IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL APPEAL No.207/2011
C/W
CRIMINAL APPEAL No.203/2011

IN CRIMINAL APPEAL No.207/2011:

BETWEEN:

SRI H.A. SEETHARAM,
SON OF LATE H.S. ALASINGACHAR,
AGED ABOUT 57 YEARS,
R/AT No.2734/2, I FLOOR,
"SAI KRISHNA VILAS"
SNS TEMPLE STREET,
CHAMUNDIPURAM,
MYSURU-570 004. … APPELLANT

(BY SRI RAVI B. NAIK, SENIOR COUNSEL FOR
SRI B.L. NANDA KUMAR, ADVOCATE)

AND:

STATE BY DY.SP, CBI ACB,
BENGALURU,
REPRESENTED BY SPL.
PUBLIC PROSECUTOR BY CBI. ... RESPONDENT

(BY SRI P. PRASANNA KUMAR, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C PRAYING THIS COURT TO SET ASIDE THE ORDER DATED 05.02.2011 PASSED BY THE XXXII ADDL.C.C & S.J., AND SPECIAL JUDGE FOR CBI CASES, BANGALORE IN

SPL.C.C.NO.10/2007 CONVICTING THE APPELLANT/ ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 120(B) READ WITH SECTIONS 468, 471, 420 AND 409 OF IPC AND SECTION 13(1)(d) READ WITH SECTION 13(2) OF PREVENTION OF CORRUPTION ACT, 1988.

IN CRIMINAL APPEAL No.203/2011:

BETWEEN:

T. PRAKASH,
AGED ABOUT 50 YEARS,
S/O LATE THAMMAIAH GOWDA,
NO.267, CAUVERY MAIN ROAD,
5TH CROSS, RAGHAVENDRANAGAR,
MYSURU - 11. … APPELLANT

(BY SRI A.H. BHAGAVAN, ADVOCATE)

AND:

STATE BY DY.S.P.,
C.B.I., A.C.B.,
BENGALURU. ... RESPONDENT

(BY SRI P. PRASANNA KUMAR, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C. PRAYING THIS COURT TO SET ASIDE THE ORDER DATED 05.02.2011 PASSED BY THE XXXII ADDL.C.C. & S.J. AND SPECIAL JUDGE FOR CBI CASES, BENGALURU IN SPL.C.C.NO.10/07 CONVICTING THE APPELLANT/ ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 120(B) READ WITH SECTIONS 468, 471 AND 420 OF IPC.

THESE CRIMINAL APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 08.12.2020, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

J U D G M E N T

These two appeals are filed by accused Nos.1 and 2, respectively challenging the judgment of conviction and sentence, dated 05.02.2011 passed in Special C.C.No.10/2007, on the file of the XXXII Additional City Civil and Sessions Judge and Special Judge for CBI Cases, Bangalore (CCH-34).

2. The factual matrix of the case is that accused No.1 who was working as the Manager, Canara Bank, SSI Branch, Mysore, during 2002 to 2004 entered into criminal conspiracy with accused No.2, Managing Director of M/s. Padmashree Products Pvt. Ltd., Mysore ('M/s. PPPL' for short) in the matter of sanction and disbursement of various credit facilities to accused No.2 and cheated the bank. Accused No.1 had sanctioned Rs.12.5 lakhs to accused No.2 during November 2002, without conducting proper verification, appraisal and assessing the working capital requirements, though the Company was suffering loss as on 31.03.2002. He had sanctioned Rs.10,00,000/- as usance revolving LC limits to accused No.2 in excess of his delegated powers, without obtaining the prior approval of the competent authority. It is further alleged that in June 2003, accused No.1 had recommended OCC limit of Rs.25,00,000/-,

machinery loan limit of Rs.5,00,000/-, supply bill discounting limit of Rs.50,00,000/-, Light Heavy Vehicles limit of Rs.6.5 lakhs and bank guarantee of Rs.30 lakhs, without verifying the activity level of accused No.2. Based on which accused No.1 sanctioned the same on 26.06.2003. The irregularities were committed in the disbursal of the said loan and misappropriated the funds of the bank by committing criminal breach of trust and cheated the bank. The accused during 2002 to 2004 functioning as public servant being party to a criminal conspiracy with accused No.2, in furtherance of the criminal conspiracy and agreement, forged the documents in connection with advancing loan to accused No.2 with an intention to cheat the bank and made use of the forged documents as genuine and cheated the bank without apprising the loan application, security furnished and sanctioned the loan. The accused without verifying the security furnished being interested with the public money, committed criminal breach of trust by allowing accused No.2 to avail advances without furnishing proper security and thereby he misappropriated the funds of the bank and he misused his position as a public servant. The charges levelled against accused No.1 is that he committed the offence punishable under

Section 120B read with Sections 468, 471, 420 and 409 of IPC and under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act.

3. The charge against accused No.2 is that he being the Managing Director of M/s.PPPL, had submitted an incomplete application for bill/cheque discounting facility of Rs.3,00,000/- and inland revolving letter of credit facility of Rs.10,00,000/- to the branch on 10.02.2003, without furnishing any details as required under various columns in the application form. Accused No.2 also had submitted the application dated 18.06.2003 for enhancement of cash credit facility from Rs.7.5 lakhs to Rs.25 lakhs, sanction of supply bill limit of Rs.50 lakhs and bank guarantee limit of Rs.30 lakhs for procurement of oil from M/s. Ruchi Soya Industries Limited. Accused No.2 with dishonest and fraudulent intention, submitted false financial statement showing inflated sales turn over, which is at variance with that filed by his Company in the office of the Assistant Commissioner of Commercial Tax, Commercial Tax Officer, VI Circle, Mysore, with a view to dishonestly induce the bank to part with its public funds and thereby committed cheating on the bank. As per the details submitted by accused No.2, for the year 2000-01, the

actual sales as reported in sales tax returns both under KST and CST is Rs.3,94,437/-, but sales turn over as furnished to Canara bank is Rs.39,25,555/-. In respect of 2001-02, the actual sales is Rs.70,680/-, but sales turn over furnished is Rs.39,52,165/-. In respect of 2002-03, the actual sales is nil, but shown as Rs.34,57,673/-.

4. Accused No.2 in furtherance of criminal conspiracy had submitted a letter dated 25.11.2003 and application dated 4.12.2003 for enhancement of cash credit facility from Rs.50 lakhs to Rs.100 lakhs, sanction of term loan of Rs.10 lakhs for purchase of a new tanker, cheque discounting limit of Rs.20 lakhs and enhancement of bank guarantee limit from Rs.30 lakhs to Rs.100 lakhs. But he did not furnish the details of sales and profit made for the year ending 31.03.2003. The Company has achieved total sales target of Rs.358 lakhs as on 31.03.2003 as against the estimated sales of Rs.1,400 lakhs for the financial year 2003-04. The accused No.2 also had submitted the copies of the sales tax returns for the months of April 2003 to November 2003, at the time of seeking further enhancement of credit facilities. He has given the break up of sales during the period from April 2003 to November 2003 claiming the sales turn

over of Rs.6,08,006,285.50/- for the said period. It is established that the copies of the sale tax returns for the months of April 2003, May 2003 and October 2003 submitted to the Bank are not the copies of the returns filed with the Commercial tax Department. The accused had submitted dishonestly forged and fabricated documents to the bank in order to show the inflated sales turn over with a view to dishonestly and fraudulently induce the bank to favourable consider the enhancement of credit facilities. The details of sales reported in the monthly sales tax returns and the sales turn over furnished to the bank for the month of April 2003 though actual sales was nil, sales turn over furnished to the bank is Rs.18,73,985/-. In respect of May 2003, though it was nil, it is shown as Rs.29,84,450/-. For the months of June 2003, July 2003 and August 2003, the actual sales as reported in sales tax returns and sales turn over as furnished to the Bank are one and the same. But in respect of September 2003, though actual sales as reported in sales tax returns is Rs.48,97,336.50/-, the sales turn over shown to the bank is Rs.1,48,97,336.50/-. In respect of October 2003, though it was Rs.46,40,690/- and the same was shown as Rs.76,40,669/-. In respect of November 2003 it is one

and the same. The actual sales was Rs.4,29,48,150.50/-, but sales turn over shown is Rs.6,08,06,585.50/-.

5. Accused No.1 though he is eligible to finance at Rs.200 lakhs, he had dishonestly and fraudulently recommended OCC limit of Rs.100 lakhs, term loan of Rs.10 lakhs, cheque discounting limit of Rs.10 lakhs under fund based limits and bank guarantee limit of Rs.100 lakhs under non-fund based limit to the Company, in view of the purported satisfactory dealings and credit worthiness of the party and also the confirmed tender allotted by the Food and Civil Supplies Corporation. The accused No.1 has recommended the credit limit notwithstanding certain adverse features like frequency of transgressions indicating the over drawings in the sanction limits by the Company and non-compliance of earlier terms of sanction in connivance with accused No.2, which jeopardized the interest of the bank and caused undue pecuniary gain without ensuring matching collateral security from accused No.2.

6. Both accused Nos.1 and 2 have hatched up the criminal conspiracy and indulged in cheating the bank with dishonest intention and also indulged in creation of the

documents. The accused persons were secured before the Trial Court and the accused did not plead guilty and claimed the trial. The prosecution examined P.Ws.1 to 21 and got marked the documents at Exs.P.1 to 432(a). The accused persons were subjected to 313 statement and thereafter the accused did not choose to lead any defence evidence. The Trial Judge after considering both oral and documentary evidence placed on record, convicted the accused persons and sentenced and hence the present appeals are filed.

7. The accused No.2 in Criminal Appeal No.203/2011 would contend that the Trial Court ought to have held that the prosecution has failed to prove the criminal conspiracy between accused Nos.1 and 2. It is in the evidence of the prosecution that accused No.1 used to prepare the credit report and send them to Regional Office for according sanction for distribution of the loan and it is the Regional Office which has eventually sanctioned the loan. Even the enhancement of limit was being intimated to and sanctioned by the Regional Office. If there was any fraudulent act on the part of the appellant, the Regional Office would not have sanctioned the loan. The AGM of the Regional Office, after being satisfied with the credit worthiness of

the appellant, has sanctioned the loan. Therefore, it cannot be said that the appellant has sanctioned the loan. Hence, it cannot be said that the appellant has conspired with accused No.1 and indulged in fraudulent act. The bonafide of the appellant are clear from the fact that all the loans which were disbursed by the Bank to the appellant were fully secured. The bank has not incurred any loss. On the other hand, it is the appellant who incurred enormous financial loss. The Trial Court has not identified specifically the documents which are alleged to have been forged. The Trial Judge ought not to have come to the conclusion that the appellant had committed the offence of forgery. The ingredients of the offence of forgery has not been made out.

8. The learned counsel for the appellant in Criminal Appeal No.203/2011 contend that Rs.2.29 Crores was misused, but the balance was only Rs.1.60 Crores. The learned counsel would contend that though it is the case of the prosecution that the documents are forged, it is not stated what are the documents which are forged. At the first instance, the case was registered against accused Nos.1 to 3 in the FIR and the accused No.1 under the FIR has sanctioned the loan. The Trial Judge

considered the evidence of P.W.9 and based on his evidence convicted the accused. He has not spoken anything about furnishing of the documents. The bank has not suffered any loss and the bank has recovered the amount by selling the property. The accused while recording the statement under Section 313 of Cr.P.C., produced the documents regarding recovery of loan amount.

9. P.W.3 who has been examined categorically says that loan of Rs.10 lakhs was cleared and in the cross-examination suggestion was made to him that amount was recovered, but he says that he does not know about the same. P.W.3 says with regard to the irregularities and the evidence of P.W.4 does not help the prosecution. P.W.5 categorically says that he had no personal knowledge. The prosecution mainly relied upon the evidence of P.Ws.16 and 21 and in their evidence also it is categorically elicited that the loan which they have advanced was secured and properties are mortgaged. The accused in 313 statement, filed the documents along with the memo that the property of Ganesha Beedi Works and flats were sold and recovered an amount of Rs.28 lakhs.

10. The learned counsel would also submit that the ingredients of Sections 463 and 464 does not attract and hence the question of convicting the accused for the offence punishable under Section 468 does not arise. There was no intention to cheat the bank. The Trial Judge mainly relies upon the documents of Exs.P.346, 347, 351 and 352, returns filed by accused No.2 with ACTO and the said documents are disputed. The charge framed against the accused is not specific with regard to forgery and which documents are forged. Without specifying which documents are forged, the bald allegations that he had indulged in forging the documents is erroneous.

11. P.W.12 admits that project report was prepared by him i.e., Ex.P.33. The Chartered Accountant of accused No.2 put his signature and those documents are not forged and it is not the case that the signature of P.W.12 is forged. The material placed before the Trial Court is not sufficient to convict the accused and the Trial Judge has not considered the same properly.

12. The learned counsel would submit that none of the witnesses speak with regard to conspiracy and with regard to

forgery, there is no material. The documents are prepared in the name of the accused, but not in the name of any other person. No witnesses speak with regard to production of documents and none of the witnesses deposes that they have acted upon based on the documents. Accused No.2 hypothecated the movables and offered personal guarantee and also mortgaged the immovable property to secure the loan. The transaction from 2002 was in order. Only in 2005, due to some financial problem, the account was not maintained properly and the account was treated as NPA. There was no intention to cheat and no criminal liability and if any liability, it is only a civil liability. Though it was due for Rs.1.60 Crores, the property was sold for Rs.1.90 Crores. The prosecution failed to prove the charges levelled against the accused and hence it requires interference of this Court.

13. In support of his contentions, the learned counsel relied upon the judgment of the Hon'ble Apex Court in the case of **MD. IBRAHIM AND OTHERS v. STATE OF BIHAR AND ANOTHER** reported in **2010 CRI.L.J.2223** and brought to the notice of this Court paragraph No.12 of the judgment. Referring this judgment, the learned counsel would submit that when a person executes a document conveying a property describing it

as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

14. The learned counsel also relied upon the judgment of the Apex Court in the case of **GURU BIPIN SINGH v. CHONGTHAM MANIHAR SINGH AND ANOTHER** reported in **1997 CRI.L.J 724** and brought to my notice paragraph No.9 of the judgment. Referring this judgment, the learned counsel would submit that if forgery be not there, allegation under Section 420 would fail because the allegation of forging the book deception was caused and members of the public were induced to purchase the same. So forgery is the principal allegation;

cheating being a consequential offence. If forgery goes, cheating cannot stand.

15. The learned counsel also relied upon the judgment of the Apex Court in the case of **AJAY MITRA v. STATE OF M.P. AND OTHERS** reported in **2003 SCC (CRI) 703** and brought to the notice of this Court paragraph Nos.16 and 17 of the judgment. Referring this judgment, the learned counsel would submit that a guilty intention is an essential ingredient of the offence of cheating and the same must be established before he can be convicted of an offence of cheating.

16. The learned counsel referring all these judgments would contend that the prosecution failed to prove either the conspiracy or the intention to cheat the bank. Hence, the Trial Court has committed an error in convicting the accused and prays this Court to allow the appeal and set aside the conviction.

17. Accused No.1 in his appeal would contend that the judgment of conviction passed by the Trial Judge is not in accordance with the settled law, evidence on record and opposed to principles of natural justice. The Trial Judge has come to a wrong conclusion which amounts to miscarriage of justice.

P.W.13 being the General Manager of Canara Bank was not competent to remove the appellant from service. The Trial Judge has erred in arriving to a conclusion that accused Nos.1 and 2 entered into criminal conspiracy, agreeing to do an illegal act of fraudulently and dishonestly forging sales statistics, balance sheet, suppress the loss, sales tax returns, appraisal report, progress report of accused No.2. In the instant case, there is absence of conspiracy and hence Section 120B of IPC cannot be invoked.

18. The Trial Court also erred in arriving to the conclusion basing on the report of P.W.9 with regard to Exs.P.315 to 371, which are monthly returns of accused No.2 and Ex.P.368 is the statement for the month of April 2003 and other exhibits of accused No.2, in which some of them shows as transaction nil and others vary. The said documents are submitted by accused No.2 and the appellant being the Manager is not the authority to question the validity of the documents of ACTO and this appellant believed that the documents furnished by accused No.2 are true and genuine. It is clear and evident on the face of the record that the appellant is the only recommending authority, based on the documents furnished by

accused No.2 and whereas AGM being the sanctioning authority who could have either verified the records or directed the appellant to cross verify. When the AGM also relied upon the documents and sanctioned the loan, the question of involvement of accused No.1 does not arise. There is no clear and cogent evidence in order to invoke the offence of criminal conspiracy.

19. The Trial Judge also wrongly erred in convicting the appellant for the offence punishable under Section 468 of IPC and the documents produced are not forged by this accused. The bank has already recovered the entire amount from accused No.2 and the question of causing loss to the bank does not arise. Accused No.2 loan was restructured by the bank. This clearly indicates that the accused was implicated in the false case. The order of conviction passed by the Trial Court for the offence punishable under Sections 468, 471, 420 and 409 of IPC is erroneous. In the absence of any incriminating evidence against the accused, the Trial Judge ought not to have convicted the accused. The Trial Court erroneously convicted the accused under the Prevention of Corruption Act. The loan account of accused No.2 became NPA in the year 2005 and the transaction was done from 2002. The loan was sanctioned by one

K.R.Lingappa, AGM, who was not even a witness before the Trial Court and earlier he was accused as per FIR. It is just and clear that the appellant has not shown any special favours to accused No.2 and the entire investigation of the respondent is partisan and suffers from merits. Hence, it requires interference of this Court.

20. The learned counsel for the appellant in his argument vehemently contend that the Trial Judge has committed an error in convicting the accused for all the charges levelled against him. There are no incriminating evidence spoken by P.W.1, though several documents are marked. P.W.2 in the cross-examination has admitted that original of Ex.P.14 was not produced and also he cannot say the contents of Ex.P.14 – inspection report. There is no incriminating evidence against the accused even P.W.2 is examined. P.W.3 Govardhan, Chief Manager, says that there were irregularities in respect of the account of accused No.2 and the said report is marked as Ex.P.2. In the cross-examination he admits that the appellant was not working as Branch Manager and also admits that the appellant has not exceeded his power in sanctioning the loan to accused No.2. He further admits that sanction of loan was reported to the

Regional Office. P.W.3 also admits that during the period of the appellant, no loan granted to accused No.2 became NPA. He also admits that an amount of Rs.10 lakhs sanctioned to accused No.2 was cleared. The accused only recommended for an amount of Rs.30,00,000/- bank guarantee limit. The recommendation of Rs.1 Crore though proposed by appellant to the Regional Office, the same was sanctioned by AGM, who is accused No.1 in FIR.

21. P.W.3 has admitted that enhancement of loan limit from Rs.12.5 lakhs to Rs.229.3 lakhs was done by the Regional Office and the AGM was periodically visiting the bank and duty was cast upon him to make inspection of the loan sanctioned. P.W.3 also admitted that pre-sanction and post-sanction investigation are the independent course. P.W.3 categorically admits that the appellant has not exceeded his power in sanctioning of the loan, except with regard to letter of credit.

22. P.W.4 categorically admits in the cross-examination that he does not have any personal knowledge regarding loan transaction of accused No.2 and in respect of Exs.P.16 to 54. P.W.4 speaks nothing against the appellant. In the cross-

examination, he admits that when proposal was submitted to the Controlling Authority, it was scrutinized by the officials of the Branch and audit report of accused No.2 Company was also scrutinized and after scrutiny only loan was sanctioned to accused No.2.

23. P.W.5 got marked the documents Exs.P.18 to 309. In the cross-examination he admitted that the appellant sanctioned Rs.7,50,000/- as open cash credit and Rs.5,00,000/- as machinery loan and Rs.10 lakhs as letter of credit. The said loan sanctioned was within the power of the appellant. The said sanctioning of the loan was also reported to the Regional Office. P.W.5 admits that the cash credit facility of Rs.7.50 lakhs was duly secured by movables. He also deposed that accused No.2 was submitting the stock statement regularly and branch was also conducting stock inspection and confirming the availability of the stock. P.W.5 also admits that cash credit loan sanctioned by the appellant was within his sanctioning power. Machinery loan of Rs.5 lakhs was also cleared. The bank guarantee of Rs.1 Crore was sanctioned by the Regional Office and the said bank guarantee was invoked by the Regional Office and it was sanctioned in favour of NSIC.

24. In the evidence of P.Ws.6 to 8, there are no incriminating evidence. P.W.9 admits that the returns submitted by PPPL were also scrutinized by the Accountant General and he has not observed any discrepancies. The Internal Investigation Officer i.e., P.W.3 also not visited the Commercial Tax office. In the cross-examination, he admits that he made telephone enquiries. The Internal Inspector has not even called the appellant to seek the clarification and so called variations in figures shown in the sales tax returns, after the appellant left the Branch in 2004, cannot be attributed against him.

25. In the evidence of P.Ws.10 and 11 also no incriminating evidence against the appellant. P.W.16 states that he just collected the document and carried the document to CBI office. In the cross-examination he admits that he has verified the loan documents of accused No.2. On verifying the records of accused No.2, P.W.16 gathered the knowledge regarding the transaction of accused No.2 with the bank. Even after the loan account of the accused No.2 became NPA in 2005, P.W.16 has recommended for restructure of the loan availed by accused No.2. During his tenure only it became NPA. P.W.17 in his evidence also he says that accused No.1 sanctioned the loan

within his delegated powers. P.Ws.18 to 20 have not spoken anything about the appellant. P.W.21 Police Inspector who conducted the investigation, admitted in the cross-examination that there was sufficient material against K.R. Lingappa, AGM, but he has not chosen to send him for trial. Even the Investigating Officer has not been cited K.R.Lingappa as a witness. Hence, it is clear that the entire investigation is partisan and not trustworthy.

26. Though 21 witnesses are examined, none of the witnesses stated that the bank has sustained loss because of the powers exercised by the appellant in recommending the sanction of loan in favour of accused No.2. It is also contended that when the searches were made in the residence of the appellant, no incriminating documents or materials were found by the CBI officials and movable property offered as security by the accused No.2 for the loan availed, were auctioned by the bank under the provisions of the SARFAESI Act and the sale proceeds were appropriated for the loan availed by accused No.2.

27. The learned counsel would also submit that none of the witnesses have spoken about the documents, particularly

sanctioning of loan to accused No.2 by accused No.1. Accused No.1 only recommended and not sanctioned the loan and he sanctioned the loan within his limit. The same is also approved by the Regional Office. The evidence of P.W.20 handwriting expert also does not help the prosecution and there is no evidence against accused No.1 that he indulged in criminal conspiracy and made any favour in favour of accused No.2. He has discharged his duties with bonafide intention and nothing is on record that with dishonest intention, he hatched up a plan with accused No.2 and made any official favour in favour of accused No.1. In the absence of any cogent evidence, it requires interference of this Court and accused No.1 is entitled for acquittal.

28. The learned counsel for the State would submit that P.W.3 has spoken with regard to Ex.P.118 and sanctioning of the loan was not intimated to the Regional Office. The defence counsel has not effectively cross-examined the prosecution witnesses, particularly in respect of Exs.P.347, 351, 352, 346 and 368 and these documents are marked through P.W.9. In the cross-examination of ACTO also, nothing is elicited even though he gave the categorical evidence that the above

documents are contrary to actual returns filed by the accused. The expert evidence of P.W.20 corroborates the other prosecution witnesses and the accused persons indulged in fabrication of the documents and the same has been proved by examining P.W.9. The evidence of P.Ws.3, 4, 9, 12 and 20 corroborates the case of the prosecution and there are ample material that accused No.1 involved in conspiracy with accused No.2 and the prosecution also proved forgery and misappropriation of amount of the bank and all of them joined together and conspired and created documents and siphoned the amount of the bank. Though the loans are secured and amounts are recovered, that itself is not sufficient to acquit the accused. The material clearly shows the dishonest intention and also misuse of powers of accused No.1 in releasing the amount exceeding his limit and the prosecution has proved the charges levelled against the accused. Hence, there are no grounds to interfere with the findings of the Trial Court.

29. Having heard the arguments of the learned counsel for the appellants and the learned counsel for the respondent and also on perusal of the grounds urged in the appeal, the points that arise for the consideration of this Court are:

(i) Whether the Trial Judge has committed an error in convicting accused No.1 for the offences punishable under Sections 120B, 468, 471, 420 and 409 of IPC and under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act and accused No.2 for the offences punishable under Sections 120B, 468, 471 and 420 of IPC.

(ii) What order?

Point Nos.(i) and (ii):

30. Before considering the documentary evidence and oral evidence, this Court would like to mention in brief the allegation made in the charge sheet against accused Nos.1 and 2. It is the case of the prosecution that accused No.1 was working as Branch Manager, Canara Bank, SSI Branch, Mysore, between 2002 to 2005 and he had entered into criminal conspiracy with accused No.2, Managing Director, M/s.PPPL and with other unknown persons. In pursuance of the said criminal conspiracy, accused No.1 had recommended and sanctioned various credit facilities to the said Company, which has resulted in a wrongful gain of Rs.197.18 lakhs to the said Company and loss to Canara Bank. Based on the complaint, the investigation

was conducted and charge-sheet has been filed against accused Nos.1 and 2. This Court has to consider the oral and documentary evidence adduced against accused Nos.1 and 2, who are the appellants herein.

31. P.W.1, who was working as Manager, Canara Bank, DA Cell Circle Office, Bengaluru, from 2002 to 2006, in his evidence deposes that he was called to produce some documents in connection with this case and accordingly he has produced the documents before the CBI. Through this witness Ex.P.1, investigation report – Ex.P.2, supplementary report – Ex.P.3 and manual of instructions – Exs.P.4 to 12 are marked. In the cross-examination, he admits that he was the custodian of the above documents and he has not issued the acknowledgment for having received the documents.

32. P.W.2, Officer at Circle Office, Canara Bank, Bangalore, in his evidence deposed that AGM directed him to produce certain documents to CBI and as per the directions he has produced Ex.P.13 covering letter and also certified copy of inspection report – Ex.P.14. Another letter of K.S.Chandramouli is marked as Ex.P.15. In the cross-examination, he admits that

said K.S.Chandramouli was very much available. He also admits in the cross-examination that he has not certified each page of the certified copy.

33. P.W.3, Chief Manager, Canara Bank, in his evidence says that AGM asked him to conduct the investigation regarding irregularities in connection with the accounts of accused No.2 and he has verified all the documents and noticed that there were no proper pre-sanction inspection, there was no proper appraisal, there was no proper monitoring and there was no proper disbursal. The report which he prepared is Ex.P.2 and once again he was asked to make the additional investigation and accordingly he conducted the investigation regarding supply bills limits and bank guarantee limits and the persons responsible for lapses. The additional report is marked as Ex.P.3. Accused No.1 had sanctioned the loan subsequently and the Regional Office also sanctioned the loan.

34. In the cross-examination, it is elicited that accused No.1 sanctioned OCC limits term loan and one LC. It is suggested that he did not exceed his power and the same was denied. But he claims that with regard to LC he has exceeded

the power. However, regarding other loans, he has not exceeded his power. He admits that the fact of the sanction of the loan was to be intimated to the Regional Office. He has not noticed any letter from the Regional Office to accused No.1 regarding his exceeding power. He further admits that after relieving of accused No.1 from the bank, if any loan was sanctioned, he was not responsible. He further admits that during the period of accused No.1, no loan account became NPA. He further admits that after the sanction of loan, accused No.1 submitted the report to the Regional Office.

35. It is further elicited that sale always depends upon the market condition, such sales would fluctuate depending upon the market condition. It is elicited that he was directed to investigate the account in respect of M/s.PPPL. He admits that accused No.1 did not sanction any loan to M/s. Chaitra Food Processing Mysore. It is also elicited that loan regarding letter of credit at Rs.10,00,000/- to M/s.PPPL was cleared. It is also elicited that Rs.1 Crore of bank guarantee was sanctioned by AGM at Regional Office Mysore and proposed by accused No.1. It is elicited that after the proposal was accepted by the Regional Office, loan was sanctioned on such proposal. It would mean

that Regional Office was concurred with accused No.1. It is also elicited that the duty was also on the Regional Office to ascertain the feasibility of the guarantee and to scrutinize the contract between accused No.2 and the NSIC. It is elicited that he does not know whether Rs.1.5 Crores was recovered from accused No.2 by conducting the auction of the properties secured. It is suggested that since the amount was recovered, the interest of the bank has not been jeopardized, and the same was denied. He admits that accused No.1 is nowhere concerned to Sai Export Bangalore. He further admits that L.S.Dinamani succeeded Lingappa. It is suggested that L.S.Dinamani and Lingappa were only responsible for irregularities, if any, and accused No.1 is no way concerned, and the said suggestion is denied. However, he admits that AGM was periodically visiting the bank and during such visit, it was the duty of the AGM to make inspection. It is also elicited that pre-sanction and post-sanction investigation are independent course by the sanctioning authority. It is elicited that such authorities should be independent, there shall not be inducement. It is further elicited that on such investigation, loan has to be sanctioned. It is also admitted that for the disbursement of the loan amount, there should be proper

monitoring. It is elicited that in the said bank there was a staff to that effect.

36. P.W.4, Officer at the Canara Bank, Mettagalli Branch, Mysore in his evidence he deposed that M/s. PPPL and M/s, Chaitra Food Processing were holding the accounts. He was enquired by the CBI. Through this witness Exs.P.16 to 54 are marked regarding the transaction taken place in the Branch. Project report and profile of both the concerns and memorandum of complete satisfaction of charge, account extract for the period from 2002 to 2005 in respect of both the firm, are marked.

37. In the cross-examination, it is elicited that he was working along with accused No.1. It is also elicited that he was not having the personal knowledge regarding the above loan transaction and the above documents. It is also elicited that accused No.2 was not the director of M/s.PPPL. Account No.123 of M/s.PPPL was not opened by accused No.2 and he is not having any idea when accused No.2 took over the charge. It is further elicited that while proposal was submitted to the Controlling Authority, it was scrutinized by the officials of the branch. He admits that the audit report was undergone scrutiny

in the branch. He admits that after accepting the said scrutiny, loan was sanctioned. He admits that periodical regular inspections were undertaken. But he cannot say how many inspections were undertaken. He admits that he has not gone through the said inspection reports.

38. P.W.5, Officer of Canara Bank, Mettagalli Branch, Mysore during December 2001 to May 2005 in his evidence he says that he identifies the handwriting and signatures of accused Nos.1 and 2 found in Exs.P.18, 20, 21, 25, 26, 28, 33, 34, 36, 37, 38 and 55 to 309. He was subjected to cross-examination.

39. In the cross-examination, he admits that accused No.1 sanctioned loan of Rs.7.5 lakhs on 18.10.2002 as cash credit and Rs.5 lakhs as machinery loan. Rs.10,00,000/- loan was sanctioned as inland letter of credit. He admits that for sanction of loan also there is a manual of instructions of the bank. He further admits that the said manual of instructions were followed at the time of sanctioning of loan. He admits that the fact of the sanction of loan was intimated to the Regional Office. He also did not find any letter from the Regional Office regarding exceeding of financial power by accused No.1. He

admits that for cash credit facility, movables were secured. He further admits that accused No.2 used to submit the statement regarding the stock secured. The branch used to conduct the inspection regarding the availability of the stock according to the statement submitted. He also admits that he has paid visit to godown 3-4 times to ascertain the availability of the stock. He further admits that stock was in accordance with the statement submitted and the cash credit loan sanctioned by accused No.1 was also within his sanctioning power. They also used to send the inspection report to Regional Office. It is further elicited that sanction of loan by accused No.1 was well within the knowledge of Regional Office. He admits that the Regional Manager Lingappa was paying visit to the Branch periodically. It is further elicited that during his visit, he used to pay visit to the godown and the loanies.

40. He admits that during his visit, he has not incorporated the adverse remarks regarding the irregularities, etc. He admits that the credit report was prepared by accused No.2 and the machinery loan granted to accused No.2 by accused No.1 has already been cleared. The bills drawn under the letter of credit has also been cleared. He further admits that

loan sanctioned by accused No.1 does not come under NPA. He admits that accused No.2 used to submit the projected balance, along with the report of the Chartered Accountant. He further admits that accused No.2 was getting actual balance sheet of the Company. He further admits that there may be variation in the projected balance and actual balance sheet, but there is no rule that they should be similar. He further admits that on the basis of the actual balance sheet, credit facility was enhanced and the Regional Office sanctioned the said loan. He also admits that he passed the cheques of accused No.2. He further admits that Chaitra Food Processing was having current account and he does not know when it was opened. It was elicited that accused No.2 had given personal guarantee apart from the hypothecation of plant and machinery. He admits that he also secured the immovable properties for the said loan and legal opinion was availed at the time of sanctioning of the loan. He admits that legal opinion was approved by the legal section. He admits that he is not having personal knowledge regarding documents marked.

41. P.W.6, Manager, Canara Bank, Mysore, in his evidence he says that he was enquired by the CBI and through

this witness documents Exs.P.15 and 310 are marked. In the cross-examination, it is elicited that the Regional Office was having the power to scrutinize the loan documents. It is also elicited that he had not verified the loan documents of accused No.2 since he was not working there at the relevant time. He admits that he was not having personal knowledge regarding sanction of the loan to accused No.2.

42. P.W.7, Senior Manager, Canara Bank, through this witness Exs.P.311, 221 to 233, 311 to 314, 234 to 253, 270 to 274 and 278 are marked. In the cross-examination, he admits that he is not having personal knowledge regarding loan sanctioned by accused No.1 and also not having personal knowledge regarding the contents of the documents.

43. P.W.8, Senior Manager, Canara Bank, through this witness Ex.P.12 – Employees Conduct Regulations, 1976 and Ex.P.4 – delegation of powers for the loans and advances are marked.

44. P.W.9, Assistant Commissioner, Commercial Tax, Mysore, in his evidence says that the person intended to pursue business within Karnataka require to avail Form No.1 and to

submit the duly filled for Assistant Commissioner, Commercial Tax for registration to whom KST number will be issued after the registration. The said person is required to submit the monthly returns in Form No.3 and annual returns in Form No.4. Through this witness got marked Exs.P.315 to 323, monthly returns of M/s.PPPL for the month of April 2000 to December 2000. The monthly returns of M/s.PPPL for the month of January 2000 and February 2000 are marked as Exs.P.324 and 325. Monthly returns for April 2001, May 2001, July 2001, September 2001 to December 2001, January 2002 to March 2002 are marked as Exs.P.326 to 336. The monthly returns for April 2002 to December 2002 are marked as Exs.P.337 to 345. The monthly returns for April 2003 to December 2003, January 2004 and February 2004 are marked as Exs.P.346 to 356. The monthly returns for April 2004, May 2004, July 2004, August 2004, October 2004 to December 2004, January 2005 to March 2005 are marked as Exs.P.357 to 367. The monthly returns for April 2003, May 2003, September 2003 and October 2003 are marked as Exs.P.368 to 371. In Ex.P.368, transaction shown for the month of April 2003 is Rs.18,73,985/-, however in the original statement for the month of April 2003 – Ex.P.346, zero

transaction is shown. Likewise in the copy of the statement for the month of May 2003, the transaction is shown at Rs.29,84,450/-, however in the original statement for the month of May 2003 in Ex.P.347, the transaction is shown as nil. In Ex.P.370, the monthly returns for the month of September 2003, the transaction is shown as Rs.1,48,97,326.50/-, however in the original statement for the month of September 2003 i.e., in Ex.P.351, the transaction is shown as Rs.48,97,336.50/-. Likewise in the copy of the returns for the month of October 2003n i.e., in Ex.P.371, the transaction is shown at Rs.76,40,690/-, however in the original statement for the month of October 2003 i.e., in Ex.P.352, the transaction is shown at Rs.46,40,690/-. His statement was recorded by the CBI officer. He was subjected to cross-examination.

45. In the cross-examination, it is elicited that he cannot say whether the figures shown in the copies of the returns are correct. He also admits that he was the final authority to keep the monthly returns which was subjected to scrutiny by the AG. The AG audited the above original returns. He admits that the AG has not observed any discrepancies in the original. The Bank Managers were not visiting to ascertain the correctness of the

statements. He further admits that there is no rule that the bank officer should pay visit to his office.

46. P.W.10, Manager, NSIC, got marked Exs.P.373 to 375, 161 to 164 and 376. In the cross-examination, he admits that he was one of the Committee member and he has not inspected the availability of the raw materials. He further admits that on the strength of the bills they were recommended and guarantee was examined.

47. P.W.11, Law Officer, Canara Bank, in his evidence says that he handed over certain documents to CBI. The letter of approval of bank guarantee forwarded to SSI Branch is marked as Ex.P.378. Document Ex.P.379 is also marked. In the cross-examination, he admits that Ex.P.379 is in the prescribed format of the bank and bank guarantee was approved by his office. The approval was without any amendment.

48. P.W.12 is the Chartered Accountant who conducted the audit of M/s.PPPL at the instance of accused No.2 in terms of Exs.P.31, 32 and 69. He says that in Ex.P.33 he has not put his signature. He identifies the signature of accused No.2. He has not verified the sales tax returns at the time of the said audit.

The CBI Officer recorded his statement. In the cross-examination, he admits that on verification of the books of account, he issued the audit certificate. He further admits that his Company prepared the project report as per Ex.P.33. The MD put his signature to Ex.P.33.

49. P.W.13 is the Retired GM, Canara Bank, who accorded sanction to prosecute accused No.1 in terms of Ex.P.380. In the cross-examination, he admits that he did not go through the service records of accused No.1 in detail, but claims gone through personal records of accused No.1.

50. P.W.14 is the Manager of Union Bank. In his evidence he says that he was called to the CBI Office in connection with another case. Inspector Shastri requested him to be a witness for obtaining the specimen signature of accused No.2 and he agreed and obtained the specimen signature of accused No.1 in terms of Ex.P.382. In the cross-examination, a suggestion was made that he was a stock witness to the CBI, and the same was denied.

51. P.W.15, Officer, Canara Bank, BIAL Branch, Bangalore, in his evidence he says that he was asked to be a

witness for the specimen signature of accused No.1 in terms of Ex.P.383. In the cross-examination, he admits that he has not received any letter in writing.

52. P.W.16, Divisional Manager, Canara Bank, speaks with regard to three term loans, one cash credit facility, besides the bank guarantee limits and supply bill limits. He identifies his signature on Exs.P.384 to 389, 108 to 168, 173 to 175, 212, 214 to 220, 391 to 417, 252, 253, 264, 269.

53. In the cross-examination, it is elicited that at the time of taking charge from accused No.1, he verified the loan accounts of M/s.PPPL. It is suggested that he paid visit to the warehouse, and the same was denied. It is elicited that he does not know whether the loans are repaid by the accused. He does not know whether the date of auction was intimated to M/s.PPPL. The auction was not conducted in his tenure. It is suggested that he himself sanctioned the loan to M/s. Sai Exports, and the same was denied. But he admits that at the tenure of accused No.1, the account of M/s.PPPL was not NPA. It is further elicited that while recommending they were convinced that the loan was to be sanctioned and arrived at the conclusion that account was

NPA by March 2005. He admits that the recommended proposal may not be accepted by the Regional Office and forwarded proposal may very well be accepted by the Regional Office. He admits that he has stated before the CBI Officer that one more opportunity to be accorded to accused No.2 by way of restructuring the account. He admits that Rs.1 Crore guarantee was also coming under the restructure. He admits that they accepted to restructure the loan account.

54. P.W.17, Senior Manager, Canara Bank. Through this witness document Ex.P.87 restructuring of loan of M/s.PPPL, which bears his signature is marked. In the cross-examination, it is admitted that accused No.1 was within his delegated power to sanction the loan. He admits that the guarantee recommended was also within the limit. It is elicited that accused No.1 was replying the query promptly. He further admits that loan of accused No.2 during the period of P.W.16 did not become NPA. He admits that whenever he has received the recommendations of the proposals, he used to place before the AGM. Whenever he undertook the scrutiny and have felt the doubt, he availed the clarification from accused No.1. He cannot say whether accused

No.1 has not shown any special favour to the loan account of accused No.2.

55. P.W.18 is the relative of accused No.2. In his evidence he says that accused No.2 was asking him to go and put his signature on the documents in the Canara Bank. Accordingly, he put the signature on the documents. He identifies his signature on Exs.P.419, 105, 107, 29 and 66. He claims that accused No.2 was looking after the business of M./s.PPPL. In the cross-examination, he admits that he was pursuing the work of packing of edible oil and accused No.2 was paying nominal salary to him. He does not know about the transaction of the said Company with the bank.

56. P.W.19, Senior Manager, Indian Overseas Bank, Chenna, in his evidence he says that Bharath Overseas Bank was merged with the Indian Overseas Bank. As per the direction of the Chief Manager, he went to the CBI office and produced the documents Exs.P.420 and 421. The documents at Exs.P.422 to 425 are marked through this witness. In the cross-examination, he admits that the said account was not opened at his time,

however, the same was opened prior to him assuming the charge.

57. P.W.20, handwriting expert in his evidence he says that he has received the question documents 1 to 54, S1 to S15 of accused No.2, S16 to S25 of accused No.1, S26 to S36 of one H. Narashimanaika, S37 to 47 of L.S. Dinamani, S48 to S57 of K.R.Lingappa and S58 to S67 of Madhu for examination and comparison. He has compared the standard documents S1 to S67 with the questioned documents 1 to 54 by using microscope, besides using hand magnifier glass. On examining, he found they are similar in nature in respect of accused No.1, accused No.2 and H. Narashimanaika. The signature of L.S.Dinamani and Lingappa also compared with admitted signature and so also P.W.18 Madhu. His opinion is marked as Ex.P.426. The reasoning is marked as Ex.P.427.

58. In the cross-examination, he admits that he has not taken his micro photos adopting the comparison. It is suggested that without availing the micro photos one could not compare the disputed and admitted documents, and the same was denied. It is elicited that handwritings of particular persons

would vary from time to time perhaps such writings depends upon the care that has taken by the writer, the speed, mental condition and physical condition also play the vital role. It is elicited that he has not compared all the questioned documents with admitted and specimen documents. He further admits that he has undertaken his work as per the questionnaires.

59. P.W.21, Investigating Officer, in his evidence he says that immediately after registering the case he was entrusted to investigate the case and thereafter he has obtained the search warrant. He also paid visit to the house of accused No.2, wherein he conducted the search and the same is marked as Ex.P.429. At the time of conducting the search, two independent panch witnesses and wife of accused No.2 were present and he has put his signature. He also conducted the search in the residence of accused No.1 as well as in the factory premises of accused No.2. Three search lists are marked as Exs.P.430, 431 and 432. He also recorded the statement of Lingappa and accused No.2 and collected the documents from P.W.4 and 16 so also from P.W.6. He also recorded the statement of the witnesses. After obtaining the sanction order, he filed the charge-sheet.

60. In the cross-examination, he admits that he has not received any complaint from the Vigilance Department of Canara Bank. In the FIR, K.R.Lingappa, AGM, was also accused and he was having supervisory power over accused No.1. He also admits that there was sufficient material against K.R.Lingappa for showing him as accused No.1. He also admits that he has recorded the statement of K.R.Lingappa and not cited him as a witness. It is suggested that by way of not citing Lingappa as a witness, he has deprived the valuable right of the accused to cross-examine him on account of which great prejudice was caused to him, and the said suggestion was denied. It is suggested that accused No.1 was within his power to sanction the loan and he replies that he does not remember the same. He admits that he has not visited the Sales Tax Office and Commercial Tax office and not recorded the statements of the officers or officials of the said offices. He admits that accused No.2 mortgaged immovable properties for securing the loan and he says that he does not remember whether the said properties were not having any encumbrance. He admits that after the conclusion of the investigation, he availed the order of sanction to prosecute accused No.1. He admits that he has not paid any

visit to any other places for recording the statements of the witnesses, their statements were recorded in his office. He admits that for other searches, the independent witnesses have not cited in the search list. He admits that no incriminating documents were found in the house of accused No.1 during the search. It is elicited that he does not know whether the entire loan amount was recovered by conducting the auction of the properties of accused No.2.

61. Having perused the oral and documentary evidence placed on record, this Court has to re-appreciate as to whether the prosecution has made out the case against the accused. Before appreciating the oral and documentary evidence, since the charges leveled against accused are criminal conspiracy, forgery and using of forged documents as genuine, this Court would like to make a mention that while considering the case of criminal conspiracy and forgery, due care and caution has to be taken while appreciating the evidence. It is settled law that in a case of criminal conspiracy, the Court has to take note of the fact that while proving the case of conspiracy, there cannot be a direct evidence and the same has to be considered by circumstantial evidence. The Court also has to take note as to

whether the loan was fully secured by collateral security and whether there was an intention on the part of the accused to cheat the bank and while convicting the accused, it requires proof beyond reasonable doubt and that there cannot be any conviction based on mere conjuncture or surmises and in order to consider the same, whether the prosecution was able to prove the case against the accused has to be looked into.

62. Learned counsel appearing for the accused relied upon several judgments with regard to forgery and also criminal conspiracy. In the light of the principles laid down in the judgments referred supra, this Court has to re-appreciate the evidence. The prosecution mainly relies upon the evidence of P.W.3 – Chief Manager, Canara Bank, SSI Branch, Mettagalli, Mysore, regarding irregularities in connection with accounts of M/s. PPPL. In his evidence, he says that he conducted the investigation and also additional investigation with regard to supply bills limits and bank guarantee limits. In the cross-examination, he categorically admits that accused No.1 had sanctioned OCC limits term loan and one Letter of Credit, but he claims that only with regard to letter of credit, he exceeded his power. However, regarding the other loans, he had not exceeded

his power. He also admits that the fact of sanction of the loan was to be intimated to the Regional Office. It is further admitted that after the relieving of accused No.1 from the Bank, if any loan was sanctioned, he is not responsible. During the period of accused No.1, no loan had become NPA. The only incriminating evidence available against the accused through this witness is that accused No.1 exceeded his limit with regard to the Letter of Credit. He categorically admits that after sanction of the loan, the same was reported to the Regional Office. It is also important to note that P.W.3 categorically says that accused No.1 had not sanctioned any loan to M/s. Chaithra Food Processing, Mysore. He also admits that loan regarding letter of credit at Rs.10,00,000/- to M/s. PPPL was cleared. Though P.W.3 says that accused No.1 exceeded the limit, it is clear that letter of credit was secured and hence, there cannot be any incriminating evidence against accused No.1 that he exceeded his limit. The other witnesses P.Ws.5 and 17 categorically admits that accused No.1 not exceeded his limit in letter of credit loan also. It is also elicited that the bank guarantee of Rs.1 Crore was sanctioned by AGM, Regional Office, Mysore, on the proposal of accused No.1. It is elicited that if the proposal of accused No.1 is

accepted by the Regional Office and the loan has sanctioned on such proposal, it would mean that Regional Office had concurred with accused No.1. It is further elicited that duty was also on the Regional Office to ascertain the feasibility of guarantee and to scrutinize the contract between accused No.2 and NSIC. These admissions takes away the case of the prosecution against accused No.1.

63. P.W.3 also admits that accused No.1 is in no way concerned to Sai Export, Bengaluru and that L.S.Dinamani succeeded Lingappa. The AGM was paying visit periodically to the Bank and during such visit, it was the duty of the AGM to make the inspection. Having perused the answers elicited from the mouth of P.W.3, no incriminating evidence is found against accused Nos.1 and 2. In so far as accused No.2 is concerned, it is elicited that authorities should be independent and there cannot be any inducement by accused No.2. He further admits that on such investigation only, the loan has to be sanctioned and for disbursement of loan amount, there should be proper monitoring and there is a staff to examine with regard to any inducement by accused No.2. The evidence of P.W.3 is not helpful to the prosecution even against accused No.2.

64. Though prosecution relies upon the evidence of P.W.4, in the cross-examination, he categorically admits that he was not having personal knowledge regarding the loan transaction and so also with regard to the documents. The evidence of P.W.4 is also not helpful to the prosecution. P.W.4 categorically admits that periodical regular inspection were undertaken and also that while proposal was submitted to the Controlling Authority, it was scrutinized by the officials of the Branch and audit report of accused No.2 Company was also scrutinized and after scrutiny only loan was sanction to accused No.2. Having perused the evidence of P.W.4 also, first of all he is not having any personal knowledge with regard to the transaction and also with regard to the documents and his evidence is not helpful to the prosecution with regard to criminal conspiracy as well as forgery and creation of documents.

65. The prosecution mainly relies upon the evidence of P.W.5 and on perusal of the same, he identifies the handwriting and signatures of accused No.1 and accused No.2 in respect of several documents. There is no dispute with regard to the execution of documents by the defence while availing loan and making transaction. Through this witness, number of documents

were marked and no incriminating evidence is found with regard to the allegation against the accused persons. But in the cross-examination by the learned counsel for accused No.1, it is elicited that the manual of instructions were followed at the time of sanction of loan and also he categorically admits that the same was intimated to the Regional Office. He categorically admits that he did not find any letter from the Regional Office regarding exceeding of the financial power by accused No.1. He also admits that for cash credit facility, movables were secured and accused No.2 used to submit the statement regarding the stock secured. The branch also used to conduct the inspection regarding the availability of the stock.

66. P.W.5 categorically admits that he paid the visit to godown for 3 to 4 times to ascertain the availability of the stock and the stock was also in accordance with the statement submitted by accused No.2. P.W.5 categorically admits that cash credit limit was within his sanctioning power. Though P.W.3 admits that accused No.1 exceeded his power while sanctioning the letter of credit, P.W.5 categorically states that he did not exceed the power. P.W.5 further admits that the sanction of the loan by accused No.1 was well within the knowledge of Regional

Office. P.W.5 admits that Regional Manager also inspected the Branch periodically and inspected the godown and nothing has been incorporated in the visit book regarding the irregularities. The credit report was also prepared by accused No.2. The machinery loan granted to accused No.2 by accused No.1 had already been cleared and so also the bills drawn under letter of credit. The loan sanctioned by accused No.1 has not gone under NPA. He categorically admits that the variation in the projected balance and actual balance sheet normally occurs. On perusal of the entire evidence of P.W.5, he categorically admits that the transactions made by accused No.2 that accused No.1 was within the limit and verified the stock and the same tallied with the statement submitted by accused No.2. P.W.5 also categorically admits that accused No.2 gave the personal guarantee apart from the hypothecation of plant and machinery and the loan was secured by immoveable properties. Prior to sanction of the loan, legal opinion was also obtained and the same is approved by Legal Section. The admission of P.W.5 that he is not having personal knowledge regarding the documents marked, takes away the entire case of prosecution. Hence, in

order to substantiate the contention that the documents are created and forged, there is no any incriminating evidence.

67. The prosecution mainly relies upon the evidence of P.W.6, who categorically admits that the Regional Office was having power to scrutinize the loan documents and also that he is not having personal knowledge with regard to sanction of the loan to accused No.2 so also P.W.7 says that he is not having personal knowledge with regard to loan sanctioned by accused No.1 and so also with regard to the contents of the documents. With regard to the creation of document also, this witness has not spoken anything.

68. The prosecution relies upon the evidence of P.W.9 regarding the production of statements and furnishing of returns with the Commercial Tax Office and no doubt, through this witness, several documents were marked, particularly, Exs.P368 to P371 that there are variations in the statement of the accused No.2. In the cross-examination, he admits that he cannot say as to whether the figures shown in the copies of the returns are correct or not though he deposes that there are variations. But he categorically says that he cannot say as to whether the

figures shown in the copy of the returns are correct. There is a provision in the Act that monthly returns have to be submitted to his office and he was making the scrutiny of the monthly returns. He was the final authority to keep the monthly returns which were subjected to the scrutiny by AG and AG audited the above original returns. The AG has not observed any discrepancies in the original. Having taken note of the answers elicited from the mouth of P.W.9, it is clear that he cannot say as to whether the figures shown in the copies of the returns are correct or not and AG not observed any discrepancies in the original. In order to prove that those documents are forged and placed before the bank, there is no cogent evidence. The answers elicited from the mouth of P.W.9 is clear that though he was the final authority to keep the monthly returns, the power was subjected to the scrutiny by AG and the same was audited. The evidence of P.W.9 is also not helpful to the prosecution to arrive at the conclusion that the documents are created and forged in order to avail the loan facility.

69. P.W.10 also in the cross-examination admits that on the strength of the bills, they recommended and guarantee was also examined. The bank guarantee was approved by the office

of P.W.11 and approval was without any amendment. The prosecution relies upon the evidence of P.W.12, who is the Chartered Accountant, particularly with regard to the project report of M/s. PPPL which is marked as Ex.P33 and he identifies the signature of accused No.2. He categorically says that he has not verified the sales tax returns at the time of said audit. But in the cross-examination, he admits that on the verification of the books of accounts, he had issued the audit certificate. He also admits that his Company has prepared the project report as per Ex.P33. Managing Director has put his signature to Ex.P33. Though P.W.12 claims that he has not put his signature, he categorically admits that Ex.P33 was prepared by his Company and Managing Director has put his signature.

70. It is not the case of the prosecution that accused No.2 had forged either the signature of P.W.10 or the signature of the Managing Director and in order to prove that accused had forged the documents, no material is placed. The evidence of P.W.13 is with regard to granting of sanction and the defence has not disputed the validity of the sanction. P.W.14 and P.W.15 are the witnesses who were present at the time of taking the signature of accused No.1 and accused No.2. The prosecution

relies upon the evidence of P.W.20-handwriting expert who has given the opinion in respect of questioned documents and admitted signatures. In his evidence, he says that the signatures which were obtained and sent to him and the signatures found on the documents were similar in nature. In the cross-examination, he admits that he has not taken micro photos adopting the comparison. He also admits the handwriting of the particular person would vary from time to time perhaps such writings depends upon the care that has been taken by the writer, the speed, mental condition and physical conditions also play vital role. He further admits that he has not compared all the questioned documents with admitted and specimen documents. He has undertaken his work as per the questionnaire.

71. Though prosecution mainly relies upon the evidence of P.Ws.20, 14 and 15 with regard to obtaining the specimen signatures, the opinion of P.W.20 and the answers elicited from his mouth that he has not compared all the questioned documents with admitted and specimen documents, takes away the case of the prosecution. P.W.20 has undertaken the work as per the questionnaire and also he has not taken any micro

photos while adopting the comparison. It is also settled law that the prosecution cannot rely upon only the evidence of the handwriting expert and the same is also directory. In view of the admission elicited from the mouth of P.W.20, I do not find any accurate report of the handwriting expert. I have already pointed out that the only case against accused No.2 is that he had placed the documents to get the higher loan creating the documents and in order to prove the said charge also, none of the witnesses speak with regard to the same. The witnesses who have been examined categorically says that they are not personally aware of either of the transaction or the documents. First the prosecution has to prove the documents, which the accused relied upon in order to get the loan. No specific charge regarding the same. I have already pointed out that the evidence of Commercial Tax Officer is also not helpful to the case of the prosecution. He is not the signatory to the said documents and the prosecution also got marked those documents through the Commercial Tax Officer. Mere marking of documents is not enough and the same has to be proved.

72. The prosecution relies upon the evidence of Investigating Officer, who conducted the investigation and

through this witness, search lists were marked as Exs.P429 to 432. In the cross-examination, he categorically admits that in the FIR, AGM was shown as accused No.1 and also he categorically admits that the said K.R.Lingappa was having superior power over the accused No.1. There were sufficient materials against him for showing him as accused No.1. But in the case on hand, though he was accused No.1 in FIR after filing the charge sheet, he was left out and even he has not been examined before the Trial Court. He also admits that he has not cited him as a witness though he recorded the statement of K.R. Lingappa. P.W.21 also admits that accused No.2 mortgaged the immovable properties to secure the loan and also he admits that he has not paid any visit to other places with regard to the statement of the witnesses. But he recorded the statement of the witnesses in his office and he further admits that for other searches, the independent witnesses have not been cited in the search list. It is also important to note that he categorically admits that no incriminating documents were found in the house of accused No.1 during the search. Though the prosecution made its effort to prove the case by examining P.W.1 to P.W.21, the witnesses who have been examined categorically admitted that

accused No.1 sanctioned the loan amount to accused No.2 within his limit and not exceeded his limit.

73. Having perused the entire evidence of prosecution, none of the witnesses speak with regard to the production of documents, which have been forged and also there is no any incriminating evidence that based on those documents, accused No.1 has acted upon. It is evident from the records that loan was secured including the hypothecation of moveable and immoveable properties and apart from that personal guarantee was also given. Accused No.1, in order to secure the loan, obtained collateral security of immoveable properties. It is also evident that the property is mortgaged in favour of the Bank and during the period of accused No.1, the account of accused No.2 had not become NPA. In order to prove the criminal conspiracy, forgery and cheating, no evidence is on record. To invoking the offence of cheating, there must be an intention to cheat the Bank. It is also elicited that the amount which accused No.1 had advanced in favour of accused No.2 was also secured. On perusal of the entire evidence of P.W.1 to P.W.21 and also the answers elicited from the mouth of prosecution witness, it is evident that accused No.1 had taken care of while advancing the

amount and also while recommending the proposal, he has verified the records and thereafter, the loan was sanctioned. It is also elicited that the account furnished by accused No.2 tallied with the statement furnished to the Bank. It is also emerged in the evidence that the said stock statement given by the accused was also periodically verified by the witnesses and in the visit of Regional Manager also, nothing is incorporated in the book with regard to irregularities and when all these answers are elicited from the mouth of prosecution witnesses, the Trial Court ought not to have convicted accused Nos.1 and 2.

74. On perusal of entire evidence and also the reasoning assigned by the Trial Court, it depicts that the Trial Court had taken note of only the chief evidence and failed to consider the answers elicited from the mouth of prosecution witnesses while analyzing the evidence. But the Trial Court ought to have considered both examination-in-chief as well as cross-examination. No where in the reasoning, the Trial Court has discussed with regard to the answers elicited from the mouth of prosecution witnesses in the cross-examination. Instead of analyzing the evidence in its entirety, the Trial Court has grossly erred in proceeding to pass an order of conviction. The charges

leveled against accused No.1 is that with criminal conspiracy, made official favour to accused No.2 in advancing the loan. But there is no incriminating evidence before the Court in support of the same. The allegation against accused No.2 is that he created the documents and relied upon those documents in order to avail loan and to substantiate that said charge also, there is no any material before the Court. Though prosecution examined P.W.20, in order to come to the conclusion that there was a criminal conspiracy between accused No.1 and accused No.2 and with an intention to cheat the bank, documents were created and in the absence of material, the Trial Court ought not to have convicted accused Nos.1 and 2.

75. I have already pointed that loan was secured by offering immoveable properties as collateral security and hypothecation as security in respect of movable properties i.e., machinery and plants, so also personal guarantee was offered. when such being the case, there cannot be any criminal conspiracy between accused No.1 and accused No.2. It is settled law that in order to invoke the offence of criminal conspiracy though direct evidence is not possible, the surrounding circumstantial evidence should support the case of the

prosecution, which is not forthcoming in the case on hand. Thus, the Trial Judge has erred in not appreciating the evidence *in toto* and instead given more credence to the chief evidence and not discussed the answers elicited from the mouth of prosecution witnesses. Hence, it amounts to perversity as the Trial Court has not considered the material on record in right perspective. Therefore, it requires interference of this Court to set aside the judgment of conviction passed against accused Nos.1 and 2.

76. In view of the discussion made above, I pass the following:

ORDER

(i) The appeals are allowed.

(ii) The judgment of conviction and sentence, dated 05.02.2011 passed in Special C.C.No.10/2007, on the file of the XXXII Additional City Civil and Sessions Judge and Special Judge for CBI Cases, Bangalore (CCH-34), is hereby set aside.

(iii) Accused No.1 is acquitted for the offence punishable under Sections 120B, 468, 471, 420 and 409 of IPC and Section 13(1)(d) read

with Section 13(2) of Prevention of Corruption Act, 1988.

(iv) Accused No.2 is acquitted for the offence punishable under Sections 120B, 468, 471 and 420 of IPC.

(iv) The fine amount, if any, deposited before the Trial Court, shall be refunded to accused Nos.1 and 2.

(v) Registry is directed to transmit the record to Trial Court forthwith.

Sd/-
JUDGE

MD/PYR