IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.596 of 2002

Arun Kumar Mishra, Son of Late Kamta Prasad Mishra, Resident of S.B.I. Officer's colony, House No. 10, Hanumannagar, P.S. – Patrakarnagar, Patna at present Junior Manager Grade Scale –I, State Bank of India, Siwan.

.... Appellant/s

Versus

State of Bihar (Thru.C.B.I.)

.... Respondent/s

with

Criminal Appeal (SJ) No. 625 of 2002

Lalit Kumar, Son of Sri Kashi Nath Das, Resident of Mohalla – East Ashok Nager, Police Station – Kankarbagh, District – Patna.

.... Appellant/s

Versus

State of Bihar Thru.S.P.E. C.B.I.

.... Respondent/s

Appearance :
(In CR. APP (SJ) No.596 of 2002)
For the Appellant/s : Mr. Suraj Narain Prasad Sinha, Sr. Adv.
Mr. Ranjan Kumar Sinha, Adv.

For the Respondent/s : Mr. Sanjay Kumar, SC - CBI
(In CR. APP (SJ) No.625 of 2002)
For the Appellant/s : Mr. Arvind Kumar, Adv.
For the Respondent/s : Mr. Bipin Kumar Sinha, SC - CBI

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
C.A.V. JUDGMENT
Date: 12 -04-2018

As both the above appeals, arise out of same impugned judgment, they are heard together and are being decided by this common order for the sake of convenience.

2. The appellants in both the above appeals have challenged the judgment of conviction and order of sentence dated 09.10.2002, passed by Sri Braj Nandan Sahay, the then Special Judge C.B.I., South Bihar, Patna, in R.C. No. 39(A)/89, whereby, the appellant Arun Kumar Mishra stood convicted and was sentenced for R.I. for two years under Sections 420 read with 120 of the Indian Penal Code (hereinafter referred to as the "IPC), R.I. for two years under Section 465 read with Section 471 of the IPC and R.I. for two years under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 along with a fine of Rs. 10,000/- having default clause. Appellant Lalit Kumar Mishra has been convicted and sentenced for R.I. of two years under Section 420 read with 120B of the IPC and R.I. for two years under Section 468 of the IPC and R.I. for two years under Section 465 read with Section 471 of the IPC along with a fine of Rs. 50,000/- having default clause.

3. Prosecution case as per written report lodged by Shri Kashmir Singh, the then Inspector of Police, C.B.I. Patna is that he received information through reliable source that in July, 1989, Shri A.K. Mishra, while functioning as Field Officer S.B.I, Kankarbagh Branch, Patna, by dishonestly abusing his official position in conspiracy with Shri Lalit Kumar, a private person & others cheated the bank to the tune of Rs. 92,000/ inasmuch as he passed two forged cheques i.e. cheque nos. 0116694 and 0116695 both dated 18.07.89

for Rs. 17,000/- and Rs. 75,000/- respectively purported to have been issued by the Proprietor of M/s Standard Iron & Steel Company, which were subsequently paid in cash. Further case is that Shri Mishra allegedly made endorsement on the cheque to indicate that necessary entries has been made in the ledger of current A/c No. CCI-2146. He also allegedly issued Token No. 57 against the two cheques. Accordingly, the paying cashier paid the amount of cheques to an unknown person. Further prosecution case is that M/s Standard Iron & Steel Company had no account in S.B.I. Kankarbagh Branch and C.C. A/c No. was not debited by said Shri Mishra. It is also alleged that Shri. A.K. Mishra got counter signature of Shri M.P. Sharma, Manager, SIB, SBI Kankarbagh Branch, Patna on Cheque No. 0116695 on the plea that the same was necessary as it exceeded the passing powers of Shri Mishra. Subsequently, Shri. Mishra allegedly scored off his own signatures on the cheques. It is further alleged that the said two cheques were authored by Shri. Lalit Kumar, Proprietor of M/s Rameshwari General Stores.

4. On the basis of aforesaid written report, R.C. Case No. 39(A)/89 Patna was registered against the appellants in both the cases.

5. It further appears that during trial, charges were framed under Section 420 read with Section 120B, 465, 471 and 477A of the Indian Penal Code and under Section 13(2) read with 13(1)(d) of

Prevention of Corruption Act, 1988.

6. During trial altogether eleven witnesses have been examined. They are: P.W. 1 Jagmohan Prasad, P.W. 2 Harinandan Prasad, P.W. 3 Krishna Ram, P.W. 4 Arun Kumar Pandey (wrongly mentioned in deposition as P.W. 5), P.W. 5 Ajay Kumar, P.W. 6 Raja Ram Paswan, P.W. 7 Jogendra Prasad Singh, P.W. 8 Mritunjay Kumar, P.W. 9 Mohan Prasad Sharma, P.W. 10 Bhuvneshwar Lal, who has proved the sanction order and P.W. 11 Kashmir Singh (I.O.)

7. Besides above ocular evidence following documents have been brought on record:-

Ext. 1 –	Cheque No. 0116695 dated 18.07.89 of State Bank of India of Rs. 75,000/-.
Ext. 1/1 –	Cheque No. 0116694 dated 18.07.89 of State Bank of India of Rs. 17,000/-.
Ext. 2 –	Entry in page no. 16 of cash receipts delivery book dated 18.07.89.
Ext. 3 –	Writing and initial of accused Arun Kumar Mishra at page no. 37 of D. Scroll Transit Book.
Ext. 3/A -	Signature of accused Arun Kumar Mishra on cheque no. 0116695,
Ext. 3/B -	Signature of M.P. Sharma on cheque no. 0116695,
Ext. 3/C –	Signature of accused Arun Kumar Mishra on Ext. 6,
Ext. 3/D –	Signature of accused Arun Kumar Mishra on Ext. 1.
Ext. 3/E –	Signature of accused Arun Kumar Mishra on Ext. 1/1
Ext. 3/F –	Signature of accused Arun Kumar Mishra on Ext. 1.
Ext. 3/G –	Signature of accused Arun Kumar Mishra on Ext. 1/1.
Ext. 3/H–	Signature of accused Arun Kumar Mishra on Ext. 1.
Ext. 3/I -	Signature of accused Arun Kumar Mishra on Ext. 1/1.
Ext. 3/J –	Signature of Accused Arun Kumar Mishra on Ext. 1/1.
Ext. 4 and 4/A –	writing and signature of P.W. 5 on cheqeus (Ext. 1 and 1/1).

Ext. 5 -	Entry in page no. 215 and 216 of day book.
Ext. 6 –	Pay in slip dated 20.07.89.
Ext. 7 –	Entire ledger sheet (one sheet).
Ext. 8 –	Entry on ledger sheet by accused Arun Kumar Mishra.
Ext. 9.-	Entry by Accused Arun Kumar Mishra dated 18.7.89 on D-Scroll.
Ext. 10-	Sanction order.
Ext. 11-	F.I.R.
Ext. 12 -	Seizure Memo
Ext. 12/1-	Signature of Shri Kashmira Singh.
Ext. 13-	Search list.
Ext. 14-	Search list.
Ext. 15-	Search list.

8. On behalf of defence also four witnesses have been examined viz. D.W. 1 – Anand Swaroop Gupta, Deputy G.E.Q.D., (Handwriting Expert), D.W. 2 - Srikant Singh, photographer, D.W. 3 – Keshav Prasad, handwriting expert and D.W. 4 – Akhilesh Kumar Shahi, Writer.

9. Apart from that following documents have also been brought on record by defence.

Ext. A -	Writing by accused Arun Kumar Mishra as on 18.07.89 on D1 to D7, page no. 91 of transit book.
Ext. B -	Cash payment register.
Ext. C -	Entry in page No. 140 dated 18.07.89 of cash payment register.
Ext. D-	Writing with initial of accused Arun Kumar Mishra on Ext. 5.
Ext. E -	Writing and signature of Shri J.P. Singh in red ink in Ext. 5.
Ext. F-	Signature of M.P. Sharma on letter marked 'X'
Ext. F/1-	Photostat copy of signature list.
Ext. F/2 to F/7 –	Signature of Arun Kumar Mishra on six cheques of

	S.B.I.
Ext. G to G/79 –	Specimen writing of accused Arun Kumar Mishra .
Ext. H-	Forwarding.
Ext. H/1-	Forwarding letter of S.P., C.B.I. to the G.E.Q.D.
Ext. I-	Expert opinion.
Ext. J-	Reasons for opinion no. DXC No. 246/89 dated 29.12.89 related to R. C. 39A/89 - Pat of S.P. C.B.I.

Material Exhibit I to VI - Six negatives

Material Exhibit VII to XXI – Fifteen photographs.

Ext. K. -	Report of handwriting expert Mr. Keshav Prasad on seventeen sheets.
Ext. L – to L/8 -	Attested copy of token register.
Ext. M -	Specimen signature of A.K. Mishra.
Ext. N -	Book of instruction volume –II, twenty sheets.
Ext. O-	Attested copy of codified circulars/instructions.
Ext. P to P/3-	Photostat official copy of three cheques dated 18.07.89.
Ext. X -	Photocopy of letter marked for identification.

10. Learned Trial Court after conclusion of trial convicted both the appellants under Section 420, 465, 471 and 477 of the IPC and also convicted appellant Arun Kumar Mishra under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act and sentenced them in the manner as stated above.

11. Learned counsel appearing on behalf of the appellant Arun Kumar Mishra has assailed the impugned judgment on several grounds and has submitted that Investigating Officer (P.W. 11) has obtained specimen writing, signatures and initial as S-1 to S-51 and also collected the admitted writing and signature of appellant from the

Bank, which were marked as A-1 to A-5, A-6/1, A-10 to A-13 and sent them for comparison and examination by Government Examiner of Question Document (in short 'G.E.Q.D') Kolkata with writing and signature and initial on question documents i.e. Q-1 to Q-18 & Q-19, but the G.E.Q.D. has not given any opinion, which will appear from Ext. I, that clearly suggests that none of the questioned writing and signature is in the pen of the appellant Arun Kumar Mishra and moreover, prosecution has not examined any officer of G.E.Q.D., thus denying opportunity to the appellant Arun Kumar Mishra to cross-examine him, that certainly goes against the prosecution.

12. Further submission of learned counsel, appearing on behalf of appellant Arun Kumar Mishra is that on the other hand defence has examined Retired Deputy G.E.Q.D. Anand Swaroop Gupta, who prepared the report Ext. I and Sri Keshav Prasad, Retired Hand Writing Expert of Government of Bihar, as D.W. 3 and Ext. I shows that no opinion was given by D.W. 1 on comparison of handwriting of appellant Arun Kumar Mishra and evidence of D.W. 3 shows that questioned signatures on Ext. 1 and Ext. 1/1 were not in the pen of appellant Arun Kumar Mishra and he has given several reasons for that but his opinion has been overlooked by the learned Trial Court and he has relied only upon the opinion of P.W. 1, P.W. 3, P.W. 5, P.W. 6, P.W. 7 and P.W. 9, who are not handwriting experts.

13. It has also been submitted by learned counsel for appellant

Arun Kumar Mishra that P.W. 6 Raja Ram Paswan was admittedly the custodian of Token and Token number 57 was taken from his custody for encashment of two questioned cheques, rubber stamp for attesting the passing order of the cheques was too in his custody. Further submission is that P.W. 6 is also responsible for verification of cheques, its amount, date, whether issued within a period of six months and as to whether that much amount is in balance or not but even though cheques were issued by M/s Standard Iron & Steel Company of Account No. CCI – 2146 and that company was not holding Account No. CCI – 2146, but still tokens were issued and that too without taking signature of payee on the back page. It has also been submitted that similarly P.W. 5 Ajay Kumar Paying Cashier is responsible for payment as he made payment without proper identification of bearer and without verifying the fact that appellant Arun Kumar Mishra was not having authority to pass cheques above Rs. 25,000/- and signature of bearer was not obtained in the back page of the cheques, though cheque were order cheques, not the bearer cheques. It has further been submitted that the learned Trial Court has itself observed in para -14 of its judgment that Paying Cashier (P.W. 5) was either careless or intentionally made the payments.

14. Further submission of appellant Arun Kumar Mishra is that fraud, if any, was committed in the bank, it was due to laches and negligence on the part of P.W. 5, P.W. 6 and P.W. 9, whereas, due to

effort of appellant Arun Kumar Mishra, Mritunjay Kumar (P.W. 8), who was holder of Account No. CCI -2146 was called in Bank and he divulged the name of appellant Lalit Kumar, who forged the two cheques, he searched Lalit Kumar and due to his efforts, fraudulently withdrawn money was deposited back in Account No. CCI – 2146, as such, appellant could not be held to be party in criminal conspiracy.

15. Submission of learned counsel appearing on behalf of appellant Lalit Kumar is that procedure for obtaining specimen signature has not been followed and no specimen handwriting and signature of Mritunjay Kumar (P.W. 8) was sent to G.E.Q.D. It has further been submitted that learned Trial Court failed to consider that payment on the cheques were effected by the Bank officials after following the Bank law and procedures and for that appellant cannot be held responsible.

16. Per contra, learned counsel appearing on behalf of C.B.I. in both the appeals submitted that the evidences of prosecution witnesses disclose that it is the appellant Arun Kumar Mishra, who got the token no. issued, he passed both the cheques and, thereafter, he went to the cash clerk and asked him to make payment to a person, who had come along with him. Evidence of prosecution witnesses also disclosed that when the fraud came to light, appellant Arun Kumar Mishra demanded all the vouchers from P.W. 1 Jagmohan and appellant Arun Kumar Mishra penned through his signature on the

Cheque No. 0116695 of Rs. 75,000/- and asked him to get the signature of the manager Shri. M.P. Sharma (P.W. 9) as he was not authorized to pass the said cheque. Evidence of P.W. 6 Raja Ram Paswan, who is counter clerk also disclosed that appellant Arun Kumar Mishra has demanded cheques/vouchers Ext. 1 from Jagmohan and he penned through his signature on cheque of Rs. 75,000/- and asked the Jagmohan to get it signed from M.P. Sharma (P.W. 9) and M.P. Sharma (P.W. 9) signed over the same. It has further been submitted that apart from that evidence of P.W. 8 Mritunjay Kumar also disclosed that appellant and M.P. Sharma came to his shop and called him to bank and on threatening, obtained his signature on Ext. 1 and Ext. 1/1 and later on they asked him to sign on pay-in slip (Ext. 6), by which Rs. 92,000/- has been deposited in the account of Vivek Radio & Electronics of which Mritunjay Kumar (P.W. 8) was proprietor. All the aforesaid evidences clearly go to show that the appellant Arun Kumar Mishra has passed the cheque in favour of M/s Standard Iron & Steel Co. in spite of the fact that account CCI – 2146 was in the name of Vivek Radio & Electronics and there was no account of M/s Standard Iron & Steel Co. in the said bank. It has further been submitted that though question document examiner has not given any opinion on question document i.e. Ext. 1, Ext. 1/1 and Ext. 3 and report Ext. I discloses that it is not possible to express any definite opinion on the rest of the items on the basis of materials at hand and as such it cannot be said that the Ext. 1, Ext. 1/1 and Ext. 3 has not been found in the writing and signature of appellant Arun Kumar Mishra.

17. It has further been submitted that question document examiner has found that the person, who wrote the blue enclosed writings stamped marked as S52 to S81, which are the specimen signature of appellant Lalit Kumar and Ext. A5/1 to A5/4 and Ext. A6 to A9, which are admitted writing and signature of appellant Lalit Kumar, who also wrote the red enclosed writings. Similarly, stamped and mark Q-3, Q-7, Q-8, Q-12, Q-16 and Q-17 and the evidence of P.W. 8 Mritunjay Kumar also shows that after seeing the Ext. 1 and Ext. 1/1, the two cheques, he identified that it was in the handwriting of appellant Lalit Kumar. It has also been submitted that evidences of P.W. 3, P.W. 5, P.W. 6 and P.W. 9 disclose that question documents Ext. 1 and 1/1 and initials on issuance of token and entry on ledger sheet (Ext. 8) and entry on D-scroll dated 18.7.89 (Ext. 9) all are in the writing and signature of appellant Arun Kumar Mishra. These witnesses had been working with the appellant Arun Kumar Mishra and they had occasion to see his writing, as such, they are competent witnesses. Moreover, Trial Court himself on examination has found the same in writing and signature of appellant Arun Kumar Mishra. On the basis of above submission, contention of learned counsel for the C.B.I. is that there is no infirmity in the impugned judgment and

conviction of appellants is just and proper.

18. Considering the evidence adduced on behalf of both the parties, it appears that in this case, question documents i.e. Ext. 1, Ext. 1/1 and Ext. 3 were sent to the G.E.Q.D. Kolkata, which will appear from Ext. H and H/1 for comparison of signature of Shri Arun Kumar Mishra from his admitted writing and signature and also with specimen writing and signature and also the writing and signature of appellant Lalit Kumar with his specimen and admitted writing and signature. A report was submitted by G.E.Q.D., which is Ext. I also signed by Assistant G.E.Q.D, Shri Anand Swaroop Gupta, D.W. 1 disclosing the following:-

> (i) Person who wrote the blue enclosed writings stamped and marked S52 to S81, A5/1 to A5/4 and A6 to A9 also wrote the red enclosed writings similarly stamped and marked Q3, Q7, Q8, Q12, Q16 and Q17.
>
> (ii) It is not possible to express any definite opinion on the rest of the items on the basis of materials at hand."

19. It further appears that neither the G.E.Q.D. nor the Assistant G.E.Q.D. has been examined in this case and even report was brought on record by the defence. The record further shows that Investigating Officer has submitted charge-sheet without waiting for the receipt of report from the G.E.Q.D., though he has himself sent the admitted signature to G.E.Q.D. for comparison with question document.

20. The above evidence disclosed that on examination of the question documents by the G.E.Q.D., no opinion was expressed in respect of writing and signature and initial of appellant Arun Kumar Mishra on the question document, however, the question documents sent for comparison with the admitted documents and specimen writing and signature of appellant Lalit Kumar was found to be in his writing.

21. Deputy G.E.Q.D. Anand Swaroop Gupta has been examined on behalf of the appellant Arun Kumar Mishra as D.W. 1 and his evidence disclosed that he has not given any opinion on the question documents relating to handwriting, signature and initial of Arun Kumar Mishra, on the basis of materials at hand. D.W. 3, Keshave Prasad, who was also a handwriting expert of Bihar Police Laboratory, Government of Bihar, from 1957 to 1991, has also been examined on behalf of the appellant Arun Kumar Mishra and his evidence discloses that Ext. 1 and Ext. 1/1 did not bear the signature of appellant Arun Kumar Mishra and the signature of Anand on question document Q-6 and Q-16, is also not in the handwriting and signature of appellant Arun Kumar Mishra and even signature of Kishor Anand on Q-9 and Q-18 has also not been written by appellant Arun Kumar Mishra. D.W. 2, is the photographer who has been examined on behalf of appellant Arun Kumar Mishra, who photographed the question documents and he has proved six negatives also as Material Ext. I to Ext. VI. D.W. 4, examined on behalf of

appellant Arun Kumar Mishra, is also a writer, who had the opportunity to see the writing and signature of appellant Arun Kumar Mishra.

22. However, learned Trial Court, after perusal of the question document has concluded that the question writing and signature on two cheques purported to be of appellant, were written slowly and were disguised, suggesting that they were forged.

23. On scrutiny of evidence, it appears that P.W. 1 is the peon, who used to maintain the vouchers. Here the voucher means those cheques on which payments have already been made. His evidence in court disclosed that appellant Arun Kumar Mishra had demanded the voucher on next day i.e. on 19.07.89 and perused the same and took out the voucher carrying more amount and he penned through his signature and asked P.W. 1 to get the signature of P.W. 9 as he was not authorized to pass the cheque of that much amount. Evidence of P.W. 1 also disclosed that he knew appellant Lalit Kumar, who used to come in the bank with appellant Arun Kumar Mishra and he identified the appellant Lalit Kumar in the dock also. This witness has been cross-examined at length. He has also been given a suggestion that Sharma Ji (P.W. 9), first put his signature and, thereafter, appellant Arun Kumar Mishra penned through his signature but he has denied the said suggestion. Even in his cross-examination, he has stated that appellant Lalit Kumar always come to appellant Arun

Kumar Mishra.

24. P.W. 3, who was the Cash Officer (Head Cashier) at the relevant time, has stated that cheques were passed by appellant Arun Kumar Mishra and after posting, he has issued token number, which he has stated after perusing the Ext. 1 and Ext. 1/1. His evidence further disclosed that on Ext. 1, his signature was penned through and ledger posting is in the handwriting of appellant Arun Kumar Mishra. His evidence also disclosed that Paying Cashier made the payment only after verifying the power of passing authority.

25. P.W. 5 was the Paying Cashier at the relevant time and his evidence disclosed that he, after verifying the two cheques Ext. 1 and Ext. 1/1 had stated that both the cheques were passed by appellant Arun Kumar Mishra, Field Officer and it bears the signature of appellant Arun Kumar Mishra, as passing authority and initial on the token is of appellant Arun Kumar Mishra and one token was issued for both the cheques and there is initial in the ledger posting on both the cheques of appellant Arun Kumar Mishra. This witness has admitted that he made the payment. However, his evidence disclosed that as appellant Arun Kumar Mishra had himself brought the cheques and asked him to make payment to a person, who had come along with him and he made the payment of Rs. 92,000/-. His evidence also disclosed that in Sl. No. 37, entry is in the writing and initial of appellant Arun Kumar Mishra on D-scroll, which has been marked as

Ext. 3. His evidence further disclosed that as appellant Arun Kumar Mishra had come for payment, as such, he made the payment and both cheques were of M/s Standard Iron & Steel Company and he does not know as to whether, there was any account of said company in the bank. He has also stated that as he had worked with appellant Arun Kumar Mishra, he knows his handwriting and signature. This witness has been cross-examined on the procedure of bank and his evidence in para – 8 disclosed that cheques used to be produced before the Counter Clerk, Shri Raja Ram Paswan (P.W. 6), who used to issue token and if the cheque is self, he got the signature of drawer on the back page of the checque and Counter Clerk made the ledger posting also and only after verifying everything, the token was to be issued but style and signature is not verified by the Counter Clerk and, thereafter the Counter Clerk sent it to passing authority. His evidence also disclosed that he does not know that in self cheque, the signature of drawer/bearer has to be attested and he did not get the signature attested by appellant Arun Kumar Mishra. He has also stated that appellant Mishra did not have authority to pass the cheque of Rs. 75,000/-. His evidence also disclosed that after payment, the signature of Shri M.P. Sharma (P.W. 9) was obtained in Ext. 1. To a Court's query, he has stated that he had asked from appellant Arun Kumar Mishra about the account. He has also been cross-examined on the point of dissimilarity of signatures on the cheque, which he has denied. Further his evidence also disclosed that at the time of payment, the signature of Mritunjay Kumar (P.W. 8) was not there. His evidence also disclosed that he is also facing a departmental proceeding. This witness in his cross- examination, has stated that initial and handwriting of appellant Arun Kumar Mishra were on the ledger posting and cheque was passed by him.

26. P.W. 6, Raja Ram Paswan was the Counter Clerk and his evidence shows that his duty was to fill in the pay book, which was written on the basis of voucher in day book and receipt and payment both are mentioned. On 18.07.89, he himself brought the voucher from the Paying Cashier and he had identified both the cheques i.e. Ext. 1 and Ext. 1/1. His evidence also disclosed that the same was mentioned in day book at page no. 215-216, which is in his writing (Ext. 5) and voucher was given to P.W. 1 Jagmohan (peon) for stitching them and after stitching, P.W. 1 handed over the same to him and while he was coming, appellant Arun Kumar Mishra demanded all the vouchers, perused the same and took out one cheque, which was of more amount and the same was taken to M.P. Sharma (P.W. 9), the S.I.B, Manager and appellant Arun Kumar Mishra has penned through his signature and, thereafter, that voucher was given to him by Jagmohan (P.W. 1), which he had identified. His evidence also disclosed that as Ext. 1 and Ext. 1/1 was of M/s Standard Steel & Iron Company, as such, in day book (Ext. 5), he mentioned the same but

the same was also penned through and appellant Arun Kumar Mishra written the name of Vivek Radio & Electronics. Though this witness has admitted that the same has not been done in his presence and when all the vouchers returned to him, he came to know about the same. His evidence further disclosed that in order to liquidate the amount, pay-in slip (Ext. 6) has been passed by appellant Arun Kumar Mishra and the same is in his writing and the same has been marked as Ext. 3/C and on 20.7.89, it was deposited in CCI -2146. He has admitted that it was his duty to issue the token but ledger entry and both cheques bears the signature of appellant Arun Kumar Mishra, which has been marked as Ext. 3/F and 3/G. His evidence also disclosed that all entry on D-Scroll was in the writing and signature of appellant Arun Kumar Mishra, marked as Ext. 9.

27. P.W. 7 Jogendra Prasad Singh, was the Deputy Manager of the S.B.I. of Kankarbagh Branch at the relevant time and his evidence disclosed that bearer cheque used to be presented before the counter and counter clerk wrote down the date of cheque, name of payee and as to whether, it was presented within a period of six months, amount is written in figures and in words, by account ledger, the signature on the proper place or not, all these are verified by the counter clerk and counter clerk also verifies as to whether the balance is available in the account of the concerned or not and presentee is also asked to sign on the cheque and, thereafter the token is being given to the presentee

and the number has been mentioned in the cheque and if the cheque is beyond Rs. 3,000/-, after posting it on the ledger, the same is kept in the ledger and sent to the passing officer, who check the ledger and after putting initial, takes the cheque for passing it. Passing Officer again verifies the check, compares it with the specimen signature and only after being satisfied, passes it for payment and, thereafter, the passing officer enters the same in the scroll and put Sl. No. on cheques and sends it to the cash clerk in transit book. His evidence also disclosed that the Paying Cashier may take the signature of the bearer or may not take it is upto his satisfaction. His evidence also disclosed that a day book is maintained in the bank and daily transaction is being mentioned in the day book and the same is verified with the ledger entries and if it is not found correct again in the morning the same is being checked and on 18.8.89, due to the shortage of time, he could not verify the day book and on the next date i.e. 19.07.89 at 9.30 A.M., he verified the day book and the two cheques were drawn by M/s Standard Iron & Steel Co. Ltd. but he has not found account of that company in the ledger and in both the cheques account no. was mentioned as Account No. CCI – 2146 and while checking the day book, he found that the account is in the name of M/s Vivek Radio & Electronics. Then he asked from the Manager about M/s Standard Iron & Steel Co. Ltd, having any account in the said branch and asked the Manager as to how he passed the check of

Rs. 75,000/- then the Manager called appellant Arun Kumar Mishra as he was also passing the check and on both the cheques, there was signature of appellant Arun Kumar Mishra. Thereafter the cheque issue register was brought for verification and it was found that cheques were issued to M/s Vivek Radio & Electronics.

28. P.W. 9 M.P. Sharma, was the Manager S.I.B., at the relevant time and he after seeing the cheque no. 0116695 dated 18.7.89 of Rs. 75,000/- has stated that it bears the signature of Mishra Sahab and also bear his own signature. In his cross-examination in para - 4, he admitted that he along with appellant Arun Kumar Mishra had gone to Mritunjay Kumar, proprietor of M/s Vivek Radio & Electronics, who informed that his cheque book was lost, he was brought to bank and when the cheques were shown to him, he told that cheques have been filled up by appellant Lalit Kumar, Proprietor of Rameshwari General Stores. His evidence also discloses that Mishra Ji brought appellant Lalit Kumar and Lalit Kumar refused that he has filled up any cheques and has withdrawn any money. His evidence also disclosed that as the cheque (Ext. 1) bear the signature of Mishra Ji, he put his signature over the said cheque. His evidence also disclosed that appellant Lalit Kumar was known to appellant Arun Kumar Mishra.

30. Evidence of P.W. 8 Mritunjay Kumar disclosed that appellant Arun Kumar Mishra along with Manager M.P. Sharma had come to him and on threatening called him in bank and took his signature on

Ext. 1 and Ext. 1/1 and also took his signature on pay-in slip (Ext. 6). His evidence also disclosed that both the cheques were filled up by the appellant Lalit Kumar and he was his friend since college time and used to visit his shop.

29. P.W. 2 is Harinandan Mishra and his evidence disclosed that he had an account in S.B.I. Kankarbagh Branch and his evidence disclosed that he was approached by Manager M.P. Mishra and appellant Arun Kumar Mishra on 19.7.89 along with three to four other employees, they asked for Rs. 92,000/- stating that a fraud of Rs. 92,000/- was committed in the bank and if he would not help, they will have to face the jail. He disclosed that he did not have Rs. 92,000/-, however, he would give it tomorrow. His evidence further disclosed that on 20.07.89, he came along with his younger brother in the bank as his younger brother was handling the account and after withdrawing Rs. 92,000/-, he gave Rs. 46,000/- to appellant Arun Kumar Mishra and Rs. 46,000/- to Manager M.P. Sharma on the assurance that they will return the money and they have returned the money in installments.

30. Prosecution evidence as discussed above, discloses that the Ext. 1 and Ext. 1/1 were filled up by appellant Lalit Kumar and same was passed by the appellant Arun Kumar Mishra and appellant Mishra has put his initial showing passing of token on those two cheques, which has been marked as Ext. 3/D and 3/E and accused Mishra has

also put signature in ledger entry, which has been marked as Ext. 3/F and 3/G and the writings D-8 on Ext. 1 and D-9 on Ext. 1/1 were in the handwriting of Shri Mishra and D-8 and D-9 denote scroll number of the passing officer, which has been marked as Ext. 3/H and Ext. 3/I and the appellant Mishra put his initial as passing officer on Ext. 1/1, which has been marked as Ext. 3/J and D is the scroll of S.I.B. Section.

31. However, it appears that handwriting expert to whom the specimen signatures, admitted signatures and the question documents relating to appellant Arun Kumar Mishra has been sent, has not given any opinion with regard to handwriting and signature of appellant Arun Kumar Mishra, however, he has found the handwriting and signature of appellant Lalit Kumar on the question documents. D.W. 3 was also examined in this case on behalf of the defence and he has stated in his evidence that he has not found the handwriting and signature of appellant Arun Kumar Mishra on the question documents. However, the evidence disclosed that he has based his finding on the photocopy of the question documents and specimen signature and admitted documents.

32. Hon'ble Apex Court in the case of **Ishwari Prasad Mishra v. Mohammad Isa** reported in **AIR 1963 SC 1782** and in the case of **Ram Narain** v. **State of Uttar Pradesh** reported in **AIR 1973 SC 2200**, has held that the evidence given by the experts of handwriting

can never be conclusive because it is after all opinion evidence and can be worthy of acceptance only when there is internal or external evidence relating to handwriting in question, supporting the expert's views. As such opinion evidence is not the conclusive proof.

33. On the other hand, the evidences available on record discloses the following circumstances against the appellant Arun Kumar Mishra:-

(i) Evidence of P.W. 5, Paying Cashier disclosed that the two cheques Ext. 1 and Ext. 1/1 were brought by the appellant Arun Kumar Mishra and he asked him to make payment to a person, who had come along with him and his evidence also disclosed that both Ext. 1 and Ext. 1/1 was passed by appellant Arun Kumar Mishra, as a passing officer and bears his signatures.

(ii) Evidence of P.W. 3, who was the Cash Officer (Head Cashier) shows that the cheques were passed by the appellant Arun Kumar Mishra and after posting, he issued token number and his evidence also disclosed that on Ext. 1, appellant Arun Kumar Mishra penned through his signature and ledger posting is also in the handwriting of appellant Arun Kumar Mishra.

(iii) Evidence of P.W. 6 also disclosed that he also identified both the cheques Ext. 1 and Ext./ 1/1 and his evidence further disclosed that when he gave the voucher to P.W. 1 Jagmohan (Peon) for stitching them, appellant Arun Kumar Mishra stopped him and demanded all the vouchers and perused the same and took out one cheque of more amount and he penned through his signature on the cheque and obtained the signature of Manager M.P. Sharma (P.W.9), stating that he has no authority to pass such an amount.

(iv) Evidence of P.W. 6 also disclosed that entry on D- scroll was also in the handwriting of appellant Arun Kumar Mishra.

(v) Evidence of P.W. 1, Jagmohan (Peon) also disclosed that appellant Arun Kumar Mishra has asked him for vouchers and after taking it, he penned through his signature on one of the cheques, which was of more amount.

(vi) Evidence of P.W. 7 disclosed that when he detected the mistake as M/s Standard Iron & Steel Company has no account, he asked the Manager as to how he passed the cheque of Rs. 75,000/-, on which the Manager called the appellant Arun Kumar Mishra as he was also passing the cheques and on both the cheques there were signatures of appellant Arun Kumar Mishra. Thereafter the cheque issue register was brought for verification and it was found that cheques were issued to M/s Vivek Radio & Electronics.

(vii) Evidence of P.W. 9, the Manager S.I.B. also disclosed that as Ext. 1 bear the signature of appellant Arun Kumar Mishra, he signed the cheques.

(viii) Apart from the above evidence of P.W. 1 and P.W. 9 also disclosed that appellant Lalit Kumar was known to appellant Arun

Kumar Mishra and he used to sit with appellant Arun Kumar Mishra.

34. The aforesaid evidence of P.W. 3, P.W. 5, P.W. 6, P.W. 7 and P.W. 9 clearly imply the hands of appellant Arun Kumar Mishra in passing the two cheques (Ext. 1 and Ext. 1/1) and also doing manipulation in Ext. 1 by cutting it and on D-scroll also, his signature was there and token was also issued by him.

35. Apart from that the evidence of P.W. 8 also disclosed that Manager M.P. Sharma (P.W. 9) and appellant Arun Kumar Mishra had approached him and on threatening, took his signature on Ext. 1 and Ext. 1/1 and also took his signature on pay-in slip (Ext. 6) and his evidence further disclosed that the two cheques were filled up by the appellant Lalit Kumar and appellant Lalit Kumar his friend since college time and he used to visit his shop. Evidence further shows that the account No. CCI -2146 was in the name of M/s Vivek Radio & Electronics and not in the name of M/s Standard Iron & Steel Company but in spite of that cheques were passed, payments were made. Evidence also disclosed that appellant Arun Kumar Mishra and P.W. 9, Manager M.P. Sharma approached P.W. 2 Harinandan Mishra and got Rs. 92,000/- from him and by getting the pay-in slip filled up by P.W. 8, deposited the amount in the account of M/s Vivek Radio & Electronics in order to adjust the account. Further appellant Lalit Kumar was identified in court by P.W. 1 and handwriting expert has also found the handwriting of appellant Lalit Kumar on the two

cheques (Ext. 1 and Ext. 1/1). It is relevant to mention here that a person may lie but not the circumstances and there are circumstances against these two appellants to show that they in connivance with each other committed fraud in the Bank.

36. No doubt a submission has been made on behalf of learned counsel for the appellants that P.W. 5, the Paying Cashier is responsible for the verification of the signature and other materials on the cheques (Ext. 1 and Ext. 1/1) and also as to whether the passing authority has power to sanction the same but he has made the payment without proper verification and similarly, it is the duty of P.W. 6 Raja Ram Paswan to issue token after verification of cheque as to whether, it is in order or not but in order to save their skin, they have implicated the appellant Arun Kumar Mishra. In this regard the trial court has also found the P.W. 5, careless and negligent and no doubt, it is the duty of P.W. 5 to verify the initial and signature and the signature of passing authority as to whether he has power to pass the cheque or not and as to whether signature of drawee has been attested or not and he made the payment and similarly the token was kept in control of P.W. 6 and it is his duty to issue token after verification of the cheque but the evidence of P.W. 5 discloses that he made the payment on the request of appellant Arun Kumar Mishra, who asked to make payment to the person, who had come along with him, as such, in faith he made the payment. No doubt, the trial court has

found him careless and negligent and for that a proceeding was also initiated against him but there is no material to show that he is in *mens rea* in making payment rather the payment was made at the request of appellant Arun Kumar Mishra. Similarly, both the cheques were passed by the appellant Arun Kumar Mishra and token was also issued under his initial and as in the Bank appellant Arun Kumar Mishra was senior to P.W. 5 to P.W. 6, they did not make any objection and for any laches on the part of P.W. 5 and P.W. 6, the allegation against appellant Arun Kumar Mishra cannot be disbelieved. Furthermore, the appellant Lalit Kumar has been identified by P.W. 1 in the court and P.W. 8 Mritunjay Kumar has also identified his signature and writing and handwriting and signature of appellant Arun Kumar Mishra has been identified by P.W. 3, P.W. 5, P.W. 7 and P.W. 9, who are the co employees of appellant Arun Kumar Mishra as they are the co-employees of appellant Arun Kumar Mishra and had the occasion to see the signature of appellant Arun Kumar Mishra, many times, as such, their identification cannot be brushed aside so far identification of handwriting and signature of appellant Arun Kumar Mishra is concerned.

37. It also appears that the trial court has also examined the handwriting and signature of appellant Arun Kumar Mishra and that of appellant Lalit Kumar and as discussed above, came to conclusion that the question writing and signature on two cheques, purported to

be of appellant Arun Kumar Mishra were written slowly and were disguised suggesting that they were forged. This court, too, has examined the two cheques i.e. Ext. 1 and Ext. 1/1, the question documents and Ext. 7 with the specimen signature and initial of appellant of Arun Kumar Mishra and found that those were in the handwriting and signature of appellant Arun Kumar Mishra. As such this court finds no reason to differ with the finding arrived at by the Trial Court that the question documents were in the handwriting and signature of appellant Arun Kumar Mishra as well as in the handwriting of appellant Lalit Kumar.

38. As such even if handwriting expert (D.W. 1) has not given any opinion on handwriting, signature and initial of appellant Arun Kumar Mishra and D.W. 3 has found them not in the handwriting and signature of appellant Arun Kumar Mishra, however, learned special Judge, C.B.I., on scrutiny, has found the same in the writing of appellant Arun Kumar Mishra and circumstances as discussed above are also against the appellants.

39. In the present case, the appellants stood convicted under Section 420 read with Section 120B of the IPC as well as under Section 468, 465 read with Section 471 of the IPC and on the basis of the evidence discussed above, it is safely be concluded that appellant Arun Kumar Mishra in conspiracy with appellant Lalit Kumar has got the two cheques passed and encashed, which were not in the name of

account holder and, thereafter, committed manipulation and forgery in the documents by cutting his signature on one of the cheques and getting the signature of P.W. 8 Mritunjay Kumar over the cheque (Ext. 1 & 1/1), thereby committing a fraud in the bank of Rs. 92,000/-, and as such, the conviction of the appellants under the aforesaid sections appears to be just and proper.

40. Appellant Arun Kumar Mishra has also been convicted under Section 13(2) read with Section 13(1)(d) and finding the sufficient materials available on record, his conviction under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

41. Accordingly, these appeals are dismissed. Judgment of conviction and order of sentence dated 09.10.2002, passed by Sri Braj Nandan Sahay, the then Special Judge C.B.I., South Bihar, Patna, in R.C. No. 39(A)/89, is hereby affirmed.

42. As the appellants are on bail, their bail bonds are cancelled and they are directed to be taken into custody.

(Vinod Kumar Sinha, J)

sunil/-

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