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.1002/2010
C/W
CRIMINAL APPEAL No.1024/2010

IN CRIMINAL APPEAL No.1002/2010:

BETWEEN:

A. RAMANUJA
S/O LATE A. CHAKRAVARTHY
D/O NO.1436, 17TH MAIN
II PHASE, J.P. NAGAR
BENGALURU – 560 078. ... APPELLANT

(BY SRI. PHANIRAJ KASHYAP, ADVOCATE)

AND:

STATE BY CBI
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 JUDGMENT OF CONVICTION AND ORDER ON SENTENCE DATED 31.08.2010 PASSED BY THE XXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE FOR CBI CASES, BENGALURU IN SPL.C.C.NO.18/2000-CONVICTING THE APPELLANT/ACCUSED No.1 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 120-B, 420, 468 AND 471 OF IPC AND SEC.13(2) READ WITH 13(1)(d) OF PREVENTION OF CORRUPTION ACT, 1988 AND ETC.

IN CRIMINAL APPEAL No.1024/2010

BETWEEN:

MR. B.L. SRIDHAR
AGED ABOUT 45 YEARS
S/O B V LAKSHMANA SHETTY
R/AT NO.140, CHICK BAZAR ROAD
SHIVAJINAGAR
BENGALURU – 560 051 ... APPELLANT

(BY SRI. SUNIL S. RAO, ADVOCATE FOR
SRI. T. SESHAGIRI RAO, ADVOCATE)

AND:

STATE OF KARNATAKA
REPRESENTED BY CBI
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 JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 31.08.2010 PASSED BY THE XXI ADDITIONAL CITY CIVIL AND S.J. AND SPL. JUDGE FOR CBI CASES, BENGALURU IN SPL.C.C.NO.18/2000 CONVICTING THE APPELLANT/ACCUSED No.2 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 120-B, 420, 468 AND 471 OF IPC.

THESE CRIMINAL APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 07.12.2020, 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 order on sentence dated 31.08.2010 passed in Spl.CC.No.18/2000, on the file of XXI Additional City Civil and Sessions Judge and Special Judge for CBI Cases, Bengaluru (CCC-4).

2. The factual matrix of the case is that between May 1993 and November 1994, accused No.1 – A. Ramanuja i.e., the appellant in Crl.A.No.1002/2010, while functioning as a Public Servant in the capacity of Branch Manager of State Bank of Mysore, Kanakapura Road Branch, Bengaluru, conspired with B.L.Sreedhar, who arraigned as accused No.2–appellant in Crl.A.No.1024/2010, Proprietor of M/s. Sanjay Enterprises; Sri Nedumaran (Accused No.3), who claimed to be the Proprietor of M/s. Amman Rubber Products, Hosur, who was also convicted and he had preferred an appeal in Crl.A.No.1025/2010 and he passed away during the pendency of the appeal. Hence, the appeal was abated vide order dated 15.09.2020. Accused No.4-Venkatesh, who indulged in creating of fabricated documents along with accused No.2 to cheat the State Bank of Mysore, Kanakapura Road Branch, Bangalore, and all of them joined together fraudulently availing and utilising over draft facility against supply bills submitted by M/s. Sanjay Enterprises for having purportedly supplied tread Rubber to M/s. Amman Rubber Products, Hosur and to derive undue pecuniary advantage for themselves. In furtherance of criminal conspiracy accused No.1 induced the Regional Office, Bangalore Zone,

Region–1 to sanction over draft facility to M/s. Sanjay Enterprises against the forged supply bills to the tune of Rs.7.50 Lakhs by misleading Regional Office through false representation of supply of tread Rubber to M/s. Annai Sathya Transport Corporation, Dharmapuri Division, Tamil Nadu and caused wrongful loss to the tune of Rs.9,84,856/- and made corresponding wrongful gain to himself and others.

3. The charge levelled against the first accused is that he abused his official position with a fraudulent intention of benefiting the firm of accused No.2 and sent advance proposal to the tune of Rs.7.50 Lakhs in respect of OD facility limit against forged supply bills of M/s. Sanjay Enterprises. Subsequently, he sent two more recommendations to Regional Office for sanction of facilities to accused No.2's firm along with fabricated documents. The advice of Regional Office to verify the credentials of accused No.2's firm regarding the business activities before sending the proposal was ignored by accused No.1 and accused No.1 chose to submit false report to Regional Office stating that accused No.2's firm was supplying Rubber Products to Government undertakings. Accused No.2's firm never supplied any Rubber Products to any Government or any

other firms. Based on the recommendation and false report of accused No.1, Regional Office sanctioned OD facility to the tune of Rs.7.50 lakhs to accused No.2's firm. As part of the conspiracy, accused No.2 with the aid of accused No.3 opened an account in the name of non-existing firm M/s. Amman Rubber Products at Hosur Branch. Subsequently, accused No.2 with the help of accused No.4 arranged forged title deeds and did the documentation with the Bank. Knowing fully well that these documents were fabricated, accused No.1 allowed accused No.2 to use such fabricated title deeds as collateral security. Thereafter, accused No.2 produced 11 supply bills purporting to evidence supply of Tread Rubber to M/s. Amman Rubber Products standing in the name of accused No.3, to the tune of Rs.12,32,300/-, out of which only two were realized and the remaining nine supply bills were returned unpaid.

4. The said overt-acts of the accused persons caused wrongful loss to the tune of Rs.9,84,856/- to State Bank of Mysore, Kanakapura Road Branch, Bangalore and accused obtained corresponding wrongful gain for themselves. The overt-acts of accused Nos.1 to 4 attract the offences punishable under Section 120B read with Sections, 420, 468 and 471 of IPC and

Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 ('the PC Act' for short). The overt-acts attributed to accused No.2 would attract the offences punishable under Section 120B read with Sections 420, 468 and 471 of IPC and the role essayed by accused No.3 would entail criminal liability respecting the offences under Section 120B read with Section 420 of IPC and the indictment levelled against accused No.4 is for the offences punishable under Section 120B read with Sections 419, 420, 468 and 471 of IPC.

5. The accused persons were secured before the Trial Court and they did not plead guilty and claimed the trial. Hence, the prosecution in order to substantiate the charges levelled against them, examined PWs.1 to 18 and got marked the documents as Exs.P1 to 167. The Trial Court recorded 313 statements of accused persons and they have not led any defense evidence.

6. The Trial Court after considering both oral and documentary evidence placed on record, convicted accused No.1 for the offences punishable under Sections 120B, 420, 468 and 471 of IPC and also Section 13(2) read with Section 13(1)(d) of

the PC Act and accused No.2 has been convicted for the offences punishable under Sections 120B, 420, 468 and 471 of IPC. Accused No.1 was sentenced to undergo simple imprisonment for 2 years and directed to pay a fine of Rs.20,000/- each for the offences punishable under Sections 120B, 420, 468, 471 of IPC and also Section 13(2) read with Section 13(1)(d) of the PC Act and in default of payment of fine amount in each case, he shall undergo simple imprisonment for a period of six months. Accused No.2 was sentenced to undergo simple imprisonment for a period of 3 years and directed to pay a fine of Rs.20,000/- each for the offences punishable under Sections 120B, 420, 468, 471 of IPC and in default of payment of fine amount in each case, he shall undergo simple imprisonment for a period of six months.

7. Being aggrieved by the Judgment of conviction and order on sentence, accused No.1 in Crl.A.No.1002/2010 would contend that the Bank circulars marked at Exs.D1 and D2 would clearly disclose the fundamental distinction between the two types of loan facility. In the bill discounting facility, the party should offer security and every bill discount should be supported by a lorry or railway receipt, whereas, in supply bills which is

with clean advance. The borrower need not produce the railway receipt or the lorry receipt or supply invoice. Only on production of delivery note acknowledged by the buyer, the bill is discounted. The supply bill facility is granted only to a long standing customer with proven credibility. Accused No.1 only based on supply bills recommended for advancing the loan. In the case on hand, there is no bill of exchange, no railway receipt or lorry receipt and no supply of invoices. The borrower only produces copy of the delivery note acknowledged by the buyer. This is risky that is why supply bills are called as 'clean advances', they are not 'self liquidating debts'. The reason is the buyer if he has already made advances payment will deduct all those amount putting the banker into difficulty. If Bank would have sanctioned bill discounting facility as proposed by accused No.1 the Bank's advance would have been safe and the whole incident could have been avoided.

8. The evidence of P.W.8, Vigilance Official of the Bank would corroborate the distinct features of the bill discounting and supply bill discounting. The alleged fraud is basically committed on account of the act of P.W.1. The investigating Agency

conveniently made the accused as scapegoat and P.W.1 is let off. The accused No.1 is not guilty of any offence.

9. The evidence adduced by the prosecution discloses that accused No.1 had only sent the proposal of the loan application. The actual discounting of bills and loan discount is done by Ajit Prasad. The evidence of P.W.8 discloses that Ajit Prasad had been diligent and vigilant while discounting the bills. The fraudulent claim bills could have been detected and loss could have been avoided.

10. The evidence on record discloses that it was in the discretion of PW.1 in granting the supply bill discounting contrary to the recommendation discount bill by accused No.1 and indiscriminate discounting by Ajit Prasad that enable the other accused to defraud the Bank.

11. The prosecution has utterly failed to prove the ingredients of Section 13(1)(d)(ii) of the PC Act. The facts disclose that the proposal for sanctioning of loan has not enabled accused No.2 to take pecuniary advantage. It is discounting of bills by Ajit Prasad is the main reason for getting pecuniary advantage. The said Ajit Prasad is not prosecuted for the illegal

lapses committed by him. That apart, he is not even cited as a witness.

12. The case of the prosecution is that accused No.2 did not have any business establishment. But the evidence of P.W.8 discloses that the report of Ajit Prasad does disclose that accused No.2 had functioning unit at No.4/2, Basavapura, Gottigere, Bengaluru. P.W.8, also has stated that he did make enquiries with all the concerned like M/s. Annai Sathya Transport Corporation at Hosur and submitted a report to the Head Office. The said report is not produced and marked before the Court.

13. P.W.9 is a lower rung Officer of M/s. Annai Sathya Transport Corporation and his evidence is to the effect that the Unit at Hosur has no confidence to approve the conduct and make payment for supply of treaded Rubber. He says the Head Office at Dharmapuri will deal with these kinds of matters. His evidence does not categorically reveal out that there is no provision to supply treaded Rubber at Hosur Unit. The letter at Ex.P169 is marked through P.W.9. The Court while marking the document has observed that the marking does not prove the contents. The author of Ex.P169 is not cited and examined.

Therefore, the contents of Ex.P169 cannot be read as evidence. Ex.P9 series are the invoices of accused No.2 for having supplied the treaded rubber from M/s. Annai Sathya Transport Corporation. The document–Ex.P9 series are xerox documents. The said documents are not even confronted to P.W.9 to deny the fact that the said document does not bear the seal and signature of the Unit of M/s. Annai Sathya Transport Corporation at Hosur.

14. The evidence of P.Ws.7 and 13, who are the Commercial Tax Officers. They say only the address of the Establishment does not come within the jurisdiction of 8th Circle or 8(1) Circle. Therefore, the evidence of those witnesses is of no avail to prove that accused No.1 had recommended for the loan sanction facility on a fabricated document.

15. The evidence of PW.1 discloses that accused No.1 had taken proper steps to secure the facility by taking movable property of one Venkataswamy. The said act was bonafide and a sound step taken to secure the loan properly. The above circumstances would disclose that if at all for committing the offence, it should be fixed on P.W.1 and Ajit Prasad and not

against accused No.1. He had only attended the formalities of loan processing, which was only a preliminary act. There was absolutely no scope for the other accused persons to defraud the Bank. It is only at the time of discounting of the supply bill, the fraud has taken place. The mere recommendation does not attract the provisions of the PC Act. The Trial Court has misread the evidence and grossly erred in convicting the accused.

16. The learned counsel in support of his arguments reiterated the grounds urged in the appeal. The learned counsel in his oral arguments also would submit that Exs.D1 and D2 are confronted to the prosecution witnesses and those documents are the circulars of the Bank and witnesses also admitted the same.

17. The learned counsel appearing for the appellant would submit that in terms of Ex.P1, the recommendation made by accused No.1 for advancing the loan for bill discounting was struck off and written as OD against supply bills and the same was done in the Regional Office. Accused No.1 only had recommended for sanctioning of loan for bill discounting and the loan was not sanctioned as per his recommendation instead of

OD facility was sanctioned by strucking of the recommendations of accused No.1 and when the same has been done by the Regional Office, P.W.1 is the real culprit and only this appellant has made scapegoat except making recommendation he has not done anything.

18. The case of the prosecution is that Ex.P9 series documents are created and the documents-Exs.P140 and 141 are the reports filed by one Ajit Prasad. It is clear that the firm is in existence, which confirms the existence of accused No.2. The offence under Section 13 of the PC Act cannot be invoked against accused No.1 and the charge levelled against accused No.1 has not been proved. Though the prosecution relies upon the recovery and recovery mahazar witnesses, no independent witnesses have been examined. Exs.P8 and P9 are not proved. The Trial Judge has read only the chief evidence of the prosecution and not considered the answers elicited in the cross-examination and defense of the accused. The bills discounting was also done by the subsequent Manager and not by accused No.1.

19. The learned counsel for accused No.1 in support of his argument relied upon the judgment of the Karnataka High Court in the case of **N.R. BHAT v. STATE BY CBI/SPE, BANGALORE** reported in **2016 CRI.L.J.3317.** Referring this judgment, the learned counsel brought to the notice of this Court paragraph No.13 of the judgment and would submit that this Court has made an observation in the judgment that in the light of non-submission of the report said to have been prepared by Shivaraman which is the basis for the bank to suspect the role of accused Nos.1 and 2, much credence cannot be attached to the evidence of Shivaraman. On the other hand, an adverse inference under Section 114(g) of the Evidence Act will have to be drawn for not producing a very vital report submitted by Shivaraman, to the investigating officer. That report must necessarily have contained all the details relating to the documents verified by him and the statements or information given to him by the staff of the branch. The learned counsel referring this judgment would submit that in the case on hand also though the prosecution claims the vigilance report, the same has not been produced and the said report is the basis to

proceed against the accused herein and in the absence of the said report, there cannot be any conviction against the accused.

20. The learned counsel also relied upon the judgment of Kerala High Court in the case of **RAJEEVAN ASWATHY, PATTATHANAM KADAPPAKADA QUILON v. SUPERINTENDENT OF POLICE** reported in **2011 CRI. L. J. 2801.** Referring this judgment, the learned counsel brought to the notice of this Court paragraph Nos.16, 19, 21, 24, 32 and 33 and would submit that the accused, a Bank Manager competent to sanction loan allegedly obtained pecuniary advantage for co-accused by sanctioning loans on false application and false quotations. Loans, however found to be fully secured by collateral security. Thus, intention to cheat the bank cannot be inferred. Senior Officer of bank who had conducted pre-sanction inspection and recommended to sanction loans was exonerated by Investigating Officer. Accused Bank Manager who sanctioned loans on such recommendation and after conducting proper enquiries and pre-sanction inspection and on strength of CRs, legal opinion etc., cannot be said to have sanctioned loans dishonestly and without proper verification. Amounts involved were also not large enough to justify investigation and

prosecution. The Trial Court also had not followed certain requirements of law and held that the accused is entitled for acquittal. The learned counsel relying upon this judgment would submit that accused No.1 only recommended for sanction of the loan and he did not sanction the loan and P.W.1 sanctioned the loan on different head and not on the recommendation of accused No.1. Hence, cannot find fault with accused No.1.

21. The learned counsel also relied upon the judgment of the Apex Court in the case of **SUJIT BISWAS v. STATE OF ASSAM** reported in **(2013) 12 SCC 406.** Referring this judgment, the learned counsel brought to the notice of this Court paragraph Nos.13 to 19 regarding distinction between proof beyond reasonable doubt and suspicion, examined – Need for proof beyond reasonable doubt – The principles reiterated – Duty of Court to ensure that mere conjectures or suspicion do not take place of legal proof – Clear, cogent and unimpeachable evidence produced by prosecution, reiterated, is a must, before accused is condemned as convict – In the present case of circumstantial evidence, guilt of appellant not proved beyond reasonable doubt, hence the judgment of conviction was reversed. The learned counsel referring this judgment would

submit that in order to convict the accused, it requires the proof beyond reasonable doubt and there cannot be any conviction based on conjectures or suspicion in the absence of clear, cogent and unimpeachable evidence and in the case on hand also there is no clear, cogent and unimpeachable evidence placed before the prosecution.

22. The learned counsel also relied upon the judgment of the Apex Court in the case of **SUBRAMANIAN SWAMY v. A. RAJA** reported in **(2012) 9 SCC 257.** Referring this judgment, the learned counsel appearing for accused No.1 would submit that in this judgment the Apex Court held that criminal conspiracy – Meaning and content in the context of Government functioning – Imprudence – Financially imprudent decision taken by Government department – Poor decision-making process of Government – Failure to make assertive intervention which might have improved situation – Whether leads to inference of conspiracy within Government. The Apex Court further held that official meetings between two Ministers could not by themselves lead to an inference of conspiracy – Mere suspicion could not be a substitute of prima facie evidence needed to proceed against Finance Minister – It was only a surmise that Finance Minister

and PM's assertive intervention might have prevented mismanagement of spectrum allocation – Nor was there any evidence that Finance Minister abused his official position in conferring any undue benefit on any party – No case therefore was made out under Sections 120-A and 120-B to implead Finance Minister as co-accused with Telecom Minister. The Apex Court further held that wrong judgment, inaccurate/incorrect approach adopted in a particular case, or poor management of government affairs, does not by itself lead to inference of conspiracy. The learned counsel referring this judgment would submit that in order to invoke the offence under Section 120-B, there must be a cogent material to come to a conclusion that there was a conspiracy in making the favour and none of the witnesses speak about the conspiracy and in the absence of the material, Section 120-B cannot be invoked.

23. The learned counsel also relied upon the judgment of the Apex Court in the case of **STATE OF MAHARASHTRA AND OTHERS v. SOM NATH THAPA AND OTHERS** reported in **(1996) 4 SCC 659** and brought to the notice of this Court paragraph No.24 of the judgment and would submit that in order to establish the charge of conspiracy, knowledge about

indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use.

24. The learned counsel referring this judgment, would submit that in order to establish the offence of conspiracy, knowledge must be there that the persons are indulging in illegal act. Apart from that, the prosecution has to establish that a particular unlawful use was intended to take the advantage. The ultimate action could be chain of actions and the same is missing in the present case and the prosecution failed to prove the fact that accused No.1 was having the knowledge that there was an act of indulging taking the advantage in placing the material and

in the absence of dishonest intention, if any act is done, the same amount to bonafide intention and not dishonest intention.

25. The learned counsel referring all these judgments would submit that the prosecution has utterly failed to prove the case against the accused in respect of any of the ingredients of the charges levelled against accused No.1. In the absence of any cogent material, there cannot be any conviction against accused No.1 and accused No.1 being a public servant, discharged his duty with utmost good faith and not made any favour as alleged by the prosecution and the Trial Judge failed to consider all these aspects while appreciating the evidence. Hence, the judgment of the Trial Court requires interference of this Court and to set aside the conviction.

26. Accused No.2, who is the appellant in Crl.A.No.1024/2010 would contend that the Trial Court has committed an error in passing the Judgment of conviction. The chief official in-charge of discounting of bills furnished by accused No.2 was done by the Manager of the Bank Mr.Ajit Prasad, who was not examined as a witness at the trial. The version of the prosecution is that Ajit Prasad has been termed as

very honest and diligent official and who has been performing his duties without any lapses, as such, if he had discounted the bills supplied by the accused then the same was pursuant to utmost diligence and verification therein. The evidence of P.W.8 discloses the fact that as per the report of Mr.Ajit Prasad, there was a functioning Unit of accused No.2 at No.4/2. Basavapura, Gottigere, Bengaluru. However, strangely the version of the prosecution was that accused No.2 did not have any business establishment by name M/s.Sanjay Enterprises, which is contrary to the report of the Bank Manager and evidence of P.W.8.

27. The other contention is that P.W.8 has deposed in his evidence that pursuant to personal verification as Vigilance Officer at the Regional Office of M/s. Annai Sathya Transport Corporation office and he submitted a report to the Head Office. The said report was not produced in evidence by the prosecution. When the question was put to P.W.8, he replied that he does not know the reason as to why the said report was not produced. The non-production of a vital report of the investigation by the prosecution is fatal to his case and an adverse inference has to be drawn.

28. The Trial Court has heavily relied upon Ex.P69 and the testimony of P.W.9 - A. Arumugam, working at Hosur, who got marked the same. However, the said evidence is not acceptable in the eye of law in view of the fact that the admission of P.W.9 to the effect that Regional Office at Dharmapuri would deal with treaded Rubber Products and Hosur branch has nothing to do with this. In spite of the evidence of P.W.9, the trial Judge has committed an error and P.W.9 had no personal knowledge to depose about the incident and he was not a competent witness and his testimony requires to be discarded. The document – Ex.P69 was marked subject to the condition that the same has to be proved in accordance with law. The said Ex.P69 was authored by a Deputy Manager, Salem Division, TNSTC and without examining the said author, the contents of Ex.P69 cannot presumed to be proved and no evidentiary value can be attached to the same.

29. The evidence of PWs.7 and 13, who are the Commercial Tax Officers have categorically admitted that the accused No.2 did not fall within their jurisdiction. When such being the evidence, the trial judge ought not to have relied upon the evidence of PWs.7 and 13.

30. The charge levelled against accused No.2 is that he involved in forging of documents and he had furnished forged title deeds and the same is not proved by the prosecution and the same is baseless. The allegation has to be proved beyond reasonable doubt by examining the author of the said document. The very charges that accused No.2 conspiring with other accused persons defrauded the Bank by illegal means is absolutely not supported by any material. The material produced by the prosecution is nothing but an allegation and the same is not proved.

31. The other allegation against accused No.2 is that, with the aid of accused No.3 he opened an account in the name of non-existing firm M/s. Amman Rubber Products at Hosur Branch, which is a non-existing firm. To prove the said accusation, the prosecution has relied upon the testimony of two independent witnesses i.e., PWs.14 and 15. These two witnesses were treated as hostile and nothing useful was elicited from their cross-examination; but, it is contradicted to their previous statements. In spite of the same, the Trial judge has committed an error. The allegation against this accused is that he conspired with accused No.3 and created M/s. Amman Rubber

Products and the same is also not proved. There is no material evidence forthcoming from the testimony of prosecution witnesses that M/s. Amman Rubber Products was a non-existing firm and he conspired with other accused persons. Hence, it requires interference of this Court.

32. Learned Counsel appearing for accused No.2 in his arguments elaborately contend that the Mahazar, which the prosecution relies upon dated 29.9.1997, none of the independent witnesses were examined and the alleged recovery mahazar was also not proved and seizure of the fradulant document also not proved. Both in respect of mahazar as well as the recovery mahazar witnesses are one and the same and none have been examined before the Court to prove the same. The case of the prosecution is that the accused has committed the forgery and perpetrator of the forgery is also not proved and the Trial Court has not given any finding in respect of the Mahazars. The allegation of the prosecution is that the accused No.2 forged the documents and those documents are not seized from the Bank and when the allegation is made that he has furnished the forged documents, the documents ought to have been seized from the Bank and the same has not been done.

33. Learned Counsel also would submit that opening of account by accused No.2 in the name of accused No.3 is also none of the document is seized and regarding non-existence of firm also no material is placed before the Court. There is no evidence regarding forgery and also invoked Section 120-B for conspiracy and no materials are placed before the Trial Court. The evidence of prosecution witnesses not helps the prosecution to prove the case against the accused persons. The very conclusion of the Trial Court that M/s. Sanjay Enterprises is not in existence is not on any basis. P.W.8 in his evidence categorically admits that the subsequent Bank Manager inspected the premises of M/s. Sanjay Enterprises and submits the report with regard to the existence of the Firm. When such being the case, the Trial Court ought not to have come to a conclusion that, M/s. Sanjay Enterprises was not in existence. The prosecution relies upon the evidence of P.W.7 and his evidence also cannot be relied upon. The prosecution relies upon the documents obtained were sent to the FSL and the same is not permitted and no permission was taken to obtain the specimen signature or any documents and not followed the procedure and the Trial judge ought not to have relied upon

those documents. Even the expert evidence is the weakest form of evidence and only it is an opinion that the Trial Court in paragraph No.30 relied upon the evidence of P.W.17 and the same is erroneous.

34. P.W.1, speaks with regard to Exs.P1 to 14 and he has not spoken anything about those documents except marking of the documents. P.W.2 is examined to mark the document Exs.P15 to 45 and he is not having any personal knowledge about those documents. P.W.3's evidence is relied upon to mark the documents - Exs.P45 to P46 and those documents of records of accused No.3, who is none other than the Manager of the Bank and his evidence also not fruitful to the case of the prosecution.

35. P.W.4, speaks with regard to Ex.P66-Ledger Central Sheet. PWs.5 and 6, who are the special assistants and their evidence also not relevant.

36. P.W.7, Commercial Tax Officer of Circle 8 and P.W.13 is also the Commercial Tax Officer of Circle 8(1) and these two witnesses evidence also not helpful to the prosecution. The prosecution relies upon the evidence of P.W.8 and P.W.8

though he is a Vigilance Officer, deposes that he has prepared and submitted the report and the said report is not produced before the Court. In the absence of the said report, the prosecution cannot contend that there was an irregularity. The complaint is lodged based on the said report and sanction is also given to prosecute the accused based on the said report and the said report has not been produced and the same is the relevant material and non-production of the report is fatal to the case of the prosecution.

37. The learned counsel would contend that Ex.P140, is a report given by Ajit Prasad dated 15.4.1997 shows that M/s. Sanjay Enterprises was in existence and Spot Inspection report at Ex.P141 discloses the very existence of M/s. Sanjay Enterprises. The report also discloses that the firm was shifted to Gottigere, Bhannerghattta road and the same was intimated by accused No.2. In spite of the same, the Trial Judge had come to the conclusion that M/s. Sanjay Enterprises was not in existence. The learned counsel would submit that the machinary to the worth of Rs.7 Lakhs was offered as security and equitable mortgage worth of Rs.13.4 Lakhs was offered and business was running at No.4/1. Basavapura, Gottigere, Bengaluru. In spite of

the same, the Trial Court did not discuss anything about the same.

38. P.W.8, who has been examined before the Court deposes the loan is secured. When such being the case, it cannot be contended that accused No.2 cheated the Bank and availed the loan. The prosecution relies on the evidence of P.W.11-R.Bhadra Reddy, he claims the said firm was not in existence. P.W.16 speaks with regard to Lease Deed and once Suresh was let out the premises and existence of property is proved and when Exs.P140 and 141 discloses the existence of the firm, which demolishes the case of the CBI that no firm was in existence is contrary to the prosecution witnesses only.

39. P.W.9 is examined with regard to forgery i.e., Exs.P68 and P69 and Ex.P1-sanction letter discloses personal guarantee was offered and Ex.P13 is a creation of deposit of title deeds and Ex.P11 – legal opinion was obtained. The very contention that the pre-grant order of the year 1971 was forged cannot be accepted for the reason that the authority has not spoken anything about the said pre-grant order is forged. In the absence of concerned authority has been examined the Trial

Court ought not to have come to a conclusion that the documents are forged. The prosecution has not proved the case. Exs.9(a) and (b) series which are marked are not the originals and the originals are not seized and placed before the Court. The Trial judge has not considered those documents as the xerox copies. The other case of the prosecution is that Exs.P32 to 38 are also forged and while giving sanction in terms of Ex.P1, it is referred that 11 bills are not realised and only two bills are realised. Those bills are also not secured and even the realised two bills are also not secured, seized and produced before the Court.

40. The learned counsel would submit that Exs.P31 to 38 are not sent to Expert and not spoken anything and he speaks with regard to the specimen signature and the same are also not taken as per the procedure. Ex.P163 marked through the Expert and there is no answer how they got the said document. The very allegation is that Exs.P31 to 38 are forged and also no evidence. Even though, the same is not proved, the Trial Court had erroneously came to the conclusion relying upon only the evidence of the prosecution and nothing has been discussed in the Judgment with regard to the cross-examination of the

witnesses. Apart from that, accused No.4 is not tried before the Trial Court. The document-Ex.P162 is ill-conceived and no ingredients of the charges leveled against the accused have been proved. Hence, the conviction is erroneous. It is also contended that no Departmental Enquiry is initiated against accused No.1. Before obtaining the sanction, no vigilance report was placed before the sanctioning officer.

41. The learned counsel for the State in his argument would submit that supply bills are forged and produced before the Bank and based on the supply bill, accused No.1 recommended for sanctioning of loan. A loss of Rs.9,84,856/- was caused to the Bank. The very contention that the Court has no jurisdiction to try the accused under the Prevention of Corruption Act, cannot be accepted. The charge-sheet is filed under the Prevention of Corruption Act and when the charges are invoked, whether the accused has committed the said offence or not, cannot be decided at the threshold and conclusion has to be arrived after the trial. Hence, the contention that the Court has no jurisdiction to try the offence against the accused, cannot be accepted.

42. The learned counsel would submit that P.W.1, on perusal of the material placed before him, applied his mind and gave the sanction and insofar as sanction is concerned, there is no effective cross-examination and nothing is elicited from the mouth of P.W.1 that he did not apply his mind while according the sanction. Hence, the sanction is not in accordance with law, cannot be accepted.

43. The learned counsel further submits that P.W.1 in paragraph Nos.2 and 3 categorically deposed that with regard to the realizing of the bills, only two bills are realized out of 13 bills and 11 bills are returned. The learned counsel in his argument would submit that in paragraph No.6 of his evidence, P.W.1 categorically gave the evidence that proposal of M/s. Sanjay Enterprises was forwarded to their office by accused No.1 vide letter dated 01.09.1994 in terms of Ex.P.4. In furtherance of the recommendation, loan of Rs.7.5 lakhs was sanctioned. In Ex.P.4, the first and second sheet relates to the particulars relating to the guarantors and the said recommendation was declined by their office and thereafter the same was intimated to the branch vide letter dated 19.08.1994 in terms of Ex.P.5. The learned

counsel would submit that in paragraph No.8, P.W.1 has deposed with regard to another letter sent to the Branch vide letter dated 10.09.1994 of the Branch of the accused. In the said letter, there is reference about the supply of tread rubber to ASTC Corporation of Tamil Nadu Government undertaking. Along with the said letter, Ex.P.9 the xerox copy of the invoice of M/s.Sanjay Enterprises totally 9 invoices have been together marked as Exs.P.9(a) and (b) which contains the signature of the accused and also produced the original lease deed in favour of Lakshmi Rubber Products which is marked as Ex.P.9(c). The Regional Officer sought the clarification in terms of Ex.P.10. In reply to the said letter, accused No.1 has sent his reply in terms of Ex.P.11(a) enclosing the legal opinion and valuation report. The Branch also sent the letter of the accused stating that M/s. Sanjay Enterprises are supplying the rubber and the records will be available in ASTC Head Office at Dharmapuri. In the said letter, it was stated that bills of M/s.Sanjay Enterprises is being discounted by Mahesh Kumar and three bills are pending for payment and the same will be paid in due course. It was also stated by accused No.1 that the original statement of sales tax return, ledger book of the firm have been verified by the

Kanakapura Branch Manager in terms of Ex.P.12. Basing on the above said document, loan was sanctioned as per Ex.P.3.

44. The learned counsel referring the evidence of P.W.1 would submit that P.W.1 has categorically spoken with regard to the very conduct of accused No.1 favouring accused No.2. When such material are available before the Court, the accused cannot find fault with the conviction order passed by the Trial Court against accused No.1. The learned counsel would also submit that ASTC Corporation says that they have not supplied any material, as contended by the accused. The evidence of P.W.9 is clear that the supply bills are created and nothing is elicited in the cross-examination regarding creating of the documents and placing the same for availing the loan from the Bank. P.W.2 identified the documents.

45. P.W.3 speaks against accused No.1 and accused No.3 has given the documents without signature and the same has not been verified by accused No.1. Exs.P.30 to 38 does not contain any signature and P.W.3 categorically deposed with regard to those documents does not contain the signature. The evidence of P.Ws.4 and 5 also supports the case of the

prosecution. P.W.6 statement corroborates the evidence of P.Ws.2, 3 and 5. The Amman Rubber Products is not in existence. However, an account was opened and transacted in the name of Amman Rubber Products. P.Ws.7 and 13 have categorically deposed that the building, which they have given the reference is not at all in existence and also not comes within the jurisdiction of their circle and hence, it is clear that when the said building is not in existence and no documents are placed before the concerned circle to show that Amman Rubber Products is in existence and also M/s.Sanjay Enterprises are in existence, it is clear case of creation of the documents and based on the forged documents, loan was availed.

46. P.W.8 deposed with regard to discounting of bills and states that he conducted the spot inspection and not found the firm and KST also not registered and in the cross-examination of these witnesses, nothing is elicited to disbelieve the evidence of the prosecution witnesses. P.W.9 – Manager of M/s. Annai Sathya Transport Corporation has categorically deposed that they have not transacted with M/s. Sanjay Enterprises and the documents are furnished only in order to get the benefit and no

explanation from the accused with regard to the particular exhibits which are marked.

47. The learned counsel would also submit that accused No.2 supplied the bills and accused No.3 was not in existence. Hence, it is clear that there was a meeting of minds between accused Nos.1 to 3 and also created the documents at the instance of accused No.4 to offer the security of immovable property. Hence, it is clear that all of them have floated the conspiracy in availing the loan from the bank and when the documents are not verified and when accused Nos.2 to 4 have indulged in creating of the supply bills and opened the account and shown that there was a transaction and there was a business, it is nothing but fraud and forgery and falsification of documents. Hence, there are sufficient materials against the accused. The learned counsel would submit that accused No.1 floated the banking regulations and recommended the loan application of accused No.2 in order to help accused No.2 and accused No.2 in connivance with accused No.3 and 4 created the documents and availed the benefit of getting the loan. Hence, the Trial Judge has rightly convicted the accused persons and

there are no grounds to interfere with the findings of the Trial Court.

48. The learned counsel in support of his arguments relied upon the judgment of the Apex Court in the case of **CHITTARANJAN SHETTY v. STATE BY CBI BANGALORE** reported in **(2016) 3 SCC (Cri) 299.** Referring this judgment, the learned counsel would submit that essential ingredients to prove offence under Section 13(1)(d)(ii) – Abuse of position by public servant in order to obtain for himself or for another person, any valuable thing or pecuniary advantage – Abuse of position must involve dishonest intention. The learned counsel referring this judgment would submit that accused No.1 abused his position in favouring accused No.2 and the Apex Court in this judgment found the concurrent findings of the court below and held that there are sufficient evidence on record to prove that the appellant was acting with dishonest intention since he had knowledge and permitted accused No.2 to utilize the over draft facilities for payment of debt. The learned counsel would submit that this judgment is aptly applicable to the case on hand since accused No.1 had misused his position and essential ingredients

of knowing fully well favoured the accused No.2 in getting the loan sanctioned.

49. The learned counsel also relied upon the judgment of the Apex Court in the case of **GULAM SARBAR v. STATE OF BIHAR** reported in **(2014) 2 SCC (CRI) 195.** Referring this judgment, the learned counsel brought to the notice of this Court with regard to conspiracy and in order to invoke Section 120-B, essential ingredient of criminal conspiracy i.e., meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means and criminal conspiracy is generally hatched in secrecy thus direct evidence is difficult to obtain or access. Offence can be proved by adducing circumstantial evidence or by necessary implication. The learned counsel referring this judgment would submit that in the present case, there was sufficient evidence to implicate the accused persons and they indulged in creation of documents in order to get the benefit and accused No.1 also extended his hands with accused No.2 to favour him and recommended for sanctioning of loan based on the false documents without examining the genuineness of those documents. Hence, the prosecution made out the case against the accused.

50. The learned counsel also relied upon the judgment of the Apex Court in the case of **R.VENKATKRISHNAN v. CENTRAL BUREAU OF INVESTIGATION** reported in **(2010) 1 SCC (CRI) 164.** Referring this judgment with regard to criminal conspiracy, the learned counsel submit would submit that conspiracy is generally hatched in secrecy. Direct evidence is therefore difficult to become available and the same can be proved on the basis of circumstantial evidence and/or by necessary implication. Smaller conspiracy may be a part of larger conspiracy. Criminal conspiracy was established when officials of two public sector banks acted in such a way that transaction appeared to be an inter-banking transaction relating to call money which the borrowing bank was supposed to retain with itself but the transaction was in fact done to help a private party to use public funds for private purpose.

51. The learned counsel referring this judgment would submit that the Apex Court time and again reiterated that criminal conspiracy cannot be proved by direct evidence and the same can be proved placing the circumstantial evidence. In the case on hand also, the prosecution has placed the material with regard to conspiracy between the accused persons and they

were having dishonest intention to get the benefit from the bank and they were indulged in creation of documents. When such being the case, this Court cannot interfere with the findings of the Trial Court and the Trial Court gave a definite finding with regard to there was a conspiracy and the accused persons were involved in committing the offence and there are no grounds to interfere with the findings of the Trial Court.

52. The learned counsel appearing for accused No.1 in his reply arguments submits that the evidence of P.W.9 cannot be given credence and he only says that there was no transaction in their branch and the Dharmapuri branch is dealing with the said transaction. When P.W.9 deposes like that, there was no any investigation by the prosecution whether such transaction was taken place at Dharmapuri branch. Accused No.1 was transferred in the September 1994 and the documents which have been relied upon by the prosecution are of the year 1995 and further those documents cannot be relied upon against accused No.1. The learned counsel also would submit that P.W.9 was not confronted with the documents regarding transaction whether those transaction was taken place in the bank or not and ought to have confronted those documents to P.W.9. The

learned counsel would submit that the evidence of P.Ws.7 and 13 is also not helpful and both of them deposes that in their circle, the address which has been mentioned are not coming. P.W.1 also says that they have not granted the loan on the basis of the recommendation of accused No.1 and when such being the case, there cannot be any fault on the part of accused No.1.

53. The learned counsel for accused No.2 in his reply arguments would submit that P.W.8 categorically admits that he has submitted his report, but not produced the said report before the Court. The learned counsel would submit that no mahazar is drawn, hence the benefit of doubt goes in favour of the accused. The learned counsel also brought to the notice of this Court that in Ex.P.28, a declaration was obtained by the accused and the advocate who subscribed his signature died in the year 1998 itself and the said declaration came into existence in the year 1996. When such being the case, it is clear that the complainant has indulged in creation of documents.

54. The learned counsel would submit that the document Ex.P.9, which is relied upon is xerox copy and original document is not secured. P.W.1 speaks about opening of the account and

transaction. P.W.11 only says with regard to address is concerned that there was no such number. P.W.12 speaks with regard to handwriting of accused No.1 and he was having acquaintance with his handwriting and over draft facility was given based on guarantor agreement. The recovery mahazar witnesses were not examined. The admissions elicited from the mouth of the Investigating Officer creates the doubt and mere seizure of the documents cannot be a proof and to doubt the document which have been placed, the same has not been proved.

55. The learned counsel appearing for the State would submit that independent investigation was conducted and the case is not based on the vigilance inspection report and the judgments are not applicable to the facts of the case. The judgment of the Apex Court of the year 2010 is applicable to accused No.1 and accused No.2 got the benefit based on the recommendations made by accused No.1.

56. Having heard the arguments of the respective the learned counsel for the appellants and the learned counsel for

the State, 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, 420, 468 and 471 of IPC and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act and accused No.2 for the offences punishable under Sections 120B, 420, 468 and 471 of IPC?

(ii) What Order?

Points No.(i) and (ii):-

57. Before considering the oral evidence, this Court would like to refer to FIR, sanction order and mahazars. The case of the prosecution is set in motion based on the FIR, which is marked as Ex.P166. The case of the prosecution is that accused No.1, while functioning as a public servant in the capacity of Branch Manager, State Bank of Mysore (SBM), Kanakapura Branch, Bengaluru District, during the year 1994, entered into criminal conspiracy with Sri. B.L.Sridhar, who arraigned as accused No.2, the Proprietor of M/s. Sanjay Enterprises to cheat the Bank and to derive undue pecuniary

gain to themselves by corrupt or illegal means otherwise by abusing his official position as a public servant.

58. In pursuance of the said conspiracy, accused No.2 with fraudulent and dishonest intention submitted an application at the Branch requesting for sanction of Over Draft (O.D.) limit to the tune of Rs.7.50 lakhs against supply bills. In support of the above application, accused No.2 with fraudulent and dishonest intention submitted forged lease deed dated 01.02.1994 purported to have been executed by one Sri. Suresh offering industrial shed No.717, Chikkabegur Gate, Madiwala Post, in his favour, a forged letter purportedly issued by M/s.Amman Rubber Products certifying his experience in the line of activity, a forged purchase order in the name of M/s. Annai Sathya Transport Corporation falsely showing supply of 240 MTs of Tread Rubber and forged sales tax documents showing KST and CST numbers belonging to some other firm.

59. It is also the allegation that accused No.1 with fraudulent and dishonest intention and knowing fully well that documents furnished by accused No.2 are forged, and without conducting pre-sanctioned inspection forwarded the proposal for

sanction of O.D. limit to the Regional Office with his recommendation on 23.06.1994. Based on the recommendation of accused No.1 and believing the documents to be genuine, the Regional Office of the SBM sanctioned Over Draft limit of Rs.7.5 lakhs against supply bills to accused No.2 and communicated to the branch. Accused No.2 with fraudulent and dishonest intention submitted a total number of 13 forged supply bills showing alleged supply of Tread Rubber to the extent of Rs.12.32 lakhs to M/s. Amman Rubber Products, Hosur. Accused No.1 fully knowing that these bills are forged and with fraudulent and dishonest intention discounted the bills and credited the amount to the account of accused No.2, which was subsequently drawn by accused No.2. Accused No.2 had also offered a equitable mortgage of agricultural land belonging to one Sri.Venkataswamy, valued at Rs.35.10 lakhs to the Bank while applying for the credit facility. Accused No.1 with fraudulent and dishonest intention did not complete the formalities in executing the equitable mortgage before releasing the Over Draft limits to accused No.2 and thereby caused loss to the Bank. None of the bills submitted by accused No.2 and discounted by accused No.1

were realized and were returned unpaid and thereby caused wrongful loss to the tune of Rs.12.32 lakhs to the Bank.

60. Ex.P1, which is the sanction order discloses that on verification, loss to the tune of Rs.9,84,856/- was found and while passing the sanction order, discussed in detail regarding the criminal conspiracy, creation of documents and misleading the Regional Office in sanctioning Rs.7.50 lakhs as Over Draft facility to accused No.2 in terms of Ex.P1. An observation to the effect that on careful examination of materials placed before him i.e., copy of FIR, investigation report of CBI, copies of statements of witnesses and material documents etc., comes to the conclusion that accused No.1 should be prosecuted in a Court of law and accorded sanction for his prosecution.

61. Ex.P3 is the mahazar dated 29.09.1997 conducted in the residence of Sri. K.Pappaiah Shetty when accused No.2 disclosed that he could show the place at his residence where he has hidden the documents forged by him and other relevant papers used for cheating the State Bank of Mysore, Kanakapura Branch. Accused No.2 has taken the search party to the forgery premises as well as his friends residence in order to show the

said material object. During the custodial interrogation, he disclosed before the independent witness that he has hidden the forged documents/letter pads etc., used for cheating the Bank at his residence. The recovery mahazar was also drawn on the same day in the residence of accused No.2 within one hour from the timings of earlier mahazar. Accused led the team to one of his room, from where he picked up a plastic bag from the heap of waste bags/materials and produced the documents from inside the plastic bag. On being asked, accused No.2 stated that he has hidden the items because some bad elements had come and threatened him not to part with any of the forged documents with any of the officials of CBI personnel. The said documents were seized, which contain correspondence of accused No.2 on behalf of M/s. Sanjay Enterprises and some issued to Amman Rubber Products by M/s. Sanjay Enterprises, invoices of M/s. Sanjay Enterprises, correspondence of accused No.2 on behalf of granites, lease agreement dated 01.02.1994, correspondence of accused No.2 with the Bank in the name of various firms, estimate of production, tax assessment for the year 1995, specimen signature card of accused No.2 dated 23.04.1993, SSI Application of M/s. Amman Rubber Products,

blank specimen invoices of M/s. Sanjay Enterprises, letter head of M/s. Sanjay Enterprises, invoices of M/s. Lakshmi Rubber Products, delivery challan of M/s. Sanjay Enterprises, letter head of Sri Lakshmi Agro Products Private Limited, blank letter head of M/s. Annai Satya Transport Corporation, two pass books in the name of accused No.2 and M/s. Amman Rubber Products and two cheque books of SBM containing unused cheque leaf and counter foils.

62. The prosecution, in order to substantiate the charges leveled against the accused in the charge sheet, relied upon the evidence of P.Ws.1 to 18 and also the documentary evidence marked. Now this Court would like to narrate in nutshell the evidence of the prosecution witnesses.

63. The prosecution relies upon the evidence of P.W.1-P.Muthuswamy, who worked as General Manager, State Bank of Mysore, in his evidence, he says that accused No.1 was working as a Branch Manager, State Bank of Mysore, Kanakapura Road, Bengaluru from May 1993 to November 1994. The witness states that he was the competent authority to remove the officers working in the Middle Management Scale-III in SBM and also to

remove accused No.1. P.W.1 had issued sanction order to prosecute accused No.1 in terms of Ex.P1. He verified investigation report, documents and statement of the witnesses sent by CBI and on perusal of the documents, it made out a case for prosecution of accused No.1 and accordingly, he issued Ex.P1. In the cross-examination, P.W.1 admits that he had gone through the advance proposal sent by accused No.1. In the advance proposal, it was mentioned that "bill discounting" and accused No.1 proposed bill-discounting limit to the extent of Rs.7.5 lakhs. The witness further admits that he observed while issuing sanction to prosecute accused No.1 in the sanction order of loan to accused No.2 "usance bill discounting facility" was struck off and in that place "O.D. against supply bills" was written and that he did not verify who had struck off the word as stated supra and who had written the words as stated supra. But the witness claims that he found discrepancies in sanction order of loan from that of proposal. It is elicited that he cannot recall which part of the papers inspired to come to conclusion that accused No.1 has committed the offence of conspiracy.

64. The witness CW.2-T.A.Padmanabhan is also examined as P.W.1, who in his evidence, says that at the

relevant time accused No.1 was the Branch Manager and he deposes pertaining to the procedure with regard to Over Draft loan at the Regional Office. The loan proposal will be received at the Regional Office and the designated desk officer of the Regional Office does the initial processing work, then the same will be scrutinized by the Manager (Advances) and he will put up the said file before the Regional Manager for sanction. The Regional Manager will apply his mind and will study the proposal and if it is found in order by him, he will sanction the loan. The Branch has to first of all check the standing and *bona fides* of the buyers of the said borrower. In other words, he has to check the genuineness of the said transaction. While sanctioning, loan margin will have to be left and thereby depending upon the sanctioned terms, a portion will be left as margin amount. In the sanction terms, there will be specification regarding the period within which the said bill will have to be paid by the buyer. If the concerned bill is not paid, the said transaction will be considered as irregular and to that extent the sanction limit will be reduced.

65. The witness–T.A.Padmanabhan also speaks with regard to the procedure for discounting facility as against the supply bills. In the recommendation, it is mentioned that the

nature of business of accused No.2 is supply of Tread Rubber. He also identified the signature of accused No.1. In the proposal-Ex.P1, accused No.1 recommended regarding the loanee/applicant that it is a well experienced in tread rubber manufacturing work and they will regularly supply the same to M/s. Annai Satya Corporation which is a Government undertaking. At that time, the witness was the Regional Manager and competent authority to sanction the loan. He sanctioned the said limit on the said recommendation of accused No.1, which got marked as Ex.P2. Another proposal forwarded by accused No.1 was shown to the witness. In furtherance of the recommendation, loan of Rs.7.5 lakhs was sanctioned in terms of Ex.P4. Though the Branch recommended for sanction of loan to a firm by name Lakshmi Rubber Products, which is said to be the sister concern of accused No.2, the loan was declined. It is also his evidence that legal opinion was also sent along with the proposal and the valuation report in terms of Exs.P6 to P8. Ex.P6 bears the signature of accused No.1. In the said letter, he has stated that the firm has supplied to the tune of Rs.40 lakhs worth goods since March 1994. He also identifies the letter at Ex.P9, wherein there is a reference about supply of Tread

Rubber to ASTC of Tamilnadu Government undertaking. Along with Ex.P9, totally 9 xerox copies of the invoices of M/s. Sanjay Enterprises are also enclosed. The original lease deed is also enclosed and certain clarification was also sought in terms of Ex.P10. Accused No.1 sent his reply in terms of Ex.P11 enclosing the legal opinion and valuation report. The letter dated 23.09.1994 addressed by the branch of accused No.1 states that M/s. Sanjay Enterprises are supplying the rubber and the records will be available in ASTC head office at Dharmapuri and bills were pending for payment. It is also stated by accused No.1 that original statement of sales tax return, ledger book of the firm have been verified by the Kanakapura Branch Manager in terms of Ex.P12. Based on the above said documents, the loan was sanctioned as per Ex.P3. It is also his evidence that Branch Manager was directed to take the collateral security by way of equitable mortgage for a total sum of Rs.12 lakhs. Subsequently, the property of one Venkataswamy.B. was accepted as property of guarantor for mortgage. The said letter is at Ex.P14. He was subject to cross-examination.

66. In the cross-examination of this witness, he admits that there is fundamental difference between bill discounting

system and supply bill system. He admits that while seeking Venkataswamy's property as collateral security in place of Rajamanikyam's property, accused No.1 had sought amended proposal. He further admits that by offering the property of Venkataswamy, accused No.1 had done act of giving more security with regard to the said loan transaction. The admission of the witness is clear that accused No.1 had taken extra care while accepting and sending the proposal of offering the property of Venkataswamy and he had done act of offering more security with regard to the said loan transaction.

67. Learned counsel for accused Nos.2 and 3 in the cross-examination elicited that Ex.P1 does not bear the signature of the owners of M/s. Sanjay Enterprises. He further admits that Ex.P4 is not the proposal of M/s. Sanjay Enterprises. It is also admitted that he had no reason to doubt that Ex.P7 and Ex.P8 are genuine documents and that Ex.P9(a) invoice contain the rubber stamp seal of ASTC. He further admits that for grant of Over Draft facility by bill discounting system, it was not always necessary that balance sheet of institution seeking loan is to be produced.

68. P.W.2-Shanmugam, who worked as Assistant Manager in the very same Branch says that from September 1994 to August 1997, one Mr. Ajit Prasad was the Manager in the said Branch. The witness says that he knew accused No.1 and when he joined the Bank, accused No.1 was under the order of transfer and he had an opportunity to work under him. Mr.Ajit Prasad has signed Ex.P4. The witness identifies Ex.P13, which is the loan sanction communication letter from the Regional Office. Ex.P14 is the letter written by the then Branch intimating to the Regional Office about the compliance to be observed as per Ex.P13, which has been signed by accused No.1. The witness also says that Venkataswamy offered the equitable mortgage and produced relevant documents which were marked as Exs.P15 to P21. The said Venkataswamy also filed affidavit in terms of Ex.P23. He also identifies the letter addressed by M/s.Amman Rubber Products to the Branch, the letter addressed by Accused No.2 and also the legal opinion, which were marked as Ex.P25 to Ex.P27 respectively. It is also his evidence that total 9 supply bills were sent to SBM, Hosur Branch for collection and these letters were signed by the then Manager Mr.Ajit Prasad.

69. In the cross-examination, P.W.2 admits that he does not have any personal knowledge regarding the said transaction pertaining to this case and the said transaction had taken place before he joined the Bank and also that he does not have personal knowledge in respect of Ex.P1. P.W.2 admits that as per Bank guidelines, if any bill is returned unpaid, the same is to be intimated to the concerned borrower/loanee.

70. P.W.3, who worked as the Assistant Manager of Advances of SBM, Hosur Branch, in his evidence, deposes with regard to the facility of bill discounting. It is his evidence that in the account opening form in respect of current account submitted by M/s. Amman Rubber Products and in the said document, the person who has to operate the account has been named as G.Nedumaran as per Ex.P.46. While opening the account, an amount of Rs.500/- was paid. He also identifies the letter Ex.P45, through which two bills at Ex.P30 and Ex.P38 were sent to the account of M/s. Amman Rubber Products for collection and the corresponding entries were made. The said bills were unpaid. He also identifies certain documents with regard to drawing of bills and the documents up to Ex.P56 were

marked through this witness. He was subjected to cross-examination.

71. In the cross-examination, P.W.3 admits that to an account, anyone can deposit the amount and thereby, it is not always necessary that it is only the account holder who alone has to deposit the amount in his account. In the further cross-examination of P.W.3, it is elicited that he does not have any personal knowledge about the transaction of accused No.3 with Hosur Branch and he has not handled the said transaction. Accused No.3 has not signed Ex.P65-Credit Voucher. P.W.3 further admits that the concerned credit slip does not bear the signature of anyone of the said firm and that whenever, in a bill discounting loan, if the bill is rejected, intimation will have to be given to the concerned party. It is further admitted that on Ex.P32 to Ex.P38, the signatures of proprietor of M/s. Amman Rubber Products is not to be seen.

72. P.W.4-B.R.Prathap, in his evidence, says that accused No.1 was working as Branch Manager. Ex.P1 is the proposal relating to sanction of O.D. supply bills of Rs.7,50,000/- to accused No.2. The same is signed by accused No.1 and the

witness identifies his signature and so also the control sheet maintained in the Bank pertaining to account of accused No.2 in respect of account No.C&I/059 for sanction of Rs.7.5 lakhs in terms of Ex.P66. The same is in the hand writing of Udaya Shankar, who was working as Clerk. In the cross-examination, P.W.4 admits that he does not have any personal knowledge regarding the alleged loan proposal and also the entire loan transaction.

73. P.W.5-R.Nagarajan, who worked in the clerical cadre in Hosur branch, deposes with regard to the information of opening of current account pertaining to M/s. Amman Rubber Products on 04.11.1993. It is his evidence that Ex.P38-bill was sent for collection of Rs.80,080/- and the same is in his hand writing and so also bill-Ex.P30 sent to the branch. The witness also identifies Ex.P45-the letter through which Ex.P30 and Ex.P38 were sent to the Branch. In terms of Ex.P48-the written memo sent from the Branch to Kanakapura Branch intimating that the bill amount has not been realized. The relevant entry pertaining to Ex.P30 and Ex.P38 is made in Ex.P49. Ex.P37-bill also returned to Kanakapura Branch and the relevant entry is made as per Ex.P44(a) and so also for having received the bill-

Ex.P33, an entry has been made in Ex.P49(a). Ex.P34-bill was also not realized and the concerned entry is at Ex.P49(c). Ex.P41-bill return memo discloses that the bill for Rs.80,495/- has been cleared and credited to the account of M/s. Amman Rubber Products on 21.02.1995. The said amount has been remitted by some one and it does not have the signature of account holder. It is his evidence that if the bill amount is not realized, the concerned bill will be sent back to the concerned party along with the bills after making entry in the bill register along with a return memo.

74. In the cross-examination, P.W.5 admits that Register has been maintained in the Bank relating to the bills which have been sent back and also admits that for depositing the amount relating to the bills, it need not necessarily be the account holder and any third party can deposit the amount. In the further cross-examination made by learned counsel for accused No.3, the witness admits that he does not have any personal knowledge regarding the alleged loan transaction between M/s. Amman Rubber Products and SBM, Hosur Branch. He identifies Exs.P61, P62, P55, P65 and deposes that the concerned deposits are not made by the account holder of the said account, since the

challan does not bear the signature of the concerned account holder. He admits that with regard to the non-realization of the bill amounts mentioned in the examination-in-chief, the branch has not intimated about the same to M/s. Amman Rubber Products.

75. P.W.6-M.S.Srinivas, who worked as Manager of Small Scale Industries Business Section of SBM, Hosur Branch, in his evidence, identifies Ex.P31 drawn on M/s. Amman Rubber Products by M/s. Sanjay Enterprises for a sum of Rs.40,040/-. The said bills are in duplicate. The said bills sent for collection was returned without realization and the same was sent back. Ex.P32-bill sent for collection also not realized. The amount of Rs.1,25,000/- deposited in the account of M/s. Amman Rubber Products was by a person other than the account holder, since the signature appearing on the credit voucher does not tally with the signatures on the account opening form. The amount of Rs.13,000/- deposited in the account was also not by the account holder. The amount of Rs.1,30,726/- is in respect of current account No.1007 favouring Hosur Branch and the same has been deposited towards LSC No.33. Ex.P63 is the cheque issued by M/s. Amman Rubber Products in favour of Accused

No.2 for Rs.13,000/- and the said amount was paid by the Branch. The witness identifies the Credit Voucher for a sum of Rs.4,000/- pertaining to the current account of M/s. Amman Rubber Products, where the signature of the depositor does not tally with the signature of the account holder. In the further cross-examination, it is elicited that Exs.P65, P61, P62 and P55 show that the concerned amount has been deposited by the persons other than the account holder of M/s. Amman Rubber Products. As soon as those bills were received by the Bank, intimation regarding receipt of those bills were sent to M/s.Amman Rubber Products in a regular format. He states that he do not have any idea as to whether the Investigating Officer has seized the said intimation.

76. P.W.7-K.V.Mohan, who worked as the Commercial Tax Officer, deposed that CBI Officer came and enquired with regard to registration certificate No.0794547-4 and CST No.799547/7 for the month of April 1994 to July 1994 as to whether the said firm has submitted the monthly returns. On verification, he found that the said firm having that registration has not submitted any returns in his circle. He found that building bearing No.128 of Anjaneya Temple Street, Bengaluru

does not come within the jurisdiction of 8th circle. In the cross-examination, the witness admits that from his office, the CBI Officers have not obtained copies of the said notification. It is further admitted that there will be change of jurisdiction and he is unable to say as to in which year there was change of jurisdiction for the last time. He also admits that there is one more circle called 8(1) circle.

77. P.W.8-K.S.R.Balla, who worked in the Vigilance Department deposes that he had occasions to verify about the loan transaction sanctioned in respect of M/s. Sanjay Enterprises. While granting such facility, the Bank sanctioning such facility has to see the credit worthiness of the buyer as well as the supplier and also the experience of the supplier in the field of business. If the bills are unpaid and returned without realizing, immediately the same will be entered in such registers and steps will be taken to recover the bill amount immediately. The Bank will not accept the new bills. Accused No.1, was the Manager of SBM, Kanakapura Road Branch and in the course of his inspection, he found accused No.2 had applied for O.D. limit of Rs.7.5 lakhs against supply of Tread Rubber. On enquiry, it revealed that to have the said business, he did not have any

past experience. Accused No.2 also did not show any industrial shed for running any industry. Witness says that the accused was not having any industrial shed and that he had also visited Hosur and his enquiry revealed that M/s. Annai Sathya Transport Corporation did not have any rubber re-trading unit at Hosur. On enquiry, the witness found that under the KST number, the accused firm has not been registered. On enquiry, P.W.8 found that the report submitted by accused No.1 along with O.D. facility application there mentioning that M/s. Sanjay Enterprises firm will have regular customer for supply of Tread Rubber to M/s. Annai Sathya Transport Corporation, Hosur also mentioning that it is a Government Agency and the same is false since the said AST Corporation unit did not had Rubber re-trading unit at Hosur. Accused No.1 had reported in his proposal that he had verified the accounts book pertaining to M/s. Sanjay Enterprises, but on his enquiry, it revealed that no such books of account has been maintained and the said enterprise of accused No.2 was not in existence.

78. P.W.8 also says that after the transfer of accused No.1, subsequent Manager Mr. Ajit Prasad after taking charge went on long leave and thereby, accused No.1 continued in the

said office upto November 1994. In the cross-examination, PW.8 admits that he had submitted his investigation report to the head office and that he does not remember the name of the officer with whom he enquired with regard to M/s. Annai Sathya Transport Corporation and so also not obtained any written statement. The enquiry report made by him is in pursuance of the reference made to him by the Chief Vigilance Officer. The witness further admits that accused No.1 had made proposal for sanction of loan to the head office based on the documents furnished to him by accused No.2. Witness Volunteers to state that recommendation to the head office for sanction of loan by accused No.1 will have to be made on his verification regarding the materials supplied by the borrowers of loan. It is also admitted in his evidence that his enquiry revealed that whatever the documents received by accused No.1 have been sent to Zonal Office and that Mr. Ajit Prasad had also failed to enquire about the credit worthiness of the buyer. It is also admitted that if Mr.Ajit Prasad had taken due diligence and care, irregularity could have been avoided. P.W.8 says that he made personal visit to the loan borrower firm M/s. Sanjay Enterprises. He does not remember as to whether Mr. Ajit Prasad in his report also made

confirmation about the existence of the firm as well as machineries relating to M/s. Sanjay Enterprises. The witness also does not remember the names of the Commercial Tax Officers with whom he made enquiries. It is suggested that accused No.1 not violated any rules or regulations of the Bank, while sending proposal or by recommending loan, the same is denied.

79. Learned counsel for accused No.3 elicited in the cross-examination of P.W.8 that he does not have any personal knowledge regarding the business transaction between accused No.2 and M/s. Amman Rubber Products. There is no procedure of maintaining any diary regarding investigation conducted by the inspection department and as such, he had not maintained any diary. The witness also admits that he had not visited the premises of M/s. Amman Rubber Products.

80. Learned counsel appearing for accused No.2 in the cross-examination of P.W.8 elicited that he cannot give the exact date or month in which he conducted the inspection, but he says that it is in the year 1996 or the early part of 1997. P.W.8 admits that the inspection is different from investigation by the Bank. He does not know that the report submitted by him as

Vigilance Officer is not produced in this case. It is further admitted that in the course of his investigation, he has not recorded the statement of any persons or officials questioned by him. He also admits that he has not visited the factory or place of the trade of accused No.2, but volunteers that inspite of his request to accused No.2, he did not take him to the place of his business or factory. He claims that he had visited two places being Kalasipalyam, Bengaluru and another place at Bannerghatta Road, in connection with locating the said shop of accused No.2. It is his further admission that his enquiry revealed that at Bannerghatta Road, there is a shop by name M/s. Sanjay Enterprises in the address given in the loan paper but accused No.2 is not the proprietor. The witness does not remember as to whether he had gone through the report of the then Manager Mr. Ajit Prasad regarding existence or otherwise of the shop and also the factory of accused No.2. He does not remember as to whether in the report of Mr. Ajit Prasad, there was a reference about his visit for inspection to the said shop and factory of accused No.2. It is suggested that in the month of May 1996, accused No.2 enterprise shifted from Kalasipalyam locality to Gottigere locality of Bannerghatta Road and he denies

the same. The witness volunteers that when he visited, the shop by name M/s. Sanjay Enterprises was there in Kalasipalyam and it was found locked.

81. PW.9-A.Arumugam, who worked as the Manager of M/s. Annai Sathya Transport Corporation, Hosur Branch, in his evidence, says that the said firm is a Government of Tamilnadu undertaking. All the purchases required to meet their requirement will be done by the head office situated at Dharmapuri. The question of purchasing any materials by the Hosur Branch from M/s. Sanjay Enterprises does not arise and since the Branch was not having any power. Witness identifies his signature as per Ex.P67(a). P.W.9 says that the said document is in the letterhead of the Tamilnadu State Transport Corporation Ltd., and he also identifies his signature at Ex.P68 and the document at Ex.P69. In the cross-examination by the learned counsel for the accused No.1, it is elicited that when the Hosur Police questioned him, Exs.P67, P69 and also the signature at Ex.P68 were not shown to him by the Investigating Officer or CBI Officer.

82. In the cross-examination by the learned counsel for accused No.2, P.W.9 admits that he does not have personal knowledge about the transaction between M/s. Sanjay Enterprises and the Corporation. He is not aware of the Tread Rubbers being supplied by the manufacturers or traders to the Corporation. Ex.P67 does not pertain to Hosur Unit of the Corporation. He further admits that the Corporation is not having separate specimen letterheads. P.W.9 further admits that Ex.P67 and Ex.P69 are having different print and it also differs in the letters of the said printings.

83. PW.10-Smt. Suma Mahesh Chandra, who worked as the Clerk in the SBM, Kanakapura Road Branch, in her evidence, identifies the document Ex.P70 with regard to current account control sheet pertaining to M/s. Sanjay Enterprises. P.W.10 says that Ex.P71 bears the signature of Mr. Ajit Prasad and through out her evidence, she says that the documents bear the signature of Mr. G.V.Ajit Prasad, Mr. Shanmugam, Mr. K.Lakshman and Mrs. K.S.Rathna. This witness speaks with regard to the Bank transactions of accused No.2. In the cross examination by learned counsel for accused No.1, P.W.10 admits that Exs.P83 to P87, P96, P97 and P99, P100, P101, P109, P124

to P133 and P135 to P137 does not bear either his signature or initial anywhere. Learned counsel for accused No.2 elicited in his cross-examination that P.W.10 has mentioned in his examination only about the unpaid bills. The O.D. facility given to M/s. Sanjay Enterprises was a secured loan. She admits that secured loans are recovered through the said securities given. The witness identifies the signature of Mr. Ajit Prasad in Ex.P40 and Ex.P40(A). On seeing the same, the witness says that it is the Inspection Report of Mr. Ajit Prasad and also identifies another report at Ex.P141.

84. PW.11-R.Bhadrareddy, who worked as postman, in his evidence, says that he does not remember about the houses bearing door No.782 and 717 of 7th Main of Chikka Begur Gate area. P.W.11 says that he worked as postman for two years in the said area. In the cross examination, it is elicited that he is not familiar with the door numbers of all the houses in the industrial sheds situated in the area where he was working as postman.

85. PW.12-G.Uday Shankar, who worked as clerk in the said branch from 1990 to 2002, says that at the relevant time,

accused No.1 was working as Manager and accused No.2 was having O.D. account against supply of bills with limit of Rs.7.5 lakhs and the proposal was sent by accused No.1. Ex.P4 is the Credit Report of Venkataswamy and the same is in his handwriting. P.W.12 prepared the credit report basing on the information given to him by Venkataswamy. Ex.P23(a) is an agreement by guarantor Venkataswamy, executed in pursuance of the sanction of the O.D. facility. The guarantor had affixed his signature in his presence and also collected demand promissory note in terms of Ex.P.142. Accused No.2 and the said Venkataswamy have also executed demand promissory note in terms of Ex.P143. He was subjected to cross-examination.

86. In the cross-examination, P.W.12 admits that when the documents referred by him in the examination-in-chief were executed by Venkataswamy and accused No.2, the then Manager Mr. Ajit Prasad was also present. He admits that for preparing the credit report-Ex.P4, the information orally provided by the concerned party is sufficient.

87. P.W.13-T.A.Nagesh worked as Commercial Tax Officer and through whom Ex.P146 is marked, the letter

addressed to him by CBI officer. He verified the KST Certificate at Ex.P147 and CST Certificate at Ex.P148. He says that the document is pertaining to 8th circle and not his circle. In the cross-examination, he admits that there is Government notification notifying the jurisdiction of each Commercial Tax Officers and also admits that there will be periodical reconstitution of the jurisdiction of the Commercial Tax Officers. He cannot say as to for which period what was the jurisdiction of which Commercial Tax Officer, without seeing the documents.

88. P.W.14-M.Balaraman,who is the tailor has turned hostile and so also PW.15-P.J.Joseph, the Courier Service Agency. However, P.W.15 was cross-examined by Public Prosecutor and it is elicited that he himself and Nadumaran were sharing the premises and he was having good relationship with him. In the cross-examination by the learned counsel for the accused No.2, P.W.15 admits that he has not entered into any agreement regarding payment of rent pertaining to the said premises. But he claims that he was paying rent to Nedumaran and not to Mr.Chettiar.

89. P.W.16-John V. Daniel, in his evidence, says that one Mr. Suresh was the landlord of the premises where he was running the said scrap material shop. P.W.16 says that he does not know anything about katha No.717. In the cross-examination, he admits that he is unable to say the extent of area covered under khatha No.718 and similarly, about the khatha Nos.719 and 717 also.

90. PW.17-C.H.Gandhi is the handwriting expert, in his evidence, he says that the questioned signatures in this case were marked by the Investigating Officer as Q-1 to Q-41 and the standard writings of accused No.2 (B.L.Sridhar) were marked as A-1 to A-37, S-1 to S-16, S16/1 and S-17 to S-34.

91. On careful and thorough examination of all the questioned and standard signatures and comparison of the same to opine that the person, who wrote the blue enclosed signatures stamped and marked as S-1 to S-10, S-28 to S-34 and A-21 to A-37 are also wrote the red enclosed signatures similarly stamped and marked as Q-1 to Q-21 and Q-23 to Q-27. It has not been possible to express any opinion on the rest of the items on the basis of the material at hand. He identifies the signature

of Assistant Government Examiner at Ex.P160 and identifies his colleague's signature and he also identifies the signature of the examiner-Mr.Narendra Singh at Ex.P161(a) and (b). He examined the questioned specimen signatures and admitted signatures. The questioned signatures Q-1 to Q-21 are in Exs.P72 to 94, respectively; Q-23 is in Ex.P96; Q-24 is in Ex.P97; Q-25 is in Ex.P100; Q-26 is in Ex.P101 and Q-27 is in Ex.P105. A-21 to A-27 as Ex.D123 and in all it consists of 8 sheets. An objection was raised while marking this document on the ground that those documents were sent for examination without permission of the Court, when the case was pending before the Court for trial. The permission taken only upto Ex.D89 as per the order dated 21.4.2005 and documents numbering D-123 was not the documents listed in the list filed by the Investigating officer. The document is marked subject to objection as Ex.P163. The objection filed in writing by Advocate for accused No.2 is also taken on file and an observation is made to the said objection will be taken into consideration at the time of determining the above said matter. Ex.P119, which contains admitted signatures on A-28 and A-29 and Ex.P87, contains admitted signatures on A-30 and A-31 and Ex.P109 contains A-

32 and Ex.P115 contains A-33, A-34, A-37 and Ex.P125 contains A-35 and A-36.

92. The specimen signatures of accused No.2 are marked as Ex.P164 and another set of alleged specimen signatures are marked as S-28 to S-34. He was subjected to cross-examination. In the cross-examination, he admits that dissimilarities are also important while giving an opinion. He volunteers to state that in the process of comparison of the questioned and standard writings or signatures, similarities and dissimilarities are to be looked into and then the opinion will be arrived at on the results of examination, finding the similarity or dissimilarity as the case may be. In this case also, he has looked for the dissimilarity, but he did not find any dissimilarities at all. He volunteers amongst the standard signatures supplied to him natural variations are observed; they vary for a period from 1993 to 2005, thereby causing natural variations amongst the signatures. The signatures found in Ex.P164, which were obtained in the year 1999 and he denies the suggestion that the signatures are dissimilar to the signatures to be seen in Ex.P165.

93. PW.18-N.Sheshachari, is the Investigating officer, in his evidence, he says that he examined accused No.3-G.Nedumaran and CW.10-Venkataswmy and other witnesses, such as, Commercial Tax Officers. The documents so collected by him are the account opening form of G. Nedumaran, ledger sheets of current account No.9/1007, pay in slip, cheques, transfer credit voucher, collection schedule statement i.e., Exs.D10 to D19. He was subjected to cross-examination and in the cross-examination, he admits that he did not cross-check the door number mentioned by PW.11 to see as to whether the said door number mentioned by him is correct or not. But again he says that he had cross-checked with the neighbours of that house, but he did not obtain any document from the local authority to confirm about the said door number and he also not recorded the statement of PW.11. He has not verified the correctness of Exs.P147 and P148. He further admits in the cross-examination that PW.7 has given his verbal statement and not recorded in writing. Though visited his office, he had not verified any files, records or registers of the office of PW.7, so also PW.13 office records. He also admits that he did not verify the records of M/s. Annai Sathya Transport Corporation, though

he visits the said office and also he has not visited the office of Tamil Nadu State Transport Corporation of Salem Division, Dharmapuri.

94. Having perused both the oral and documentary evidence available on record, this Court has to find out whether the evidence placed by the prosecution inspires the confidence of the Court to convict accused Nos.1 and 2. This Court restricts the material against only accused Nos.1 and 2 since accused No.3 passed away during the pendency of this appeal and the case has been abetted in Criminal Appeal No.1025/2010. Accused No.4 is also not subjected to trial and he is absconded.

95. Now, let this Court consider the evidence available on record. First, this Court would like to consider the material against accused No.1. The witness - PW.1, who gave the sanction, in his evidence, he says that without recommendation of the branch, Regional Office will not consider the proposal. The records reveal that accused No.1 has sent the proposal. PW.1 also says that the Branch has to check the standing and bonafide of buyers of the said borrowers i.e., genuineness of the said transaction. If the concerned bill is not paid, the said transaction

will be considered as irregular and to that extent, the sanction limit will get reduced. In such circumstances, endeavour shall be made to recover the irregular bill amount. The concerned branch has to enter it into the concerned register. It has to be noted that the proposal was sent on 23.6.1994 by accused No.1 and the same was received in the Regional Office on 29.6.1994. PW.1 admits the said loan proposal was for recommending sanction of overdraft facility against supply bills of the limit of Rs.7,50,000/- in favour of accused No.2. In the said proposal the nature of business was shown was supply of 'tread rubber'. Accused No.1 has recommended the proposal in terms of Ex.P1. PW.1 categorically admits that he is the competent authority to sanction the loan and he has sanctioned the said limit on the basis of recommendation of accused No.1. Accused No.1 was recommended that accused No.2 is well experienced in trade rubber manufacturing work. In Ex.P4, the first and second sheet narrate to the particulars relating of the guarantors. He also deposes regarding correspondence between Regional Office and the Branch Office. In the letter dated 10.9.1994, there is reference about supply of tread rubber to ASTC in terms of Ex.P9 and totally 9 invoices which are marked as Ex.P9(a) and 9(b)

and also he identifies the letter dated 14.9.1994, which is marked as Ex.P9 and accused No.1 has given the reply in terms of Ex.P11 on 16.9.1994. In the cross-examination, a question was put to him, whether the Manager will recommend either overdraft against supply bills or overdraft against bill discounting system. It is elicited that bill discounting system is a very wide term which covers all types of advances, such as overdraft supply bills, foreign bills, inland bills, usage bills etc. But he says that there are no fundamental difference between bill discounting system and supply bill system. He admits that one Venkataswamy has offered collateral security instead of Rajamanikyam's Properties, accused No.1 has sought amendment in the proposal. PW.1-Padmanabhan categorically admits that by offering the property of Venkataswamy, the accused No.1 had done act of giving more security with regard to the said loan transaction. This admission takes away the case of the prosecution and it is the case of the prosecution that accused No.1 had made the favour in respect of accused No.2. This admission that accused No.1 had done the act of giving more security with regard to the loan transaction by taking the collateral security of one Venkataswamy is fatal to the case of

the prosecution. PW.1-Padmanabhan also admits that accused No.1 has sent the proposal for sanctioning of loan for bill discounting, but he had sanctioned the loan against the supply bills. Further, he admits that writing in ink as "overdraft against supply bills" i.e., not the handwriting of accused No.1. Hence, it is clear that accused No.1 has sent the proposal for sanctioning of the loan for bill discounting but loan is sanctioned against the supply bills. He also admits that Ex.P9-invoices contain the rubber stamp and seal of ASRTC. Further, he admits that for grant of overdraft facility by bill discounting system, it was not always necessary that balance sheet of the institution seeking loan is to be produced. The answers elicited from the mouth of PW.1 supports the contention of the defense counsel that PW.1 would have been the accused since he granted the overdraft loan against supply bills not as recommended by PW.1. It is also important to note that he categorically admits that PW.1 had taken extra care protecting the interest of the Bank while getting the collateral security towards the property of Venkataswamy.

96. The prosecution also relies upon the evidence of PW.2-Shanmugam. He speaks with regard to he joined the very same branch and got marked the documents Exs.P13 to P45 in

order to substantiate the case of the prosecution; but he admits that he joined the Bank in September 1994 and also got marked the documents pertaining to Sri Venkataswamy and execution of Ex.P23.

97. In the chief evidence, he has deposed with regard to the letter of M/s.Amman Rubber Products and also the legal opinion, which has been taken by the Bank and also speaks with regard to Ex.P9-supply bills. In the cross-examination, he categorically admits that he does not know any personnel knowledge regarding the said transaction and the same was taken place prior to joining the said Bank. His evidence was not helpful to the prosecution, since he is not having personal knowledge regarding transaction.

98. The evidence of PW.3 reveals that no incriminating material against accused No.1. The other witness PW.4, he claims he was an Assistant Manager in SBM, Kanakapura Road Branch from 1991 to 1994 August. At the relevant time, accused No.1 was also working as Branch Manager and in his evidence also there is no incriminating evidence against accused No.1. PW.5's evidence also discloses that, no incriminating

evidence against accused No.1. PW.7 evidence is also not helpful to the prosecution against accused No.1 except marking of documents.

99. The main evidence is PW.8, who was the Vigilance Officer and conducted the inspection and submitted the report in respect of the allegation of misdeeds of accused No.1. He speaks with regard to overdraft facility in respect of bill discounting and credibility of the business. He says accused No.1 was the manager of SBM, Kanakapura Road Branch from 25.5.1993 to 27.11.1994. He inspected the premises of accused No.2 and no such premises was in existence and also visited M/s. Annai Sathya Transport Corporation, Hosur and does not have any unit of Rubber re-trading at Hosur and accused No.1 did not make any verification and accused No.2-Firm was also not in existence. In his enquiry, he came to know that a false report was filed. Accused No.1 had reported in his proposal that he had verified the accounts, book pertaining to M/s. Sanjay Enterprises. In the cross-examination he admits that he has submitted the report to Head Office and further he categorically admits that accused No.1 had made a proposal for sanction of loan to the Head Office based on the document furnished to him

by M/s. Sanjay Enterprises. He volunteers to state that recommendation to the Head Office was sanction of loan and he ought to have been made the verification regarding the materials supplied by the borrowers of loan. But he admits that in his enquiry revealed that whatever documents have been received by accused No.1 was sent to the zonal office. But he categorically admits that the subsequent Manager-Ajit Prasad had also failed to enquire about the credit worthiness of the buyer.

100. He further admits that if Mr.Ajit Prasad had taken due diligence and care, irregularity could have been avoided. This admission takes away the case of the prosecution and also it is emerged in the evidence that accused No.1 had sent the proposal based on the document submitted by accused No.2 and also it is emerged that subsequent Manager, who sent the supply bills and not accused No.1. It is also important to note that in terms of Exs.P141 and 142, the Subsequent Manager-Ajit Prasad sent the report with regard to the existence of the Firm i.e., accused No.2. But, P.W.8 intelligently says that he does not remember the said report. It is also important to note that the report, which the PW.8 was submitted to the Department, has

not been produced before the Court. The Trial judge failed to take note of these aspects. It is important to note that the case is filed against accused No.1 mainly on the Inspection Report of PW.8 and the said report ought to have been placed before the Trial Court, why the same has been suppressed by the prosecution, there is no explanation in this regard.

101. PW.8, categorically says he submitted the report to the head office and he also did not record the statement of any of the witnesses but only he claims that during his visit it reveals that the said firm is not in existence. Ex.P26 clearly discloses that an intimation was sent shifting of the firm of accused No.2 and also he categorically admits that the subsequent Manager ought to have taken care and if he had taken due diligence, irregularity could have been avoided.

102. The evidence of PW.8 is fatal to the case of the prosecution and the same is not helpful to the prosecution in order to bring home the accused No.1. The Trial Court did not discuss the same in detail and only taken note of the chief evidence and the answers elicited from the mouth, particularly,

P.Ws.1 and 8, which is fatal to the case of the prosecution and not being discussed.

103. PW.8 also categorically admits that accused No.1 has taken more care for security for the bank by collecting the collateral security from Venkataswamy. The other witnesses relied upon by the prosecution, none of the witnesses speak with regard to the misdeeds of accused No.1. The evidence of PW.9 also not helpful to the prosecution.

104. PW.9 categorically admits that the Head Office located at Dharmapuri deals with the tread rubber. Exs.P67 and 69 are having different print and also it differs in the letters of the said printings. Further, he categorically admitted that he does not have any personal knowledge about the transaction between M/s.Sanjay Enterprises and the Corporation. When such being the case, when he does not have any personal knowledge, his evidence cannot be relied upon. No doubt, accused No.1 has sent the proposal and I have already pointed out that though he sent the proposal for sanctioning of loan for bill discounting, the same was sanctioned by PW.1 against supply bills and subsequently the Manager corresponds the same. PW.8

categorically admits that if the subsequent Manager would have taken care the irregularity could have been avoided. The other witnesses, who have been examined before the Trial Court, do not speak anything about the involvement of accused No.1 except marking of the documents.

105. The learned counsel appearing for accused No.1 relied upon several Judgments with regard to the conspiracy as well as the involvement of the accused and this Hon'ble Court in **N.R.Bhat**'s case (supra), with regard to non-production of the Vigilance report categorically held that, much credence cannot be attached and further held an adverse inference under Section 114(g) of the Evidence Act will have to be drawn for not producing a very vital report submitted by the Vigilance Officer to the Investigating officer. In the case on hand also PW.8 categorically admits that he gave the report to the Head Office and the said report is not produced before the Court. The very base document to initiate the proceedings against accused No.1 has not been placed before the Court.

106. The Kerala High Court also in **Rajeevan Aswathy**'s case (supra), held that when the loan was fully secured by

collateral security, the intention to cheat the Bank cannot be inferred. In the case on hand also no dispute with regard to the property of Venkataswamy is created as collateral security. PW.8 also categorically admits that it is a secured loan. Further he admits that the subsequent Manager has not taken care of it. In the case on hand, only he has made the recommendation but PW.1 has sanctioned the loan. The said Judgment is also aptly applicable to the case on hand.

107. The learned counsel also relied upon the judgment of the Apex Court in **Sujit Biswas**'s case (supra), the Apex Court held that while convicting the accused, it requires proof beyond reasonable doubt and there cannot be conviction based on mere conjectures or suspicion and the said Judgment is applicable to the case on hand.

108. The learned counsel relied upon the judgment of the Apex Court in **Subramanian Swamy**'s case (supra), regarding conspiracy is concerned and in this Judgment also, the Apex Court held that only based on surmise and assertive intervention with regard to any official position misusing, the offence under Section 120-B cannot be invoked. In order to attract the

provisions of Section 120-B, no doubt, as rightly contended by the learned counsel appearing for the State there cannot be any direct evidence and there must be a circumstantial evidence. In the case on hand, I did not find any circumstantial evidence and no doubt accused No.1 sent the proposal and also recommended with regard to the existence of the Firm of accused No.2 and also sent the report.

109. Though prosecution claims that accused No.2-Firm was not in existence but the subsequent Manager-Ajit Prasad report in terms of Exs.P140 and P141 is clear, though the prosecution made all efforts to prove that firm was not in existence by examining the Postman and Courier service persons and also the other persons, who are having the premises but their evidence not suffice to come to a conclusion that the firm is not in existence. Instead Ex.P26 discloses that an intimation was sent for shifting of business. The accused was also working from 1993 to 1994 till his transfer. During his period only a proposal and recommendation was sent with regard to the credibility of business of accused No.2.

110. When such being the facts and circumstances of the case, this Court does not find any material that accused No.1 acted upon with dishonest intention to cheat the Bank. P.W.1, who sanctioned the loan and no doubt recommendation was made by accused No.1 and P.W.1 and 7 categorically admits that he has sent the proposal based on the documents supplied by accused No.2. When these admissions are elicited from the mouth of Prosecution Witnesses, I do not find any incriminating evidence against accused No.1 that he committed the offences invoked against him. The Trial Judge picked up the evidence of the prosecution witnesses i.e., in chief evidence and not discussed the answers elicited from the mouth of witnesses in the cross-examination.

111. Learned counsel for the appellant has rightly pointed out that the Trial Judge has not considered both the chief evidence and the answers elicited from the mouth of the witnesses, who have been examined and the relevant admissions elicited particularly from the evidence of PWs.1 and 8 has not been discussed by the Trial Court and came to an erroneous conclusion that accused No.1 has committed the

offences as invoked against him. Hence, it requires an interference of this Court.

112. The case of the prosecution against the accused No.2 is that with fraudulent and dishonest intention submitted the forged lease deed 01.02.1994 purported to have been executed by one Sri. Suresh offering industrial shed No.717, Chikka Begur Gate, Madiwala Post, in his favour, a forged letter purportedly issued by M/s. Amman Rubber Products certifying his experience in the line of activity, a forged purchase order in the name of M/s.Annai Sathya Transport Corporation falsely showing supply of 240 MTs of Tread Rubber and forged sales tax documents showing KST and CST numbers belonging to some other firm. It is also the charge that accused No.2 conspired with accused No.1 in creation of documents to avail the Over Draft limit of Rs.7.5 lakhs against supply bills and made accused No.1 to believe the documents as genuine. Accused No.2 submitted a total number of 13 forged supply bills showing the alleged supply of Tread Rubber to the extent of Rs.12.32 lakhs to M/s. Amman Rubber Products, Hosur and committed fraud on the Bank and cheated. Accused No.2 had also offered equitable mortgage of agricultural land belonging to one Sri.Venkataswamy, valued at

Rs.35.10 lakhs to the Bank while applying for the credit facility. Hence, he committed offence under Section 120B read with Sections 420, 468, 471 of I.P.C.

113. The prosecution, in order to substantiate the charges leveled against the accused in the charge sheet, relied upon the evidence of P.Ws.1 to 18 and mainly focused against accused No.2 relying upon the evidence of P.W.1-T.A.Padmanabhan, who speaks with regard to submitting of Ex.P1-Proposal. Accused No.2 did not dispute the document Ex.P1, but P.W.1 admits that Ex.P1 does not bear the signatures of the owners of M/s. Sanjay Enterprises and also admits that Ex.P4 is not the proposal of M/s.Sanjay Enterprises. It is also admitted that he had no reason to doubt that Ex.P7 and Ex.P8 are genuine documents and that Ex.P9(a) invoices contain the rubber stamp seal of ASTC. He further admits that in order to grant Over Draft facility by bill discounting system, it was not always necessary that balance sheet of institution seeking loan is to be produced. Having considered the evidence of P.W.1, there is no incriminating evidence with regard to the act of accused No.2 as the witness only speaks with regard to giving application for O.D. facility.

114. The evidence of P.W.1-P.Muthuswamy is only with regard to sanction and there is no incriminating evidence against accused No.2. The evidence of P.W.2 is with regard to the documents Ex.P.13 to Ex.P45. However, the prosecution relies upon the documents of supply bills to M/s. Sanjay Enterprises and they were sent to SBM Hosur Branch for collection and out of that, two bills are realized. P.W.2 categorically admits that he does not have any personal knowledge regarding the said transaction and he also admits that as per Bank guidelines, if any bill is returned unpaid, the same is to be intimated to the concerned borrower/loanee. Having perused the evidence of P.W.2, there is no incriminating evidence against accused No.2 except the bills, nine in number, which are said to have been returned unpaid and produced by accused No.2.

115. P.W.3 speaks with regard to opening of current account in the name of M/s. Amman Rubber Products and also the bills at Ex.P30 to Ex.P38 and the corresponding entries. In the cross-examination by accused No.2 counsel, it is elicited that he does not have any personal knowledge about the transaction of accused No.3 with Hosur Branch and he has not handled the said transaction though he was in the branch. He categorically

admits that accused No.3 has not signed Ex.P65-Credit Voucher. He further admits that the concerned credit slip does not bear the signature of anyone of the said firm. It is the case of the prosecution that accused No.2 created the account in the name of M/s. Amman Rubber Products and none speaks with regard to the said fact.

116. P.W.5 also speaks with regard to opening of current account in the name of M/s. Amman Rubber Products on 04.11.1993 and his evidence is also with regard to Ex.P30 to Ex.P38 and corresponding entries between M/s. Amman Rubber Products and SBM, Hosur Branch. The evidence of P.W.5 also not come to the aid of the prosecution.

117. P.W.6 speaks with regard to realization of the bills and there is no dispute with regard to the fact that only two bills are realized and 9 bills are returned unpaid. He also says that he does not have any personal knowledge about the transaction between M/s. Amman Rubber Products and the Bank.

118. P.W.7 deposed with regard to producing of KST and CST registration certificate and enquiring the same. P.W.7 in his evidence says that on verification, he found that the said firm

has not submitted any returns in his circle in respect of building No.128, but he says that the said building does not come within the jurisdiction of 8th circle. He admits that there is one more circle called 8(1) circle.

119. The evidence of P.W.13 is not helpful to the prosecution to prove the creation of documents by accused No.2. P.W.13 says that the documents Ex.P146, Ex.P147 and Ex.P148 are pertaining to 8th Circle and not his circle. In the cross-examination, he admits that there is a Government notification notifying the jurisdiction of each of the Commercial Tax Officer. Though the prosecution tried to prove the fact of concoction of KST and CST relying upon the evidence of P.W.7 and P.W.13, who deposes that the same does not come within their jurisdiction of their circle, but says that the returns are not filed. If the jurisdiction does not come within their circle, the question of filing the returns in their circle does not arise. Thus, the evidence adduced by these two witnesses are also not helpful to the case of the prosecution.

120. The prosecution mainly relied upon the evidence of P.W.8 the Vigilance Officer, who conducted the inspection and

found that the firm of accused No.2 was not in existence. But he has not recorded any statement of the witnesses. In the cross-examination, P.W.8 categorically admits that he cannot state the exact date or month in which he conducted the inspection but he claims that it is in the year 1996 or in the early part of 1997 and that the inspection is different from investigation. He categorically admits that during his investigation, he has not recorded the statement of any persons or officials questioned by him. It is also important to note that the report which he had submitted is not forthcoming before the Court as it is not placed before the Court. But he claims that accused No.2 did not take him to the factory where he conducts the business. He admits that he visited two places being Kalasipalyam, Bengaluru and another place at Bannerghatta Road in connection with locating the business premises of M/s. Sanjay Enterprises. It is suggested that the subsequent Manager Mr. Ajit Prasad gave the report of inspection and finding of the shop M/s. Sanjay Enterprises, but he says that he does not remember as to whether the said report was submitted. The accused persons relied upon the documents Exs.P140 and P141 and the same are the reports

given by the said Ajit Prasad stating that the said firm is in existence.

121. Learned counsel for the accused suggested that in the month of May 1996, accused No.2 has come to know the shifting of M/s. Sanjay Enterprises from Kalasipalyam to Gottigere and he denies the said suggestion. On perusal of the document-Ex.P26 which is marked by prosecution itself shows that it is the intimation given to the Bank. It is also important to note that P.W.8 says that when he visited the shop, M/s. Sanjay Enterprises was there in Kalasipalyam and it was found locked. The answers elicited from the mouth of P.W.8 with regard to existence of the firm is clear that the prosecution relied upon the evidence of P.W.8 that accused No.2 firm was not in existence is fatal to the case of the prosecution and the same has not been discussed by the Trial Court.

122. No doubt, the prosecution also relies upon the evidence of P.W.9, who was the Branch Manager of ASTC says that no rubber tread transaction was taken place in the said Branch in terms of Ex.P67 to Ex.P69. But in the cross-examination, he categorically admits that he does not have any

personal knowledge about the transaction between M/s. Sanjay Enterprises and the Corporation. This admission is also fatal to the case of the prosecution and though prosecution contention is that the documents are created with regard to the rubber tread business, relies upon the evidence of P.W.9, who is not having any personal knowledge. He also admits that Ex.P67 does not pertain to Hosur unit of the Corporation and when the said admission is elicited, the Trial Judge ought not to have relied upon Ex.P67 so also Ex.P69. It is the categorical admission that those documents are having different prints and it differs. It is also his admission that the main branch is doing the rubber tread business. The evidence of P.W.9 is also not helpful to the prosecution in order to prove the charges leveled against the accused in respect of transaction between the ASTC and accused No.2.

123. The prosecution relies upon the evidence of P.W.10 regarding the transaction that had taken place between the Bank and M/s. Sanjay Enterprises and there is no dispute with regard to the transaction that between accused No.2 firm and the Bank and number of documents are also got marked through this witness. There is no incriminating evidence against accused No.2

through this witness. But he categorically admits in the cross-examination that the O.D. facility given to accused No.2 was a secured loan and the secured loan are recovered through the securities given. P.W.1 categorically admits the signatures of Mr.Ajit Prasad available in Ex.P.140 and Ex.P141 and also admits that the said reports are given by Mr.Ajit Prasad and hence, it is clear that the subsequent Manager Mr.Ajit Prasad inspected the premises. But the evidence of P.W.8 is contrary to the documents Ex.P.140 and Ex.P.141. But P.W.8 says that he does not know about the reports at Ex.P140 and Ex.P141.

124. The Prosecution relies upon the evidence of P.W.11 with regard to the fact that the firm is not in existence. But in the cross-examination, he categorically admits that he is not familiar with the door number of all the houses and industrial sheds, which is also not helpful to the case of the prosecution. The evidence of P.W.14, who is a tailor also not helpful to the case of the prosecution, in order to prove the case with regard to the non-existence of the firm as he turned hostile. PW.15 is the Courier Service Agency and he also turned hostile. His evidence is also not helpful to the case of the prosecution.

125. The prosecution also relies upon the evidence of P.W.16 with regard to the premises having katha No.717 and he claims that one Suresh is the landlord of the premises. The prosecution relies upon the evidence of P.W.16 with regard to lease deed allegedly created by the accused and his evidence is also not helpful to the prosecution though he claims that one Suresh was the landlord of the premises where he was running the scrap material shop as he says that he is not alive. Though the prosecution came to know that the said landlord is not alive, they did not record the statement of his legal heirs with regard to proving the fact as to whether he has executed the lease deed in favour of the accused for having let out the premises. Though it is charged that the said document is created, in order to prove the same, there is no any material before the Court. However, the prosecution relies upon the evidence of P.W.17, who examined the documents sent to him for forensic examination and he speaks with regard to the questioned documents as well as the specimen signatures of the accused while marking i.e., Q-1 to Q-21 and also A-21 to A-37, on which the objections were raised and the Court marked those documents subject to objection. The Trial Judge has relied upon the opinion of P.W.17

in terms of Ex.P.160. When the document is marked subject to objection that those signatures are not obtained with permission, the Trial Court ought to have considered the same. Even though there was an observation that the same would be considered at the time of considering the matter on merits, but nothing is discussed, particularly in respect of specimen signatures at A-21 to A-23.

126. The main contention of the accused before the Trial Court is that without permission, the signatures have been obtained and no procedure has been followed for taking the specimen signatures. The questioned documents Q-1 to Q-21 are at Exs.P72 to P94 and Q-23 to Q-27 are at Exs.P96 to P105 and accused did not dispute those documents which are cheques presented to the Bank while doing the business. When the documents are marked subject to objection, the Trial Court while considering the matter on merits ought to have given the findings in terms of earlier observation. The fact that those documents, which are in dispute are secured without the permission of the Court has not been explained by the prosecution. No doubt, there is a procedure to secure the document and while sending the disputed documents and

admitted documents to the forensic examination and also that the same should be sent after obtaining the permission of the Court. The prosecution did not place any material for having taken the permission of the Court to secure the specimen signatures and other documents.

127. The prosecution further relied upon the evidence of P.W.18, who conducted the part investigation, examined accused No.3 and recorded the statement of some of the witnesses. The main I.O. who conducted the investigation has also not been examined before the Trial Court. In the cross-examination, he categorically admits that though he visited the premises of P.W.9, he has not recorded the statement of P.W.9 and also not cross-checked the door numbers mentioned by P.W.11. He also not recorded the statement of P.W.11, but claims that he orally questioned him. He also not verified about the creditworthiness of the documents at Ex.P147 and Ex.P148. In the cross-examination, he also categorically admits that he has not recorded the statement of P.W.7 and though he visited the Commercial Tax Office, he had not verified any files or records. He also categorically admits that he visited ASTC but he did not

verify any files. The evidence of I.O. also not supports the case of the prosecution.

128. Having perused the materials available on record, first of all the seizure of documents at the instance of accused No.2 in his house including the letter heads of Bank and accused No.3, none of the independent witnesses of the mahazar were examined so also in respect of recovery mahazar, though there are number of witnesses. The very mahazar has not been proved with regard to seizure is concerned. Though prosecution claims that Exs.P.9(a) and P(b) are the bills placed by the accused, the same are xerox documents and the originals are not seized. The Trial Judge has erred in relying upon those documents in coming to the conclusion that the accused have committed the offence. It is also important to note that it is the case of the prosecution that the accused No.2 produced created documents of one Venkataswamy offering the same as collateral security and in order to prove that those documents are fake documents, none of the witnesses have been examined. As rightly pointed out by the learned counsel appearing for the accused, the charges leveled against the accused remains as the charges and

prosecution has not proved the same and the Trial Judge also did not consider the material in a right perspective.

129. On perusal of the entire evidence available on record, no doubt, some of the witnesses have spoken with regard to the act of accused Nos.1 and 2, but in the cross-examination, they gave the answers and admitted that the inspection was conducted by the one Mr. Ajit Prasad. It is also important to note that the said Mr.Ajit Prasad has neither been examined nor cited as a witness by the prosecution. If he has been examined before the Court as a witness, the indulgence of accused Nos.1 and 2 in creation of documents would have been thrown light with regard to their illegal acts. But the fact that the very said Mr.Ajit Prasad subsequent to the transfer of accused No.1, he himself had placed the documents to the Bank, conducted the inspection and given the report have not been considered by the Trial Court. The reasons assigned by the Trial Court is only on the basis of the chief-evidence and has failed to consider the answers elicited from the mouth of prosecution witnesses. If both the chief-examination and cross-examination have been considered by the Trial Court in right perspective, the

Trial Judge ought not to have come to the conclusion that accused Nos.1 and 2 have committed the offence invoked against them.

130. The evidence of the investigating officer is also not helpful to the case of the prosecution and the investigating officer who conducted the major investigation has also not been examined before the Trial Court. The prosecution mainly relies upon the investigation report of P.W.8 and the same is not forthcoming before the Court and the same is also not marked. The prosecution case mainly rests upon the said report and there is no explanation by the prosecution as to why the same is suppressed before the Trial Court and in the cross-examination of P.W.8, it is elicited that he has submitted the report to the head office and the same is not placed before the Court. Inspite of the same, the said report is not placed before the Court.

131. The prosecution mainly relies upon the said report making the accusation against accused Nos.1 and 2, but the primary document is not placed before the Court. The Trial Court has committed an error in not appreciating the evidence available on record, which is perverse and not based on the

material available on record. The Trial Judge carried away with the evidence of the prosecution witnesses and not discussed in detail *in toto* and has wrongly come to the conclusion that the accused Nos.1 and 2 have committed the offence and failed to consider the admissions of the prosecution witnesses and erred in coming to the conclusion that the charges leveled against them have been proved. Hence, it requires interference of this Court to reverse the findings of the Trial Court.

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

ORDER

(i) The appeals are allowed.

(ii) The judgment of conviction and order on sentence dated 31.08.2010 passed in Spl.CC.No.18/2000, on the file of XXI Additional City Civil and Sessions Judge and Special Judge for CBI Cases, Bengaluru (CCC-4) is hereby set aside.

(iii) Accused No.1 is acquitted for the offences punishable under Sections 120B read with Sections 420, 468 and 471 of I.P.C. and

Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

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

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

(vi) The Registry is directed to transmit the TCR to the Trial Court forthwith.

Sd/-
JUDGE

cp*/MD/PYR