

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. CRA-S No.1508-SB of 2011

Avtar Singh and others

... Appellants

Versus

Central Bureau of Investigation

... Respondent

2. CRA-S No.1510-SB of 2011

Naveen Kumar Sharma and others

... Appellants

Versus

Central Bureau of Investigation

... Respondent

3. CRA-S No.1530-SB of 2011

Harish Chander and others

... Appellants

Versus

Central Bureau of Investigation

... Respondent

Date of decision: 10th May, 2016

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Vikram Chaudhri, Senior Advocate with
Mr. Manish Verma, Advocate for appellants No.1, 4, 6 & 7;
Mr. Ashok Singla, Advocate for appellants No.2, 3 & 5
in CRA-S No.1508-SB of 2011.

Mr. H.S. Brar, Advocate for appellants No.1 to 4 & 7 to 11;
Mr. Deepender Singh, Advocate for appellants No.5 & 6
in CRA-S No.1510-SB of 2011.

Mr. A.P.S. Deol, Senior Advocate with
Mr. Vishal Lamba, Advocate for the appellants
in CRA-S No.1530-SB of 2011.

Mr. Sumeet Goel, Advocate, Standing Counsel CBI
for the respondent.

FATEH DEEP SINGH, J.

Initially an FIR bearing No.RC9(A)/1999 dated 26.02.1999 was registered at CBI-ACB New Delhi against unknown officials of Staff Selection Commission (in short, 'the SSC') and the officials of Department of Income Tax, North West Region, Patiala under Sections 120B/420/468/471/201 IPC read with Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. After much dilly-dallying as is the stand of the prosecution, the same was sent to CBI Police Station SPE/CBI/ACB/Chandigarh where a fresh FIR bearing No.CHG2000A0027 of 10.10.2001 was got registered under the same very provisions against 31 accused namely, Naveen Kumar Sharma, Harish Chander, Sanjeev Kumar, Deepinder Singh, Avtar Singh s/o Gurbachan Singh, Bhupinder Singh, Veer Singh, Paramjeet Singh, Kamaljeet Singh, Baljinder Singh, Pardeep Singh, Anil Rishi, Ripan Kumar, Parinder Pal Singh, Rakesh Kumar, Smt.Reena Kumari Taneja, Sham Sunder, Manjeet Singh, Rajiv Kumar, Harjinder Singh, Bachitar Singh, Amarjit Singh, Navtej Singh Inderjit Singh, Mukesh Kumar, Prem Sagar, Narinder Singh, Avtar Singh s/o Harnek Singh, Suresh Chand Sharma, Satnam Singh and P.C. Chhatwal.

The precise allegations are that accused Suresh Chand Sharma then Tax Assistant, accused Satnam Singh then Upper Division Clerk along with accused P.C. Chhatwal then Inspector Income Tax (who has since died during trial), all posted in the

Confidential Branch of the office of Chief Commissioner, Income Tax, Patiala hatched a conspiracy whereby for illegal monetary benefits they have mis-conducted and through forgery and fake documents managed to secure appointments of Income Tax Inspectors, Stenos and Lower Division Clerks on the basis of such fraudulent nomination letters purported to have been sent by Staff Selection Commission. On account of this forgery and fabrication, accused Paramjit Singh, Kamaljeet Singh (since died), Baljinder Singh, Pardeep Singh, Bhupinder Singh, Rakesh Kumar and Veer Singh were appointed as Inspectors in the Income Tax Department, whereas accused Rajiv Kumar, Bachitar Singh, Amarjit Singh, Navtej Singh, Inderjit Singh, Mukesh Kumar, Prem Sagar, Narinder Singh, Avtar Singh got appointed as Upper Division Clerks in the Income Tax Department; and accused Manjeet Singh, Harjinder Singh, Smt.Reena Kumari Taneja and Sham Sunder secured their appointments as Stenographer Grade-D in the Income Tax Department. It is alleged that inspite of the fact that names of these persons were nowhere there in the alpha list, select list or find mention in the master index list of the concerned quarter. It was further revealed that these fake nomination letters were sent in the year 1991. The allegations emancipated on account of there being absence of embossing on the nomination letters/dossiers and that the rubber stamp of these carried the words "Kendriya Krayala Pariwar" instead of 'Kendriya Karyala

Parisar' and that on certain lists the initials of certain officials were found missing.

To establish its case, prosecution examined in all 22 witnesses comprising of PW1 R.S. Mathoda, Chief Commissioner Income Tax; PW2 K.M. Bali, Director Border Management; PW3 Amit Viyas, Senior Assistant; PW4 Anil Kumar Sharma, Junior Assistant; PW5 Kulwant Singh, Assistant Grade-III; PW6 Rajneesh Sharma, Steno Typist, PW7 Yatish Kumar, Bank Manager; PW8 S.P. Garg, Under Secretary; PW9 Smt.Neelam Sharma, Income Tax Officer and PW10 Harparsad Kain, Commissioner Income Tax. Thereafter prosecution examined PW11 K.C. Katoch, retired Deputy Director General; PW12 L.Viswanathan, Director, Staff Selection Commission; PW13 R.K. Dhingra, retired Manager Government of India Press, Faridabad, PW14 Baldev Singh; PW15 K.K. Sood, retired Section Officer, PW16 Chander Mohan, Income Tax Officer, PW17 H.R. Chopra; PW18 Vivek Dhir Inspector CBI; PW19 Raj Singh Inspector CBI; PW20 D.S. Sengar, Inspector CBI; PW21 M.L. Sharma as Handwriting Expert and lastly PW22 Smt.Shally Kwatra, Office Superintendent, office of Commissioner of Income Tax, Patiala. Prosecution proved documents Ex.P1 to P10.

Accused in their statements under Section 313 Cr.P.C. denied the allegations and in their defence examined DW1 Rajesh Gupta, Senior Tax Assistant in the office of Chief Commissioner,

Income Tax, Chandigarh; DW2 Dev Bux, Tax Assistant office of Commissioner of Income Tax (Central), Ludhiana and DW3 P.A. Venkatesh, Assistant Director (Legal), Northern Region of SSC, New Delhi. Thereafter, the accused closed their defence after proving documents Ex.DW1/1 to Ex.DW1/4.

The Court of learned Special Judge, CBI, Patiala through the impugned judgment dated 16.05.2011 held accused namely Naveen Kumar Sharma, Harish Chander, Sanjeev Kumar, Deepinder Singh, Avtar Singh s/o Gurbachan Singh, Bhupinder Singh, Veer Singh, Paramjeet Singh, Kamaljeet Singh, Baljinder Singh, Pardeep Singh, Anil Rishi, Ripan Kumar, Parinder Pal Singh, Rakesh Kumar, Smt.Reena Kumari Taneja, Sham Sunder, Manjeet Singh, Rajiv Kumar, Harjinder Singh, Bachitar Singh, Amarjit Singh, Navtej Singh Inderjit Singh, Mukesh Kumar, Prem Sagar, Narinder Singh, Avtar Singh s/o Harnek Singh as guilty for commission of offences under Sections 120B/471/420 IPC whereby they have been sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹500 each and in default of payment of fine to undergo further rigorous imprisonment for one month under Section 120B IPC; whereas they were sentenced to undergo RI for two years and to pay a fine of ₹1,000 each and in default thereof to undergo further RI for two months under Section 420 IPC and to a similar sentence under Section 471 IPC. However, they stood acquitted under Section 468

IPC. The conspirators who were then posted in the office of Chief Commissioner Income Tax, Patiala namely Suresh Chand Sharma and Satnam Singh after the death of their third conspirator P.C. Chhatwal stood acquitted. It is against this conviction, appellants namely Avtar Singh s/o Gurbachan Singh, Veer Singh, Anil Rishi, Ripan Kumar, Sham Sunder, Mukesh Kumar and Prem Sagar have invoked the Appellate jurisdiction of this Court under Section 374 Cr.P.C. by way of CRA-S No.1508 of 2011; appellants namely Naveen Kumar Sharma, Sanjeev Kumar, Dapinder Singh, Bhupinder Singh, Paramjeet Singh, Kamaljeet Singh, Parinder Pal Singh, Rakesh Kumar, Smt.Reena Kumari Taneja, Navtej Singh and Inderjit Singh have filed CRA-S No.1510 of 2011, whereas Harish Chander, Amarjit Singh, Bachitar Singh, Rajiv Kumar, Narinder Singh, Avtar Singh s/o Gurdev Singh, Harjinder Singh, Manjeet Singh, Pardeep Singh and Baljinder Singh have come up in CRA-S No.1530 of 2011.

It is worthwhile to mention here that during the course of these appeals, convict Kamaljeet Singh is reported to have died. Thus, in all there are 27 convict appellants before this Court who have impugned the findings of the learned trial Court. It would not be out of place to refer here that out of the appellants, Harish Chander had already resigned on 28.09.1992, Bachitar Singh on 24.08.1999 whereas Amarjit Singh resigned in the month of December 1998 and services of Deepinder Singh and Avtar Singh son of Gurbachan Singh

stood terminated in earlier point of time prior to the conclusion of the trial.

Heard Mr. A.P.S. Deol, Senior Advocate assisted by Mr. Vishal Lamba, Advocate; Mr. Vikram Chaudhri, Senior Advocate assisted by Mr. Manish Verma, Advocate as well as Mr. Ashok Singla, Mr. H.S. Brar and Mr. Deepender Singh, Advocates on behalf of the appellants; Mr. Sumeet Goel, Advocate, Standing Counsel for the CBI and perused the records.

Learned counsel for the two sides have readily accepted the principle of law which has crystallized into the golden rule which enunciates that it is for the prosecution to establish its case beyond the shadow of reasonable doubt and the prosecution can by no means take advantage of the weaknesses of the defence which is to prove its stand by mere preponderance of probabilities for which reliance is placed on **1976 CLR 74 (SC) 'Partap v. State of UP'**; and **1976 CLR 116(SC) 'Bhagiratti v. State of MP'**. So by that analogy, it is for the prosecution in this case to establish by cogent and substantial evidence its allegations against each of the accused so as to romp home with the charges against them. It is the own case of the prosecution that initially an FIR was lodged with CBI-ACB New Delhi by way of FIR No.RC9(A)/1999 dated 26.02.1999. It is not in any manner controverted by Mr. Sumeet Goel, Advocate representing the CBI that this initial FIR was lodged on the grounds and allegations that

certain unknown officials of the SSC and Income Tax Department, North West Region, Patiala had conspired and hatched a conspiracy by virtue of which they have issued bogus selection letters and as a consequence of which certain persons have joined in the offices as Ministerial staff of the Government of India.

To the very query of the Court, learned counsel for the CBI was totally at a loss of words as to how or in what manner this initial FIR was dropped midway without further investigating and by what means the second FIR at Chandigarh has cropped up after more than 2 years and 8 months for which there is no worthwhile and acceptable explanation. Though under the premise of the investigations having been transferred, Mr.Sumeet Goel has sought to take refuge but effectively pursuing the second FIR and its contents and proceedings thereon nowhere suggests even remotely that it was transfer of the investigation, rather entirely a new case and fresh initiation of proceedings under Section 154 Cr.P.C. have come to take place by this subsequent recourse.

The Hon'ble Supreme Court considering this question whether there can be more than one FIR in relation to the same incident which could have occurred out of the same very occurrence, has detailed at length that second complaint in such a situation is not permissible nor the Court could be satisfied by the learned counsel representing CBI that it was a pure preliminary inquiry prior to the

registration of an FIR. Seeking support from '**Anju Chaudhary v. State of U.P. and another**' 2013(1) RCR(Criminal) 686 where reliance has been placed on '**T.T. Antony v. State of Kerala**' 2001(3) RCR (Criminal) 436 their Lordships were of the view that an information given under Section 154(1) of the Code of Criminal Procedure which is commonly termed as 'First Information Report' is a very important document and a second FIR for the same offence is not permissible. Since in the present case, it is the same very incident harbouring around the same set of allegations regarding fraudulent recruitment based on the forged and fabricated documents, therefore, to the mind of this Court, to avoid any serious complications certainly de hors registration of a subsequent FIR on the same set of allegations and therefore, the State (CBI in the present case) is precluded from registering another FIR, that too at Chandigarh when the very inception of the fraud and the documents on which such appointments are based are alleged to have been initiated from the office of SSC, New Delhi from where the alleged dossiers/appointment letters/nomination letters are claimed to have been issued. This Court seeks support from another view laid down in '**Chirra Shivraj v. State of Andhra Pradesh**' 2011(2) RCR(Criminal) 96, where it was held by the Hon'ble Supreme Court that when there are same set of allegations pertaining to the same offence and events and when the chain of persons involved is the same, there cannot be a second FIR.

Thus, in the totality of what has been detailed above, such a recourse that has been adopted by the investigating agency, certainly goes to the very roots of prosecution allegations and to their detriment thus putting a big question mark over the very credibility of the subsequent allegations which have led to the present prosecution. Rather such a subsequent recourse clothes it with a mistrial.

The second leg of submissions that has been advanced on behalf of the appellants by their respective counsels revolves around the very averments that it was the same set of evidence of the prosecution which has been believed against one set of accused/present appellants/convicts and which in the case of the co-accused, who have since been acquitted, stands disbelieved certainly needs to be taken with a pinch of salt. It needs to be reiterated here that assuming that these dossiers/letters of appointment/nomination letters had originated from the confidential branch of Income Tax Department, Head Quarter at Patiala but as is abundantly reflected from the records of the case, neither the Income Tax Officer, Mr. O.P. Sood who was holding the post responsible for processing of these documents and issuance of these appointments was ever examined as a prosecution witness nor was arrayed as an accused and the accused Suresh Chand Sharma and Satnam Singh, officials of the said office, stood acquitted are matters which undermine completely the case of the prosecution as to how these officials on such set of

evidence stood acquitted when that is the very axis on which the prosecution story revolves (though out of them, one P.C. Chhatwal has died during the trial). If such an evidence as to forgery and fabrication of the nomination letters is not established qua these persons, how come the convict appellants could be held responsible for the same when the allegation of the prosecution at the very inception of the FIR that the initial conspiracy was between Satnam Singh UDC, P.C. Chhatwal Income Tax Officer and Suresh Chand Sharma Tax Assistant who all were posted in the Confidential Branch of the office of Chief Commissioner Income Tax, Patiala. Since these so “initiators” of this crime have been let off the hook, it would be too preposterous to hold the other persons, who have merely joined on the basis of these documents in the offices, to be solely responsible. By exonerating these officials, the very “originators” of this crime, how could there be an element of criminal conspiracy qua the convict appellants, who at the relevant time were pure candidates aspiring for these posts? It is highly unbelievable as has been contended on behalf of the appellants which the counsel for the CBI failed to rebut that these private persons could manage to get appointments by their own acts when it is a matter of common knowledge that selection process as well as appointment procedure has to go through various channels and hierarchy till a candidate is finally made to join on a particular post, drew salaries, perks, attained seniority and where they

had continued for almost more than a decade. Even none from the office of SSC has been associated as an accused to emphasize and highlight the very origin of these selections.

The biased role of Income Tax Officer, Mr. O.P. Sood is well elicited even from the very cross-examination of PW22 Smt. Shally Kwatra who is the main pillar of the prosecution story and who at the relevant time was working in this Income Tax Office at Patiala and who in no uncertain terms admits and has given the procedure of dealing with such dossiers which are received in closed envelopes and accepts that the first person supposed to open up as per her confrontation with Ex.PW9/1 (the nomination letter), shows she admits that it was first got endorsed by O.P. Sood at the Income Tax Office, Head Quarter, Patiala and in spite of this duty having undergone by him he had not mentioned any objection, irregularity or omission in the same, rather to the mind of this Court erodes the very stand of the prosecution that these nomination letters/dossiers were forged and fabricated and if they were so how this official who was supposed to deal with such communications has been let off is anybody's guess. Similarly questions put to this witness PW22 Smt. Shally Kwatra bear out that she admits having processed these nomination letters at the first instance and has accepted that she has processed them taking them to be in order and admits further that as per office order she was In-charge of the matter relating to direct recruitments along with roster

to assist the Inspectors in maintenance of ACRs. It is her own admission that accused P.C. Chhatwal was the head of the Establishment Branch at the relevant time, thus leaves many questions unanswered in the investigations.

What further strengthens the belief of this Court into this partisan investigation which apparently is misdirected as it is the procedure so admitted even by learned counsel representing CBI that all nomination letters received from SSC for the recruitments in Income Tax Department are received in the office of Income Tax, Head Quarter, Patiala and which are opened and processed leading to the final verification and joining of the candidates so detailed therein. Undisputedly it was there in the instructions of the SSC so is in these nomination letters that whenever there is absence of embossing of seal, rubber stamp or photographs are not embossed, the nomination letters are to be returned back to SSC and are not to be entertained. All the nomination letters being addressed to the Income Tax Officer, Head Quarter at Patiala which were confidential documents and in the letters of the SSC it was laid down that the dossiers and the nomination letters would be taken to be authentic only if the photograph of the candidate on the enclosed dossier and each page of the nomination letter was embossed with special stamp of the Commission and that each page of the annexure to that and the last page of the nomination letter were duly embossed and in case of any

discrepancy were to be referred back to the SSC without delay and which as is sufficiently proved on the records from the testimonies of PW2, PW8, PW10, PW13 and PW22, states they were never returned back with such an objection, that too when the alleged forged and fake nomination letters were issued way back in the year 1991 whereas for 11 continuous long years these persons worked on these posts, drawn salaries and it was only at the juncture of fixation of seniority between the various constituents of the Department as has been contended by the appellant side a dispute had arisen which has led to this false implication of the accused, thus in the light of which necessitates and impels this Court to have a deep peep into the dark alleys of these wrongdoings.

As has been the submissions of appellants' counsel, the testimony of PW13 R.K. Dhingra Retired Manager, Govt. of India Press, Faridabad, who has been sought to be examined to prove that the nomination letters were never printed by the Printing Press, Nilokheri. But his testimony does not come to the rescue of the prosecution as in his cross-examination he admits that these nomination letters/forms carried the printed letters 'M.G.I.P.F.-869S.S.C./88-30.3.89-25000' and has elaborated that the same indicates that these forms have been printed at Govt. of India Press at Faridabad but none from the said Press has been examined to establish it so comprehensively beyond any doubt that it was never printed at the said Press, rather in the light of arguments that have

been advanced by the appellant side by their counsels, it emerges that this witness states in his cross-examination that there are about 22 Printing Presses of Govt. of India all over the country and the Printing Press at Nilokheri is one of them. Thus, in that eventuality he does not completely rule out the possibility that these nomination letters/forms were forged and fabricated one and rather has stated that possibility cannot be ruled out about printing of such forms which were there in the present case at some other Printing Press of Government of India.

The other two important witnesses around which the prosecution story revolves is the deposition of PW10 and PW11. PW10 Harparsad Kain is one of the persons who at the relevant time of these selections/appointments was Divisional Director, Northern Region, SSC, New Delhi and has sought to bring about evidence as to fabrication and forgery of these dossiers/nomination letters by reiterating missing essentialities on these documents as well as his signatures on the letters. He has categorically admitted that his specimen signatures were only obtained at the office of CBI Chandigarh and there was no one else and therefore, invariably rules out any semblance of credibility to these so called admitted signatures. In his cross-examination he admits that whenever any requisition is received from any office located in the region, the same is entered in the registers maintained by the Commission and the same is complied with by sending nomination letter along with dossiers and which is received in the recruitment Section. He further admits that whenever a nomination letter is signed, the same is put up

along with requisition letter and other documents. The most essential admission by this witness as has been pointed out in the arguments of the counsel is to the effect that he admits that it is correct that in all the nomination letters which he alleged to be forged in his examination in chief, bear the particulars of the requisition made by different Departments and admits that he had not checked up from the Recruitment Section as to whether such requisition mentioned in the disputed nomination letters had in fact been received in the Commission or not. He accepts the fact that on receipt of nomination letters along with dossiers, the appointment letters are issued by the concerned Department which has sent the requisition to the Commission. The most material admission by him is to the effect that in Ex.PW3/D2 and Ex.PW8/2 as per the Clause VI it is required that copy of appointment letter be sent to the SSC by the concerned Department and thus, illustrates that there has been a definite procedure leading to issuance of the appointment letters to the candidates in these Departments. Furthermore, the witness admits that there is no separate record maintained in the office of SSC regarding the number of documents on which the stamp/embossing of seal of the office has to be affixed and that the despatch register regarding such nomination letters/dossiers is maintained and when confronted he was unable to account for the said despatch register which would have been a material evidence to corroborate the fact of this fabrication and forgery so claimed to have been undertaken by the prosecution and which does not form part of the prosecution evidence

and above all, to a very particular question this witness admits that a candidate has no role in preparation of the nomination letter, are matters which certainly bear out that there is something more than what is brought before the Court in the evidence of the prosecution which has been kept away for a purposeful motive.

The other important witness PW11 K.C. Katoch who at the relevant time remained posted as Regional Director, Northern Region, SSC, New Dehli and has sought to further the case of the prosecution to term certain documents to be false and fictitious and when confronted admits that he has not seen the result sheets for the relevant period regarding which he was testifying in the Court. He has admitted the procedure as per which the master index is prepared on the basis of valid applications of the eligible candidates and that it is the Computer Department of the SSC which prepares the same and accepts that he has not compared the entries in the master index register with the application forms, are matters which do have a definite bearing on the outcome of the prosecution version. This witness further accepts that it is the duty of the officer concerned to verify correctness and genuineness of the nomination letters received by him and further admits that no such query or clarification was ever sought during his tenure in SSC. Thus, from this overall evidence it clearly points out that there has been yawning gaps in the prosecution story and that the very chain of events so sought to be completed is materially broken at vital places.

Furthermore, assuming for the sake of arguments as has been contended on behalf of the CBI by their counsel that there is only circumstantial evidence which has remained unrebutted and is well reflected from the absence of embossing of seals/rubber stamps, photographs being not embossed and that the name of the Printing Press on the proformas forming the dossiers is in itself suggestive of the falsity of the same. Even by that analogy how the concerned officials of the Income Tax Office, Head Quarter, Patiala where the office of Chief Commissioner Income Tax is located and who were supposed to deal with such appointments in the Department in spite of there being specific mention in the letters that in case any of these features are missing or are discrepant the letters of nomination may be returned back to the originator office but however, the same were never returned back and rather were acted upon further strengthens the belief of the Court that all was not well either in the working of the Department concerned much less in the investigations. It is duly conceded by learned counsel for the CBI that during the investigations no original records of selections have been taken into possession and what is sought to be the main plank is that all the records stood destroyed furthers the suspicion as to the role of the concerned office of the Income Tax as all these appellants who are from the ministerial staff pertain to that very Department only. It is a matter of common knowledge and is rightly conceded by the two sides that prior to the selection, advertisements are given to which prospective candidates respond by moving appropriate applications which are processed and

after the applicants are found to qualify the minimum qualification so laid, are issued admit cards leading to their appearance in the examination and thereafter alpha lists which depict the results of the examination are prepared and on the basis of the same, nomination letters are sent to the department by the SSC and thereafter appointment letters are issued however, none of these records in original have come up before the Court. The alleged so called select list Ex.PB/1 is the photostat copy of a computer generated document and thus in the absence of the originals or the proof of the loss of originals and without leading of secondary evidence, the same has been allowed to be exhibited. While dealing with all these processes during the course of despatch and receipt of various letters pertaining to these selection processes, relevant entries certainly are made in the diary/despatch register which too have never been brought about by any means. Even to the mind of this Court the person who in the SSC used to prepare such dossiers has not been examined either in the investigations or at the trial to bring forth the stand of the prosecution that such dossiers during the relevant period were never prepared by him nor were processed by SSC for such a purpose. Since there is complete failure of the prosecution and in the absence of original documents or lack of legitimate proof thereof. As has been laid down in **‘Budh Ram v. State of Haryana’ 2010(2) RCR(Criminal) 352** relied upon by the appellants’ counsel the offence of forgery can only be committed in relation to the original documents and not with respect to the copies thereof, certainly negates the conclusions that

have been sought to be drawn by the learned trial Court. Therefore, it ensues that the Court below has recorded these findings contrary to this settled proposition of law as the originals were never brought before the Court nor established by any means.

It is well enunciated law reliance of which can be taken note of the ratios laid down in '**Sait Tarajee Khimchand and others v. Yelamarti Satyam and others**' 1971 AIR (SC) 1865; '**Karnail Singh v. M/s Kalra Brothers, Sirsa**' 2009(2) RCR(Civil) 380; '**LIC of India & another v. Ram Pal Singh Bisen**' 2010(4) SCC 491; and '**Muddoru Rajappa Tipanna v. State of Karnataka**' 2015(4) RCR(Criminal) 485, where their Lordships have held that to prove a document the party is supposed to lead tangible evidence either by primary evidence or through secondary evidence by secondary means and which is totally missing in the present case and thus, mere exhibiting of documents in such a manner for lack of due proof as has been laid down in these ratios does not dispenses with their proof. Since it was the prosecution which was supposed to prove its case beyond reasonable doubt thus, such an irregular and illegitimate way of exhibiting the documents which are mere photostat copies contrary to the provisions of Section 65 of the Indian Evidence Act, 1872 impels this Court to hold that there has been non compliance of the prerequisites of the Evidence Act. It is admitted stand of the prosecution that the originals of these documents have never been brought on the records and the ones that are there are only photostat copies. Section 63 of the Evidence Act deals with secondary evidence

and which means and includes certified copies given under the provisions of the Evidence Act, copies made from the originals by mechanical processes which in itself assures the accuracy of the copy and copies compared with such copies, copies made from or compared with the originals, counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it. Thus, in the present case, none of these essentialities have been established on record by the prosecution. There is no attempt by the prosecution to lead secondary evidence to prove such documents in terms of Section 65 of the Evidence Act.

With the advent of electronics system, amendments have been introduced to the Indian Evidence Act by way of Sections 65A and 65B emphasizing how the contents of the electronic records may be proved and where none of the requirements so laid down have ever been fulfilled to bestow upon these documents creditworthiness of being considered as a legal and legitimate piece of evidence. The Hon'ble Supreme Court of India in '**Anvar P.V. vs. P.K. Basheer and others**' 2014(4) RCR(Civil) 504; '**Tomaso Bruno and another v. State of U.P.**' 2015(1) RCR(Criminal) 678; and '**Kaliya vs. State of Madhya Pradesh**' 2013(3) RCR(Criminal) 958 has considered at length the manner pertaining to the electronic record and how the same is permissible to be exhibited and therefore, lays emphasis on due compliance of the provisions of Sections 65A and 65B of the Indian Evidence Act, 1872. Thus, in the totality and the failure of the

prosecution to satisfy the Court on the very legitimacy of these documents which are the sole evidence brought on the record during the investigations and trial certainly undermines the case of the prosecution.

As has been highlighted in the contentions of learned counsel for the appellants, the very testimony of PW21 M.L. Sharma certainly needs to be taken with a pinch of salt who has sought to prove through his statement having examined the signatures on the documents of PW10 Harparsad Kain and PW11 K.C. Katoch and it is rightly contended by learned counsel for the appellants that this witness in his cross-examination has admitted that he was not having any qualification/degree in Forensic Science or any diploma and that he has not undergone specialized training including identification of the writing and signatures, admitting further that he has never studied Forensic Science and has never undergone any comparison of Forensic Science. How the Investigation Officer considered him to be worth of an Expert or what prompted the trial Court to take his evidence on the face of it in the absence of any qualification possessed by him in this specialized field. Merely because he has orally stated of having appeared as a witness in a number of cases or has expressed opinions earlier that too orally does not bestow upon him the skills and qualifications of a Handwriting Expert. More so, there is nothing tangible proved on the record that specimen signatures of these two witnesses PW10 and PW11 were obtained before the Court or a Magistrate and thereafter were sent for their

comparison with the disputed signatures, certainly is a serious remiss and affects the very authenticity of the so called admitted specimen signatures of these PWs which this witness details were fictitious. Reliance has been placed on '**Chamkaur Singh v. Mithu Singh**' **2014(1) RCR(Civil) 303** by the appellant side to hammer home the point firstly to bring forth the submissions that the Courts are not bound by the opinion of the Experts. Interpreting the provisions of Sections 45 and 47 of the Evidence Act, the Hon'ble Supreme Court in **Chamkaur Singh's case (ibid)** has held that the Expert whose opinion is sought on a questioned document needs to be an Expert/skilled person in the field concerned and thus to the mind of this Court in the absence of any such worthwhile qualification, his testimony qua this is certainly dubious. Since there is no tangible proof of signatures of such witnesses PW10 and PW11 or their handwriting which the prosecution claims to have been made by them thus, in terms of Sections 45 and 67 of the Evidence Act since the very execution of these documents has not been established through the admitted handwriting/signatures of the concerned witnesses therefore, the ones on the questioned documents cannot be accepted by such a feeble evidence of the prosecution.

The trial Court merely on the assumption that the names of private accused were not reflected there in the alpha list/results therefore there was some sort of deceit and fraud and rather the learned trial Court has reversed the onus of proof and has thrown it upon the accused holding that on account of their failure to prove that

they were genuinely and bonafidely selected has drawn the conclusions that it was the accused who have been instrumental in the same and who were held to be at fault and thus, undermines the very sanctity of the criminal jurisprudence.

In the light of contentions of the two sides, since the entire evidence of the prosecution revolves around the very element of circumstantial evidence and as has been laid down by Hon'ble the Apex Court in '**Alamgir v. State (NCT, Delhi)**' **2002(4) RCR(Criminal) 834** that in cases based on circumstantial evidence, circumstances from which the conclusion of guilt is to be drawn should be fully established on the facts and which should be consistent with the hypothesis of guilt of the accused and that the chain of evidence needs to be so complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused. Further it was held that the same needs to be such that with all human probability the act must have been done by the accused. Their Lordships have stressed on the fact that there should not be missing links in the chain of events so far as the prosecution is concerned and that if the circumstances proved are consistent either with the innocence of the accused or with his guilt then the accused is entitled to the benefit of doubt, whereas in the present case the chain of events has never been completed in entirety and there are innumerable missing links in this chain which certainly goes to the detriment of the prosecution story and therefore creating a doubt in its veracity and truthfulness.

Thus, from this all it is evident that the learned trial Court has run into an error in interpreting the evidence. As is reflected from the statements of the accused recorded under Section 313 Cr.P.C. much of the material evidence which was essential to be put to the accused to call for their explanations enabling the Court to consider the same in the light of stand of the defence have never been put to them and therefore, has certainly resulted in immense prejudice to the case of the accused and thus, these important circumstances which were relied upon by the learned trial Court holding the accused to be guilty having not been put to the accused individually in their statements taken under Section 313 Cr.P.C., certainly has rendered these essential prerequisites an empty formality undermining the very case of the prosecution and therefore, as has been held by their Lordships in '**Asraf Ali v. State of Assam**' 2008(3) RCR(Criminal) 835 certainly vitiates the trial.

The learned trial Court as is reflected from the impugned findings has drawn this presumption from the fact that the lists purported to have been prepared by the SSC and that particulars of some of the genuine nomination letters were not correlated with the lists in question. The trial Court has jumped to this conclusion and has run into an error holding that it was for the defence to have confronted the witnesses with these lists and facts when it was the onerous duty of the prosecution to establish its case beyond reasonable doubt. The mere fact as has been concluded by the learned trial Court that there was no oral or documentary evidence on record to support the

assertion of the prosecution version that the officials/accused ever took any bribe and thus the allegations attributed to P.C. Chhatwal and Suresh Chand Sharma could not be established by any means and that they were only advising the subordinate officials in preparing these lists, and has thus absolved them of these charges. When there is nothing even suggestive that it was the accused/appellants who were instrumental in preparing of these dossiers/nomination lists then it would be too preposterous to hold them guilty. Since the very recommendations have been received from the concerned office of the Department of Income Tax and it was on the basis of these requisitions these dossiers/nomination letters were sent by the SSC to the Income Tax Office at Patiala, this Court is unable to accept that the private accused who were the prospective candidates to these posts could be in a position to influence and fabricate such a large amount of processes enabling them to get the appointment letters in the absence of connivance of the officials of the concerned Department.

No doubt, as has been concluded by the learned trial Court that conspiracy is hatched in secrecy and it is impossible to adduce direct evidence but at the same time the Court cannot loose sight of the fact that there needs to be a semblance of cogent and reliable evidence pointing to the guilt of the accused and which is totally amiss in the present case and it is even accepted by the learned trial Court that the prosecution has not led any evidence to prove as to the forgery of dossiers and the nomination letters. More so, since the

learned trial Court has already acquitted the accused under Section 468 IPC on account of lack of evidence and due proof of allegations as to the forgery for the purpose of cheating, and how the learned trial Court came to the conclusion in the absence of any tangible evidence that it was the accused, the present appellants who have been convicted, who have fraudulently and dishonestly used as genuine such dossiers/nomination lists to procure such an employment in the Government Department and when even the very question of the power to take cognizance after the period of limitation of such an offence under Section 471 IPC which provides imprisonment upto 3 years has already elapsed, in the light of the fact that the alleged occurrence having taken place in the year 1991 and the prosecution has been lodged after almost 10 years, certainly makes this cognizance of the offence to be undesirable and illegitimate one.

In view of the foregoing discussion and the reasons detailed above, the findings of learned trial Court have certainly run into an error necessitating intervention by this Court by way of acceptance of these appeals and thereby setting aside the judgment of conviction by the Court below. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

May 10, 2016

rps

Whether to be referred to the reporters or not? No.