit-5/18 short signature of Rama Ballabh Choudhary on Ext.4/6, Exhibit-6/11 signature of Sri Rama Ballabh Choudhary on Ext.6/11, Exhibit-5/19 short signature of Sri Rama Ballabh Choudhary on Ext.3/7, Exhibit-6/12 sample signature of Sri Rama Ballabh Choudhary on Ext.6/7, Exhibit-9/5 writing of Rama Ballabh Choudhary of entry dated 26.1.94, Exhibit-10/5 writing of R. B. Choudhary of bill no.41 dated 18.12.93 in bill book, Exhibit-13/5 to 13/7 signature of Sri B. K. Sinha on page 31 in bill book, Exhibit-11/5 writing of Shri Devendra Kunwar of bill no.41 dated 18.12.93 in payment register, Exhibit-13/8 signature of B. K. Sinha below Ext.11/5, Exhibit-5/20 short signature of R. B. Choudhary below Ext.13/8, Exhibit-9/6 writing of R. B. Choudhary of bill no.41 dated 18.12.93 in messenger book, Exhibit-5/21 short signature of R. B. Choudhary on messenger book, Exhibit-13/9 signature of B. K. Sinha above Ext.5/21, Exhibit-5/22 short signature of R. B. Choudhary on Ext.4/7, Exhibit-15 bill no.51/95-96, Exhibit-15/1 bill no.52/95-96, Exhibit-16 sanction order in respect of bill no.51, Exhibit-16/1 sanction order in respect of bill no.52, Exhibit-5/23 short signature of R. B. Choudhary on Ext.15, Exhibit-5/24 short signature of R. B. Choudhary on Ext.15/1, Exhibit-6/13 sample signature of R. B. Choudhary on Ext.15, Exhibit-6/14 sample signature of R. B. Choudhary on Ext. 15/1, Exhibit-17 writing of advice no. on Ext.15, Exhibit-17/1 writing of advice no. on Ext.15/1, Exhibit-18 to 18/7 signature of Sri Ganesh Sharma on eight bills, Exhibit-19 and 19/1 signature of Naresh Choubey on Ext.3/6 and 3/7 respectively, Exhibit-19/2 and 19/3 signature of Naresh Choubey on sanction orders attached with Ext.3/6 and 3/7 respectively, Exhibit-19/4 and 19/5 writing of advice no.1/303 and 1/502 of Naresh Choubey and Ext.3/6 and 3/7 respectively, Exhibit-20 and 20/1 signature of PW-8 Indrajit Prasad on Ext 3/6 and 3/7 respectively, Exhibit-21 and 21/1 signature of Ayub Sabir on Ext.3/6 and 3/7 respectively, Exhibit-22 signature and writing of Lalit Kishore Pd. Srivastava on Ext.3/2, Exhibit-23 signature of PW-10 Shambhu Pd. Singh on Ext.3/2, Exhibit-24 signature of Treasury Officer Ayub Sabir on Ext.3/2, Exhibit-25 signature and writing of Naresh Choubey on Ext 3/5, Exhibit-23/1 signature of PW-10 Shambhu Pd. Singh on Ext.3/5, Exhibit-24/1 signature of Ayub Sabir on Ext.3/5, Exhibit-22/1 signature and writing of Lalit Kishore Pd. Srivastava on Ext.3, Exhibit-26 signature of Jitesh Chandra Verma on Ext.3, Exhibit-27 signature of Sri M.O.Siddique, Treasury Officer on Ext.3, Exhibit-22/2 signature and writing of Lalit Kishore Pd. Srivastava on Ext.3/1, Exhibit-26/1 signature of Jitesh Chandra Pd. Verma on Ext.3/1, Exhibit-28 signature of Sri Madhav Prasad, Treasury Officer on Ext.3/1, Exhibit-29 signature and writing of entry of Raj Mangal Kumar in messenger book, Exhibit-29/1 signature and writing of entry of Raj Mangal Kumar on bill no.26/94-95, Exhibit-30 signature of Jagdish Pd. Srivastava on bill no.26/94-95, Exhibit-31 signature of Jugal Kishore on bill no.26/94-95, Exhibit-29/2 writing of advice no.1/764 of Raj Mangal Kumar, Exhibit-29/3 writing of T.V. No.99/23.7.94 of Raj Mangal Kumar, Exhibit-32 writing and signature of Faruque Azam on bill (already marked Ext.3/4), Exhibit-30/1 signature of Jagdish Pd. Srivastava on bill (Ext.3/4), Exhibit-27/1 signature of M.O. Sidique on bill (Ext. 3/4), Exhibit-33 and 33/1 writing and signature of Madan Prasad on bills (Ext 15 and 15/1), Exhibit-34 and 34/1 signature of Awadhesh Kr. Sinha on bills (Ext. 15 and 15/1), Exhibit-35 and 35/1 signature of Shri P. Mishra on bills (Ext. 15 and 15/1), Exhibit-32/1 signature and endorsement of Faruque Azam (P.20.14) over Treasury Messenger Book for receipt of bill no.24, Exhibit-36 written complaint (part of bayan), Exhibit-37 carbon copy of letter no.386 dt. 18.11.95, Exhibit-38 interim report dt. 24.11.95, Exhibit-39 report dated 25.11.95, Exhibit-40 signature of Gyanendra Prasad on seizure memo dated 5.6.96, Exhibit-40/1 signature of Gyanendra Prasad Singh on the list of retired employees between 1.4.91 to Dec.95, Exhibit-41 signature of Birendra Pd. On the list of retired employees between 1.4.91 to Dec.95, Exhibit-42 letter no.193 dated 08.6.96 written by Binay Kr. Srivastava, Exhibit-36/1 formal F.I.R., Exhibit-

36/2 endorsement and signature of Harendra Kumar Singh on Ext.36, Exhibit-36/3 True copy of formal F.I.R., Exhibit-36/4 True copy of written report, Exhibit-36/5 signature of Asgar Hasmi on Ext.36/3, Exhibit-36/6 signature of Asgar Hasmi on Ext.36/4, Exhibit-43 specimen signature of Sri B. K. Sinha in four pages, Exhibit-43/1 specimen signature of B. K. Sinha in one page on Ext.A/3, Exhibit-44 report of G.E.O.D., Exhibit-45 signature of Sri S. K. Sexsena on forwarding letter, Exhibit-44/1 detailed report of V.G.S. Bhatnagar containing his signature, Exhibit-46 seizure memo dt. 04.12.96, Exhibit-40/2 signature of Sri. B. N. Jha, D.A.G., Exhibit-47 list of fourteen employees and officials to be retired from 1.4.91 to Dec.95 from the office of Ghango Vikash Prakhand, Muzaffarpur, Exhibit-36/7 formal F.I.R. containing signature of Zabir Ahmad, S.P., C.B.I., Exhibit-46/1 signature of J.P. Mishra & Gyanendra Pd. Singh in seizure memo, Exhibit-46/2 signature of J. P. Mishra & Aub Sabir on seizure memo dt. 31.5.96, Exhibit-43/2 specimen signature of B. K. Sinha & R. B. Choudhary containing signature of J.P. Mishra, Exhibit-47 writing & signature of R. B. Choudhary (35 sheets).

17. On the other hand, defence had also exhibited some documents which is exhibited as Exhibit-A signature of B. K. Sinha on s-23, Exhibit-A/1 signature of Shri B. K. Sinha on (Ext.9/2) Treasury Messenger Book, Exhibit-A/2 signature of Sri B. K. Sinha

on (Ext.9/1) Treasury Messenger Book, Exhibit-A/3 signature of Sri B. K. Sinha on s-37, Exhibit-A/4 signature of Sri B. K. Sinha on page-65 of payment register, Exhibit-B fax message dated 07.07.2000.

18. Because of the fact that some short of activities relating to functioning of treasury is to be perceived in order to proper appreciation of the evidence of the witnesses. Therefore, it looks expedient in the interest of justice to have a glance of Bihar Treasury Code. As per Rule-4(2), the treasury is to be under the general charge of the Collector who has been authorized to entrust the immediate executive control to a Treasury Officer subordinate to him. However, by such action his administrative control remains. As per Rule-17, the Treasury Officer is not authorized to make payment in routine manner unless and until is not being authorized as well as is not covered by a special order received from the Accountant General. As per Rule-20, the leave salary of a non-gazetted servant is to be paid in that District only in which his pay would be withdrawn, if he were on duty. As per Rule-29, every Government Servant who is authorized to draw cheques or sign or counter-bills payable at a treasury shall send a specimen of his signature to the Treasury Officer through same superior or other officers whose specimen signature is already with the treasury. In likewise manner, when such a government servant makes charge to his office to another, he is under obligation to send a

specimen of a signature of the relieving government servant to the Treasury Officer. The aforesaid specimen signature should be forwarded on a sheet of paper duly attested by the officer who forwards the same.

19. As per Rule-60, Accountant is responsible under the orders of the Treasury Officer for keeping complete record of cash and book transactions of the District. He is also required to see that the rules and orders enforced are properly observed.

20. As per Rule-179, guideline has been prescribed in dealing with the transaction whereunder the government had further notified vide memo no.A/3-303-46/61/22812, dated 19.11.1961, maintenance of a Treasury Messenger Register for bills sent to Treasury/ Sub-treasury through messengers by all drawing officers bifurcated under different columns requiring them to be properly filled up in the office of the drawing officer after the bills have been passed by the drawing officer. It further requires that on presentation at the Treasury/ Sub-registry by the messenger, the clerk of the Treasury/ Sub-treasury shall put his signature with date under column-7. Any bill without messenger book should not be accepted at the Treasury counter. Whenever bill is passed and returned to the messenger, the same be endorsed in Column-8 of the register by the clerk, the messenger will endorse the same with his signature under

Column-8. In case, bill is found defective one then also the same is to be endorsed under Column-8. Save and except, the bill relating of payment of Gazetted Officer as well as in terms of Rule-313, all bills is to be properly mentioned over the Treasury Messenger Book.

21. As per Rule-185, specimen signature received by the Treasury Officer is to be pasted in Guard Files and should be kept in the personal custody of the Treasury Officer. It also requires that before passing of the bill, the Treasury Officer shall satisfy himself that the signature is genuine. As per Rule-186, the Treasury Officer shall check the arithmetical computation on the bills.

22. From the aforesaid relevant rules, it has become abundantly clear that specimen signature of drawing officer is to be kept by Treasury Officer in guard file and while passing of bills, it found obligatory on the part of the Treasury Officer to see the signature of drawing officer duly compared so that forgery should be avoided.

23. PW-18 is the Treasury Officer. He had stated in his examination-in-chief that messenger register is being issued by the treasury to the Drawing Disbursing Officer duly attested by the Treasury Officer authenticated by the Drawing Disbursing Officer. Thereafter, treasury messenger is being deputed by the Drawing Disbursing Officer whose photo is being pasted over the messenger

book. His signature along with photograph happens to be attested by the Competent Authority. Bills relating to non-gazetted employees for each Financial Year is to be mentioned in the messenger book in chronological manner and contends the details of the bills, serial number of bill, amount of the bill and then puts his signature. Thereafter, is totaled subsequently so that the bill is presented before the Treasury which is being accepted by the dealing clerk so authorized to receive the same as per their duty chart, who check the bill and for that, the specimen signature of drawing and disbursing officer is made available to him. After passing of bill by the dealing clerk, the bill goes to the table of Accountant and having been passed at his end, comes before the Treasury Officer whereupon his signs after being satisfied with the passing of the bill at lower level. On being suspicious, he tallies with specimen signature. Then the bill has to return back to the dealing clerk who prepars bank advice having signature of Treasury Officer and sent to the bank while the bill is returned back to the messenger having duly endorsement in the messenger book. In likewise manner, he had accepted his signature over the disputed bills already Exhibit-24, 24/1, 21, 21/1. He had further stated that bill no.105/1993-94 was received by dealing clerk, Lalit Kishore Prasad Srivastava, who checked it and found in order whereupon passed the bill. Then thereafter, it had gone to the table of

Shambhu Prasad, Accountant who also passed and then it was placed before him whereupon he also passed. Treasury Voucher no.80 was prepared by Naresh Choubey, Dealing Clerk which was checked by Shambhu Prasad and he accordingly, had signed. Bill no.94/1995 was received by Naresh Choubey, who had inspected the same and then passed the bill. Then, it was passed by Indrajit Prasad, Accountant and accordingly, he signed. Bill no.107/1993-94 was received by Naresh Choubey, who had inspected the bill and after passing of the bill, the same had gone to the table of Indrajit Prasad, Accountant, who also passed the bill and then, he put his signature. It has also been disclosed that signature of drawing and disbursing officer is of dated 05.12.94 over T.V. no.80 and the same was passed on 08.12.94 on which date Naresh Choubey had also put his signature. Then, had stated that bill no.105/1993-94, 107/1993-94 was not entered in the messenger book. In likewise manner, bill no.41/ 1993-94 was also not mentioned in the Treasury Messenger Book. Bill no.41/ 1993-94 was received by Naresh Choubey, who had verified the bill on 31.03.1994, passed the bill and then thereafter, the bill was passed by Indrajit Prasad, the Accountant and then, he had put his signature. It has further been disclosed that on 26.01.1994, the drawing and disbursing officer had sent the bills appertaining to Rs.1,15,647/- under bill no.47/ 1993-94. Totaling of the amount did not carry the aforesaid bill. He had further stated that bill no.105, 107, 41 and T.V. no.80 was endorsed in name of Rama Ballabh Choudhary. During cross-examination on behalf of Naresh Choubey, it has been admitted that Naresh Choubey was table partner of Madan Prasad. However, he had denied that Madan Prasad was entrusted to deal with Animal Husbandry Department under head no.2403. Then, had denied the suggestion. He had further denied that Naresh Choubey used to do work in case, Madan Prasad was badly engaged. He had further admitted that over T.V. no.80, Naresh Choubey had not scribed 'receive'. Then, there happens to be cross-examination over procedural event under Para-39, 40. In Para-50, he had stated that he did not become suspicious over signature of drawing and disbursing officer present over all the bills. Then, there happens to be cross-examination over status of the bills under Para-64, 65, 66, 67, 68, 69 wherefrom, it is evident that after seeing Exhibit-3, 3/6 became to know that aforesaid were not mentioned in the messenger book while bill no.19/ 1993-94, 41/ 1993-94 were mentioned.

24. Now, coming to another important witness, PW-19 is Birendra Kumar Sinha, the Drawing and Disbursing Officer of 'Gahan Go Vikas', Prakhand Vikash, Muzaffarpur and was artificial insemination officer and in that capacity, he was drawing and disbursing officer. He, after confronting Exhibit-3 to 3/7, had stated

that all these bills did not contain his signature and in likewise manner, he had disowned his signature over Exhibit-4, 4/7. He had further disowned his signature over Exhibit-15, 15/1, 16, 16/1. He had further stated that during course of investigation, he had gone to C.B.I. Office and had given his specimen signature. During cross-examination, he had admitted that he had not put his signature in presence of Magistrate. In Para-10, he had further stated that form of bills as well as messenger book is kept by the concerned clerk. At that very time, Rama Ballabh Choudhary, was the Dealing Clerk. He had further stated that being a drawing and disbursing officer, he had seen Rama Ballabh Choudhary frequently going with Treasury Messenger Book, however, it was under his control. On recall, he had further accepted.

25. PW-20 is the Handwriting Expert, who had compared and examined the writing obtained by C.B.I. of PW-19 as well as appellant/ accused Rama Ballabh Choudhary with the signature having over questionable bills as well as the writing and further gave his opinion followed with report. It is further evident from his evidence that he had found the signature over bill of PW-19, to be forged at the other hand, found it in the handwriting of accused Rama Ballabh Choudhary. From mode of cross-examination, it is evident that the accused did not dare to cross-examine him over

finding recorded under report and in likewise manner, Rama Ballabh Choudhary failed to challenge conclusion this PW over his finding having the bill in pen of Rama Ballabh Choudhary as well as signature. That means to say, preparation of bills coupled with signature of Drawing & Disbursing Officer is found in pen of accused Rama Ballabh Choudhary, and those part is unrebutted.

26. Presence of remaining witnesses are found under two groups. The first group happens to be that of those witnesses who hail from Animal Husbandry while the other from Treasury.

27. PW-2, PW-3, PW-4, PW-5, PW-6, PW-15 (informant) are the witnesses, who happen to be employee of the Animal Husbandry Department, and being so, have duly identified Rama Ballabh Choudhary to be Treasury Messenger. Furthermore, they also deposed over bills, sanction order. They had also narrated regarding the procedure to be followed during course of preparation of bills, passing of bills as well as mode of encashment. They had also specifically disclosed that bills under Exhibit-3 series were not even put on Treasury Messenger Book. From cross-examination, it is apparent that defence had not challenged the same.

28. Another set of witnesses, comprising PW-8, PW-10, PW-11, PW-12, PW-13, PW-14, are retired treasury employees who were in service at the time of alleged occurrence and on account

thereof, exposed activities of Lalit Kishore Prasad Srivastava as well as Naresh Choubey, who stridulated with Rama Ballabh Choudhary while entertaining, passing the forged bills, which they had also endorsed. Surprisingly, their cross-examination is silent over activity of accused, though their complicity during course thereof, has also been suggested.

29. At the present moment, evidence of PW-4 Para-93 has also to be taken note of wherein he had stated that Madan Prasad Srivastava, a Treasury Clerk was entrusted with Animal Husbandry Department though contradicted by PW-18, Treasury Officer, but his evidence is not going to support the accused as they have not denied their presence over respective bills.

30. PW-21 and PW-22 are the Investigating Officers, out of whom; PW-21 is the part I.O., who did not play active role. PW-22 had properly investigated the case, took signature of PW-19 as well as Rama Ballabh Choudhary, got it compared and then, submitted chargesheet. Nothing material is found in their evidence explicitly in favour of appellants or expunction to prosecution.

31. At this crucial juncture, the statements of the appellants are also to be looked into. Lalit Kishore Prasad Srivastava had admitted to be dealing clerk in the treasury during the relevant period. He had admitted receipt of bill no.19/ 1992-93 (Exhibit-3), bill

no.23/ 1992-93 (Exhibit-3/1), bill no.105/ 1993-94 (Exhibit-3/2) from Rama Ballabh Choudhary, the Treasury Messenger and had further stated that after passing the bill at his level, moved the file to the Accountant. Though, he had not specifically stated with regard to non-entering of aforesaid bills in the treasury messenger. However, had stated that after receiving the bill, he passed it over to Accountant. He had further denied the event that on bare perusal of the bill, it could be defected forged. He had further stated that specimen signature happens to be along with Treasury Officer. He had denied the other incriminating circumstances.

32. Therefore, from his statement, it is apparent that his status as a dealing clerk and while exercising such function receiving of bill no.19/ 1992-93 (Exhibit-3), bill no.23/ 1992-93 (Exhibit-3/1) and bill no.105/ 1993/94 (Exhibit-3/2) as well as passed by him, is admitted.

33. Naresh Choubey also during course of his statement under Section 313 Cr.P.C. had admitted that he also worked as dealing clerk in Treasury Department. He had not denied passing of bill no.0, T.V. no.80 (Exhibit-3/5), bill no.0, T.V. no.107 (Exhibit-3/6), bill no.41/1993-94, T.V. no.146 (Exhibit-3/7), instead thereof, had stated that he is not remembering. In likewise manner, he had also did not express clearly that inspite of those bills having not been

entered in the messenger book, were received by him and the subsequent part of his statement, is found complete denial.

34. Rama Ballabh Choudhary, during his statement had admitted that he was employee at Artificial Insemination Officer up-till 31.01.1996. He had further admitted that during aforesaid period, he had worked as Treasury Messenger. The subsequent incriminating materials have been denied by him.

35. Howfar, statement of accused is to be acted upon during course of adjudicating upon the matter, has elaborately been dealt with in ***Ashok Debbarama alias Achak Debbarama v. State of Tripura reported in 2014 CR.L.J.1830***, and held:-

> ***"21***. *We are of the view that, under Section 313 statement, if the accused admits that, from the evidence of various witnesses, four persons sustained severe bullet injuries by the firing by the accused and his associates, that admission of guilt in Section 313 statement cannot be brushed aside. This Court in State of Maharashtra v. Sukhdev Singh and another (1992) 3 SCC 700 held that since no oath is administered to the accused, the statement made by the accused under Section 313 CrPC will not be evidence stricto sensu and the accused, of course, shall not render himself liable to punishment merely on the basis*

of answers given while he was being examined under Section 313 CrPC. But, Sub-section (4) says that the answers given by the accused in response to his examination under Section 313 CrPC can be taken into consideration in such an inquiry or trial. This Court in Hate Singh Bhagat Singh (supra) held that the answers given by the accused under Section 313 examination can be used for proving his guilt as much as the evidence given by the prosecution witness. In Narain Singh v. State of Punjab (1963) 3 SCR 678, this Court held that when the accused confesses to the commission of the offence with which he is charged, the Court may rely upon the confession and proceed to convict him.

22. *This Court in Mohan Singh v. Prem Singh and another (2002) 10 SCC 236 held that the statement made in defence by accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 CrPC cannot be made the sole basis of his conviction. In this connection, reference may also be made to the judgment of this Court in Devender Kumar Singla v. Baldev Krishan Singla (2004) 9 SCC 15 and Bishnu Prasad Sinha and another v. State of*

> *Assam (2007) 11 SCC 467. The above-mentioned decisions would indicate that the statement of the accused under Section 313 CrPC for the admission of his guilt or confession as such cannot be made the sole basis for finding the accused guilty, the reason being he is not making the statement on oath, but all the same the confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the prosecution.*
>
> ***23**. We may, however, indicate that the answers given by the accused while examining him under Section 313, fully corroborate the evidence of PW10 and PW-13 and hence the offences levelled against the Appellant stand proved and the trial Court and the High Court have rightly found him guilty for the offences under Sections 326, 436 and 302 read with Section 34 IPC".*

36. Much stress has been put on behalf of appellants over status of the witnesses and submitted that witnesses were not at all competent to testify over the signature of accused Rama Ballabh Choudhary over the respective bills.

37. Section 47 of the Evidence Act prescribed a procedure whereunder signature is to be proved. After going through the same, it is apparent that the opinion of any person acquainted with

the handwriting of the person by whom it is supposed to be written or signed, could be exhibited and on account thereof, the evidence of PW-2 is found duly proved the requirements of Section 47 of Evidence Act. Furthermore, it has also been submitted that signature of PW-19, B. K. Sinha as well as the accused Rama Ballabh Choudhary was not taken in presence of Magistrate and therefore, as per Section 73 of the Evidence Act, the same cannot be legally acceptable. For better appreciation, **Section 73** is quoted below:-

> *"In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.*
>
> *The Court may direct any person present in court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person".*

38. From the plain reading of Section 73 of Evidence Act, it is found bifurcated in two parts. The first part suggest mode of exhibit while the later part discretion of the Court to direct the person

present in Court to sign, to enable to compare both the two. However, is silent with regard to exercise of discretion during course of investigation. The learned counsel for the appellants had relied upon ***Sukhvinder Singh and others v. State of Punjab*** reported in ***(1994) 5 SCC 152 of the Hon'ble Apex Court wherein***, it has been elaborately discussed:-

> ***19.*** *A subsequent writing of an accused taken under the direction of the court is in substance a specimen writing obtained for comparison of the disputed writing with it. Though, Section 73 does not specifically say as to who could make such a comparison but reading Section 73 as a whole, it is obvious that it is the Court which has to make the comparison and it may form the opinion itself by comparing the disputed and the admitted writings or seek the assistance of an expert, to put before the Court all the material, together with reasons, which induce the expert to come to a conclusion that the disputed and the admitted writings are of one and the same author so that the court may form its own opinion by its own assessment of the report of the expert based on the data furnished by the expert. The function of a handwriting expert is to opine after a scientific comparison of the disputed writing with the admitted (specimen) writing with regard to the points*

of similarity and dissimilarity in the two sets of writings.

20. *The second paragraph of Section 73 (supra) enables the court to direct any person present before it to give his specimen writing "for the purpose of enabling the court to compare" such writings with writings alleged to have been written by such person. The obvious implication of the words "for the purpose of enabling the court to compare" is that there is some proceeding pending before the court in which or as a consequence of which it is necessary for the court to compare such writings. The direction is therefore required to be given for the purpose of "enabling the court to compare" and not for the purpose of enabling an investigating or a prosecuting agency to obtain and produce as evidence in the case the specimen writings for their ultimate comparison with the disputed writings. Where the case is still under investigation and no proceedings are pending in any court in which it might be necessary to compare the two writings, the person (accused) cannot be compelled to give his specimen writings. The language of Section 73 does not permit any court to give a direction to an accused to give his specimen writing for comparison in a proceeding which may subsequently be instituted* *in some other competent court. Section 73 of the Evidence Act in our opinion cannot be made use of for collecting specimen writings during the investigation and recourse to it can be had only when the enquiry or the trial court before which proceedings are pending requires the writing for the purpose of 'enabling it to compare' the same. A court holding an enquiry under the Code of Criminal Procedure is indeed entitled under Section 73 of the Evidence Act to direct an accused person appearing before it to give his specimen handwriting to enable the court by which he may be subsequently tried to compare it with the disputed writings. Therefore, in our opinion the court which can issue a direction to the person to give his specimen writing can either by the court holding the enquiry under the Code of Criminal Procedure or the court trying the accused person with a view to enable it to compare the specimen writings with the writings alleged to have been written by such a person. A court which is not holding an enquiry under the Code of Criminal Procedure or conducting the trial is not permitted, on the plain language of Section 73 of the Evidence Act, to issue any direction of the nature contained in the second paragraph of Section 73 of the Evidence Act. The words "any person present in the court" in*

Section 73 has a reference only to such persons who are parties to a cause pending before the court and in a given case may even include the witnesses in the said cause but where there is no cause pending before the court for its determination, the question of obtaining for the purposes of comparison of the handwriting of a person may not arise at all and therefore, the provisions of Section 73 of the Evidence Act would have no application.

39. In ***State of Uttar Pradesh v. Ram Babu Misra*** reported in ***A.I.R. 1980 (SC) 791***, it has been observed:-

3. *S. 73 of the Evidence Act is as follows :*

"73. In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have *been written by such person. This section applies also, with any necessary modifications to finger-impressions".*

4*.The second paragraph of Sec. 73 enables the Court to direct any person present in Court to give specimen writings 'for the purpose of enabling the Court to compare' such writings with writings alleged to have been written by such person. The clear implication of the words 'for the purpose of enabling the Court to compare' is that there is some proceeding before the Court in which or as a consequence of which it might be necessary for the Court to compare such writings. The direction is to be given for the purpose of 'enabling the Court to compare' and not for the purpose of enabling the investigating or other agency 'to compare'. If the case is still under investigation there is no present proceeding before the Court in which or as a consequence of which it might be necessary to compare the writings. The language of S. 73 does not permit a Court to give a direction to the accused to give specimen writings for anticipated necessity for comparison in a proceeding which may later be instituted in the Court. Further, S. 73 of the Evidence Act makes no distinction between a Civil Court and a Criminal Court. Would it be open to a person to seek* *the assistance of the Civil Court for a direction to some other person to give sample writing under S. 73 of the Evidence Act on the plea that it would help him to decide whether to institute a Civil suit in which the question would be whether certain alleged writings are those of the other persons or not ? Obviously not. If not, why should it make any difference if the investigating agency seeks the assistance of the Court under S. 73 of the Evidence Act on the plea that a case might be instituted before the Court where it would be necessary to compare the writings?*

5. *We may also refer here to S.5 of the Identification of Prisoners Act, 1920, which provides:*

"5. If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Cr. P. C. 1898, it is expedient to direct any person to allow his measurements or photograph to be taken, he may make an order to that effect, and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a public officer :

Provided that no order shall be made directing any person to be photographed except by a Magistrate of *the first class:*

Provided further, that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding."

Section 2 (a) of the Act defines 'measurements' as including 'finger impressions and foot-print impressions'.

***6.** There are two things to be noticed here. First, signature and writing are excluded from the range of S. 5 of the Identification of Prisoners Act and, second, 'finger impressions' are included in both S.73 of the Evidence Act and S. 5 of the Identification of prisoners Act. A possible view is that it was thought that S.73 of the Evidence Act would not take in the stage of investigation and so S.5 of the Identification of Prisoners Act made special provision for that stage and even while making such provision, signature and writings were deliberately excluded. As we said, this is a possible view but not one on which we desire to rest our conclusion. Our conclusion rests on the language of S.73 of the Evidence Act.*

***7.** S.73 of the Evidence Act was considered by us in State (Delhi Administration) v. Pali Ram, AIR 1979 SC 14 where we held that a Court holding an enquiry* *under the Criminal Procedure Code was entitled under S. 73 of the Evidence Act to direct an accused person appearing before it to give his specimen handwriting to enable the Court by which he may be tried to compare it with disputed writings. The present question whether such a direction, under S. 73 of the Evidence Act, can be given when the matter is still under investigation and there is no proceeding before the Court was expressly left open. The question was also not considered in State of Bombay v. Kathi Kalu Oghad, AIR 1961 SC 1808, where the question which was actually decided was that no testimonial compulsion under Art. 20 (3) of the Constitution was involved in a direction to give specimen signature and handwriting for the purpose of comparison.*

40. During course of appreciation of evidence, the conduct of witnesses more particularly the respective Accountants as well as Treasury Officer is not found above board, and at least doubt is found over their activity, however, is not going to exonerate the appellants for their activities while preparing forged bills, sanction order, facilitating passing of bills and then misappropriated the amount after withdrawing from Bank, which the Bank officials proceed.

41. After giving anxious as well as minute observation of the materials available on the record, it is found and held that prosecution has succeeded in proving its case. Consequent thereupon, all these appeals are dismissed. Appellants are on bail, hence their bail bonds are cancelled with a direction to surrender before the learned lower Court to serve out the sentences. So far appellant Rama Ballab Choudhary (deceased) is concerned, on account of his death the substantial sentence extinguished. However, the fine inflicted to by the learned trial Court is to be deposited by the substituted appellant within three months, failing which learned lower Court will be at liberty to proceed in accordance with law.

(Aditya Kumar Trivedi, J)

Patna High Court,
Dated-10.03.2015
Vikash/-

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