

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I.**CRA-S-338-SB-2015**

Reserved on : May 16, 2022

Date of pronouncement : **May 23, 2022**

Lakhvir Singh and others

....Appellants

Versus

Central Bureau of Investigation

...Respondent

II.**CRA-S-516-SB-2015**

Ashok Kumar and others

...Appellants

Versus

Central Bureau of Investigation

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Bipan Ghai, Senior Advocate with
Mr. Paras Talwar, Advocate and
Mr. Rishabh Singla, Advocate
for the appellants.

Mr. G.S. Punia, Advocate with
Mr. Amit, Advocate
for appellant No.5.

Mr. Rajeev Anand, Advocate
for the respondent-CBI.

ARVIND SINGH SANGWAN, J.

Since both the above-mentioned appeals have arisen out of the same judgment dated 12.1.2015 vide which RC8-A of 2004 dated 31.3.2004 under Sections 120-B read with Sections 420, 467, 468, 471 IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, registered at Police Station SPE/CBI, ACB, Chandigarh, was decided, convicting and sentencing the appellants. Therefore, both the appeal are being taken up together.

Both the appeal are preferred against judgment of conviction and order of sentence dated 12.1.2015 vide which the appellants were convicted for offence punishable under Sections 120-B, 420, 471 IPC and sentenced to undergo RI for a period of two years under Sections 420 and 471 IPC and to pay a fine of Rs.4,000/- each and for one year and to pay a fine of Rs.2,000/- each under Section 120-B IPC.

It is worth noticing that since the appeals are pending since 2015 and vide order dated 22.1.2015, while admitting the appeal, the sentence of the appellants was suspended.

An application has been moved by the applicant/appellant for early hearing of the main appeal and disposing of the

same in terms of the judgment dated 10.5.2016 passed by a co-ordinate Bench in CRA-S-1508-SB of 2011, CRA-S-1510-SB of 2011 and CRA-S-1530-SB-2011 allowing the appeal and acquitting the appellants in those appeals.

It is stated in the application that the CBI has filed two sets of reports challans under Section 173(2) Cr.P.C. though the allegations in both the sets are similar and as the accused in the aforesaid three FIRs stand acquitted by a co-ordinate Bench vide judgment dated 10.5.2016, the present appeals are also to be decided in terms of the same.

Learned Senior Counsel has also submitted that the aforesaid judgment has attained finality and no SLP was filed by the CBI. It is also submitted that subsequently even the persons, who faced the trial have been reinstated in service.

For reference, the judgment passed by a co-ordinate Bench of this Court is reproduced here-in-below :-

“Initially an FIR bearing No.RC9(A)/1999 dated 26.02.1999 was registered at CBI-ACB New Delhi against unknown officials of Staff Selection Commission (in short, ‘the SSC’) and the officials of Department of Income Tax, North West Region, Patiala under Sections 120B/420/468/471/201 IPC read with Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. After much

dillydallying as is the stand of the prosecution, the same was sent to CBI Police Station SPE/CBI/ACB/Chandigarh where a fresh FIR bearing No.CHG2000A0027 of 10.10.2001 was got registered under the same very provisions against 31 accused namely, Naveen Kumar Sharma, Harish Chander, Sanjeev Kumar, Deepinder Singh, Avtar Singh s/o Gurbachan Singh, Bhupinder Singh, Veer Singh, Paramjeet Singh, Kamaljeet Singh, Baljinder Singh, Pardeep Singh, Anil Rishi, Ripan Kumar, Parinder Pal Singh, Rakesh Kumar, Smt.Reena Kumari Taneja, Sham Sunder, Manjeet Singh, Rajiv Kumar, Harjinder Singh, Bachitar Singh, Amarjit Singh, Navtej Singh Inderjit Singh, Mukesh Kumar, Prem Sagar, Narinder Singh, Avtar Singh s/o Harnek Singh, Suresh Chand Sharma, Satnam Singh and P.C. Chhatwal.

The precise allegations are that accused Suresh Chand Sharma then Tax Assistant, accused Satnam Singh then Upper Division Clerk along with accused P.C. Chhatwal then Inspector Income Tax (who has since died during trial), all posted in the Confidential Branch of the office of Chief Commissioner, Income Tax, Patiala hatched a conspiracy whereby for illegal monetary benefits they have mis-conducted and through forgery and fake documents managed to secure appointments of Income Tax Inspectors, Stenos and Lower Division Clerks on the basis of such fraudulent nomination letters purported to have been sent by Staff Selection Commission. On account of this forgery and fabrication, accused Paramjit Singh, Kamaljeet Singh (since died), Baljinder Singh,

Pardeep Singh, Bhupinder Singh, Rakesh Kumar and Veer Singh were appointed as Inspectors in the Income Tax Department, whereas accused Rajiv Kumar, Bachitar Singh, Amarjit Singh, Navtej Singh, Inderjit Singh, Mukesh Kumar, Prem Sagar, Narinder Singh, Avtar Singh got appointed as Upper Division Clerks in the Income Tax Department; and accused Manjeet Singh, Harjinder Singh, Smt.Reena Kumari Taneja and Sham Sunder secured their appointments as Stenographer Grade-D in the Income Tax Department. It is alleged that inspite of the fact that names of these persons were nowhere there in the alpha list, select list or find mention in the master index list of the concerned quarter. It was further revealed that these fake nomination letters were sent in the year 1991. The allegations emancipated on account of there being absence of embossing on the nomination letters/dossiers and that the rubber stamp of these carried the words "Kendriya Krayala Pariwar" instead of 'Kendriya Karyala Parisar' and that on certain lists the initials of certain officials were found missing.

To establish its case, prosecution examined in all 22 witnesses comprising of PW1 R.S. Mathoda, Chief Commissioner Income Tax; PW2 K.M. Bali, Director Border Management; PW3 Amit Viyas, Senior Assistant; PW4 Anil Kumar Sharma, Junior Assistant; PW5 Kulwant Singh, Assistant Grade-III; PW6 Rajneesh Sharma, Steno Typist, PW7 Yatish Kumar, Bank Manager; PW8 S.P. Garg, Under Secretary; PW9 Smt.Neelam Sharma, Income Tax

Officer and PW10 Harparsad Kain, Commissioner Income Tax. Thereafter prosecution examined PW11 K.C. Katoch, retired Deputy Director General; PW12 L.Viswanathan, Director, Staff Selection Commission; PW13 R.K. Dhingra, retired Manager Government of India Press, Faridabad, PW14 Baldev Singh; PW15 K.K. Sood, retired Section Officer, PW16 Chander Mohan, Income Tax Officer, PW17 H.R. Chopra; PW18 Vivek Dhir Inspector CBI; PW19 Raj Singh Inspector CBI; PW20 D.S. Sengar, Inspector CBI; PW21 M.L. Sharma as Handwriting Expert and lastly PW22 Smt.Shally Kwatra, Office Superintendent, office of Commissioner of Income Tax, Patiala. Prosecution proved documents Ex.P1 to P10.

Accused in their statements under Section 313 Cr.P.C. denied the allegations and in their defence examined DW1 Rajesh Gupta, Senior Tax Assistant in the office of Chief Commissioner, Income Tax, Chandigarh; DW2 Dev Bux, Tax Assistant office of Commissioner of Income Tax (Central), Ludhiana and DW3 P.A. Venkatesh, Assistant Director (Legal), Northern Region of SSC, New Delhi. Thereafter, the accused closed their defence after proving documents Ex.DW1/1 to Ex.DW1/4.

The Court of learned Special Judge, CBI, Patiala through the impugned judgment dated 16.05.2011 held accused namely Naveen Kumar Sharma, Harish Chander, Sanjeev Kumar, Deepinder Singh, Avtar Singh s/o Gurbachan Singh, Bhupinder Singh, Veer Singh, Paramjeet Singh, Kamaljeet Singh, Baljinder Singh, Pardeep Singh, Anil Rishi, Ripan

Kumar, Parinder Pal Singh, Rakesh Kumar, Smt.Reena Kumari Taneja, Sham Sunder, Manjeet Singh, Rajiv Kumar, Harjinder Singh, Bachitar Singh, Amarjit Singh, Navtej Singh Inderjit Singh, Mukesh Kumar, Prem Sagar, Narinder Singh, Avtar Singh s/o Harnek Singh as guilty for commission of offences under Sections 120B/471/420 IPC whereby they have been sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- each and in default of payment of fine to undergo further rigorous imprisonment for one month under Section 120B IPC; whereas they were sentenced to undergo RI for two years and to pay a fine of ` 1,000 each and in default thereof to undergo further RI for two months under Section 420 IPC and to a similar sentence under Section 471 IPC. However, they stood acquitted under Section 468 IPC. The conspirators who were then posted in the office of Chief Commissioner Income Tax, Patiala namely Suresh Chand Sharma and Satnam Singh after the death of their third conspirator P.C. Chhatwal stood acquitted. It is against this conviction, appellants namely Avtar Singh s/o Gurbachan Singh, Veer Singh, Anil Rishi, Ripan Kumar, Sham Sunder, Mukesh Kumar and Prem Sagar have invoked the Appellate jurisdiction of this Court under Section 374 Cr.P.C. by way of CRA-S No.1508 of 2011; appellants namely Naveen Kumar Sharma, Sanjeev Kumar, Dapinder Singh, Bhupinder Singh, Paramjeet Singh, Kamaljeet Singh, Parinder Pal Singh, Rakesh Kumar, Smt.Reena Kumari Taneja, Navtej Singh and Inderjit Singh have

filed CRA-S No.1510 of 2011, whereas Harish Chander, Amarjit Singh, Bachitar Singh, Rajiv Kumar, Narinder Singh, Avtar Singh s/o Gurdev Singh, Harjinder Singh, Manjeet Singh, Pardeep Singh and Baljinder Singh have come up in CRA-S No.1530 of 2011.

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

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

Learned counsel for the two sides have readily accepted the principle of law which has crystallized into the golden rule which enunciates that it is for the prosecution to establish its case beyond the shadow of reasonable doubt and the prosecution can

by no means take advantage of the weaknesses of the defence which is to prove its stand by mere preponderance of probabilities for which reliance is placed on 1976 CLR 74 (SC) 'Partap v. State of UP'; and 1976 CLR 116(SC) 'Bhagiratti v. State of MP'. So by that analogy, it is for the prosecution in this case to establish by cogent and substantial evidence its allegations against each of the accused so as to romp home with the charges against them. It is the own case of the prosecution that initially an FIR was lodged with CBI-ACB New Delhi by way of FIR No.RC9(A)/1999 dated 26.02.1999. It is not in any manner controverted by Mr.Sumeet Goel, Advocate representing the CBI that this initial FIR was lodged on the grounds and allegations that certain unknown officials of the SSC and Income Tax Department, North West Region, Patiala had conspired and hatched a conspiracy by virtue of which they have issued bogus selection letters and as a consequence of which certain persons have joined in the offices as Ministerial staff of the Government of India.

To the very query of the Court, learned counsel for the CBI was totally at a loss of words as to how or in what manner this initial FIR was dropped midway without further investigating and by what means the second FIR at Chandigarh has cropped up after more than 2 years and 8 months for which there is no worthwhile and acceptable explanation. Though under the premise of the investigations having been transferred, Mr.Sumeet Goel has sought

to take refuge but effectively pursuing the second FIR and its contents and proceedings thereon nowhere suggests even remotely that it was transfer of the investigation, rather entirely a new case and fresh initiation of proceedings under Section 154 Cr.P.C. have come to take place by this subsequent recourse.

The Hon'ble Supreme Court considering this question whether there can be more than one FIR in relation to the same incident which could have occurred out of the same very occurrence, has detailed at length that second complaint in such a situation is not permissible nor the Court could be satisfied by the learned counsel representing CBI that it was a pure preliminary inquiry prior to the registration of an FIR. Seeking support from 'Anju Chaudhary v. State of U.P. and another' 2013(1) RCR(Criminal) 686 where reliance has been placed on 'T.T. Antony v. State of Kerala' 2001(3) RCR (Criminal) 436 their Lordships were of the view that an information given under Section 154(1) of the Code of Criminal Procedure which is commonly termed as 'First Information Report' is a very important document and a second FIR for the same offence is not permissible. Since in the present case, it is the same very incident harbouring around the same set of allegations regarding fraudulent recruitment based on the forged and fabricated documents, therefore, to the mind of this Court, to avoid any serious complications certainly dehors registration of a subsequent FIR on the same set of

allegations and therefore, the State (CBI in the present case) is precluded from registering another FIR, that too at Chandigarh when the very inception of the fraud and the documents on which such appointments are based are alleged to have been initiated from the office of SSC, New Delhi from where the alleged dossiers/appointment letters/nomination letters are claimed to have been issued.

This Court seeks support from another view laid down in 'Chirra Shivraj v. State of Andhra Pradesh' 2011(2) RCR(Criminal) 96, where it was held by the Hon'ble Supreme Court that when there are same set of allegations pertaining to the same offence and events and when the chain of persons involved is the same, there cannot be a second FIR.

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

The second leg of submissions that has been advanced on behalf of the appellants by their respective counsels revolves around the very averments that it was the same set of evidence of the prosecution which has been believed against one set of accused/present

appellants/convicts and which in the case of the coaccused, who have since been acquitted, stands disbelieved certainly needs to be taken with a pinch of salt. It needs to be reiterated here that assuming that these dossiers/letters of appointment/nomination letters had originated from the confidential branch of Income Tax Department, Head Quarter at Patiala but as is abundantly reflected from the records of the case, neither the Income Tax Officer, Mr. O.P. Sood who was holding the post responsible for processing of these documents and issuance of these appointments was ever examined as a prosecution witness nor was arrayed as an accused and the accused Suresh Chand Sharma and Satnam Singh, officials of the said office, stood acquitted are matters which undermine completely the case of the prosecution as to how these officials on such set of evidence stood acquitted when that is the very axis on which the prosecution story revolves (though out of them, one P.C. Chhatwal has died during the trial). If such an evidence as to forgery and fabrication of the nomination letters is not established qua these persons, how come the convict appellants could be held responsible for the same when the allegation of the prosecution at the very inception of the FIR that the initial conspiracy was between Satnam Singh UDC, P.C.

Chhatwal Income Tax Officer and Suresh Chand Sharma Tax Assistant who all were posted in the Confidential Branch of the office of Chief Commissioner Income Tax, Patiala. Since these so "initiators" of this crime have been let off the hook, it would be too preposterous to hold the other persons, who have merely joined on the basis of these documents in the offices, to be solely responsible.

By exonerating these officials, the very "originators" of this crime, how could there be an element of criminal conspiracy qua the convict appellants, who at the relevant time were pure candidates aspiring for these posts? It is highly unbelievable as has been contended on behalf of the appellants which the counsel for the CBI failed to rebut that these private persons could manage to get appointments by their own acts when it is a matter of common knowledge that selection process as well as appointment procedure has to go through various channels and hierarchy till a candidate is finally made to join on a particular post, drew salaries, perks, attained seniority and where they had continued for almost more than a decade. Even none from the office of SSC has been associated as an accused to emphasize and highlight the very origin of these selections.

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

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

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

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

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

arguments that have been advanced by the appellant side by their counsels, it emerges that this witness states in his cross-examination that there are about 22 Printing Presses of Govt. of India all over the country and the Printing Press at Nilokheri is one of them. Thus, in that eventuality he does not completely rule out the possibility that these nomination letters/forms were forged and fabricated one and rather has stated that possibility cannot be ruled out about printing of such forms which were there in the present case at some other Printing Press of Government of India. The other two important witnesses around which the prosecution story revolves is the deposition of PW10 and PW11. PW10 Harparsad Kain is one of the persons who at the relevant time of these selections/appointments was Divisional Director, Northern Region, SSC, New Delhi and has sought to bring about evidence as to fabrication and forgery of these dossiers/nomination letters by reiterating missing essentialities on these documents as well as his signatures on the letters. He has categorically admitted that his specimen signatures were only obtained at the office of CBI Chandigarh and there was no one else and therefore, invariably rules out any semblance of credibility to these so called admitted signatures. In his cross-examination he admits that whenever any requisition is received from any office located in the region, the same is entered in the registers maintained by the Commission and the same is complied with by sending nomination letter along with dossiers and

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

confronted he was unable to account for the said despatch register which would have been a material evidence to corroborate the fact of this fabrication and forgery so claimed to have been undertaken by the prosecution and which does not form part of the prosecution evidence and above all, to a very particular question this witness admits that a candidate has no role in preparation of the nomination letter, are matters which certainly bear out that there is something more than what is brought before the Court in the evidence of the prosecution which has been kept away for a purposeful motive. The other important witness PW11 K.C. Katoch who at the relevant time remained posted as Regional Director, Northern Region, SSC, New Dehli and has sought to further the case of the prosecution to term certain documents to be false and fictitious and when confronted admits that he has not seen the result sheets for the relevant period regarding which he was testifying in the Court. He has admitted the procedure as per which the master index is prepared on the basis of valid applications of the eligible candidates and that it is the Computer Department of the SSC which prepares the same and accepts that he has not compared the entries in the master index register with the application forms, are matters which do have a definite bearing on the outcome of the prosecution version. This witness further accepts that it is the duty of the officer concerned to verify correctness and genuineness of the nomination letters received by him and further

admits that no such query or clarification was ever sought during his tenure in SSC. Thus, from this overall evidence it clearly points out that there has been yawning gaps in the prosecution story and that the very chain of events so sought to be completed is materially broken at vital places.

Furthermore, assuming for the sake of arguments as has been contended on behalf of the CBI by their counsel that there is only circumstantial evidence which has remained un rebutted and is well reflected from the absence of embossing of seals/rubber stamps, photographs being not embossed and that the name of the Printing Press on the proformas forming the dossiers is in itself suggestive of the falsity of the same. Even by that analogy how the concerned officials of the Income Tax Office, Head Quarter, Patiala where the office of Chief Commissioner Income Tax is located and who were supposed to deal with such appointments in the Department in spite of there being specific mention in the letters that in case any of these features are missing or are discrepant the letters of nomination may be returned back to the originator office but however, the same were never returned back and rather were acted upon further strengthens the belief of the Court that all was not well either in the working of the Department concerned much less in the investigations. It is duly conceded by learned

counsel for the CBI that during the investigations no original records of selections have been taken into possession and what is sought to be the main plank is that all the records stood destroyed furthers the suspicion as to the role of the concerned office of the Income Tax as all these appellants who are from the ministerial staff pertain to that very Department only. It is a matter of common knowledge and is rightly conceded by the two sides that prior to the selection, advertisements are given to which prospective candidates respond by moving appropriate applications which are processed and after the applicants are found to qualify the minimum qualification so laid, are issued admit cards leading to their appearance in the examination and thereafter alpha lists which depict the results of the examination are prepared and on the basis of the same, nomination letters are sent to the department by the SSC and thereafter appointment letters are issued however, none of these records in original have come up before the Court. The alleged so called select list Ex.PB/1 is the photostat copy of a computer generated document and thus in the absence of the originals or the proof of the loss of originals and without leading of secondary evidence, the same has been allowed to be exhibited. While dealing with all these processes during

the course of despatch and receipt of various letters pertaining to these selection processes, relevant entries certainly are made in the diary/despatch register which too have never been brought about by any means. Even to the mind of this Court the person who in the SSC used to prepare such dossiers has not been examined either in the investigations or at the trial to bring forth the stand of the prosecution that such dossiers during the relevant period were never prepared by him nor were processed by SSC for such a purpose. Since there is complete failure of the prosecution and in the absence of original documents or lack of legitimate proof thereof. As has been laid down in 'Budh Ram v. State of Haryana' 2010(2) RCR(Criminal) 352 relied upon by the appellants' counsel the offence of forgery can only be committed in relation to the original documents and not with respect to the copies thereof, certainly negates the conclusions that have been sought to be drawn by the learned trial Court. Therefore, it ensues that the Court below has recorded these findings contrary to this settled proposition of law as the originals were never brought before the Court nor established by any means.

It is well enunciated law reliance of which can be taken note of the ratios laid down in 'Sait Tarajee Khimchand and others v. Yelamarti Satyam and others' 1971 AIR (SC) 1865; 'Karnail Singh v. M/s

Kalra Brothers, Sirsa' 2009(2) RCR(Civil) 380; 'LIC of India & another v. Ram Pal Singh Bisen' 2010(4) SCC 491; and 'Muddoru Rajappa Tipanna v. State of Karnataka' 2015(4) RCR(Criminal) 485, where their Lordships have held that to prove a document the party is supposed to lead tangible evidence either by primary evidence or through secondary evidence by secondary means and which is totally missing in the present case and thus, mere exhibiting of documents in such a manner for lack of due proof as has been laid down in these ratios does not dispenses with their proof. Since it was the prosecution which was supposed to prove its case beyond reasonable doubt thus, such an irregular and illegitimate way of exhibiting the documents which are mere photostat copies contrary to the provisions of Section 65 of the Indian Evidence Act, 1872 impels this Court to hold that there has been non compliance of the prerequisites of the Evidence Act. It is admitted stand of the prosecution that the originals of these documents have never beenbrought on the records and the ones that are there are only photostat copies. Section 63 of the Evidence Act deals with secondary evidence and which means and includes certified copies given under the provisions of the Evidence Act, copies made from the originals by mechanical processes which in itself assures the accuracy of the copy and copies compared with such copies, copies made from or compared with the originals, counterparts of documents as against the parties who did not execute them and oral accounts

of the contents of a document given by some person who has himself seen it. Thus, in the present case, none of these essentialities have been established on record by the prosecution. There is no attempt by the prosecution to lead secondary evidence to prove such documents in terms of Section 65 of the Evidence Act.

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

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

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

The trial Court merely on the assumption that the names of private accused were not reflected there in the alpha list/results therefore there was some sort of deceit and fraud and rather the learned trial Court has

reversed the onus of proof and has thrown it upon the accused holding that on account of their failure to prove that they were genuinely and bonafidely selected has drawn the conclusions that it was the accused who have been instrumental in the same and who were held to be at fault and thus, undermines the very sanctity of the criminal jurisprudence. In the light of contentions of the two sides, since the entire evidence of the prosecution revolves around the very element of circumstantial evidence and as has been laid down by Hon'ble the Apex Court in 'Alamgir v. State (NCT, Delhi)' 2002(4) RCR(Criminal) 834 that in cases based on circumstantial evidence, circumstances from which the conclusion of guilt is to be drawn should be fully established on the facts and which should be consistent with the hypothesis of guilt of the accused and that the chain of evidence needs to be so complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused. Further it was held that the same needs to be such that with all human probability the act must have been done by the accused. Their Lordships have stressed on the fact that there should not be missing links in the chain of events so far as the prosecution is concerned and that if the circumstances proved are consistent either with the innocence of the accused or with his

guilt then the accused is entitled to the benefit of doubt, whereas in the present case the chain of events has never been completed in entirety and there are innumerable missing links in this chain which certainly goes to the detriment of the prosecution story and therefore creating a doubt in its veracity and truthfulness.

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

The learned trial Court as is reflected from the impugned findings has drawn this presumption from the fact that the lists purported to have been prepared by the SSC and that particulars of some of

the genuine nomination letters were not correlated with the lists in question. The trial Court has jumped to this conclusion and has run into an error holding that it was for the defence to have confronted the witnesses with these lists and facts when it was the onerous duty of the prosecution to establish its case beyond reasonable doubt. The mere fact as has been concluded by the learned trial Court that there was no oral or documentary evidence on record to support the assertion of the prosecution version that the officials/accused ever took any bribe and thus the allegations attributed to P.C. Chhatwal and Suresh Chand Sharma could not be established by any means and that they were only advising the subordinate officials in preparing these lists, and has thus absolved them of these charges. When there is nothing even suggestive that it was the accused/appellants who were instrumental in preparing of these dossiers/nomination lists then it would be too preposterous to hold them guilty. Since the very recommendations have been received from the concerned office of the Department of Income Tax and it was on the basis of these requisitions these dossiers/nomination letters were sent by the SSC to the Income Tax Office at Patiala, this Court is unable to accept that the private accused who were the prospective candidates to these posts could be in a position to influence and fabricate such a large amount of processes enabling them to get the appointment letters in the absence of connivance of the officials of the concerned Department.

No doubt, as has been concluded by the learned trial Court that conspiracy is hatched in secrecy and it is impossible to adduce direct evidence but at the same time the Court cannot loose sight of the fact that there needs to be a semblance of cogent and reliable evidence pointing to the guilt of the accused and which is totally amiss in the present case and it is even accepted by the learned trial Court that the prosecution has not led any evidence to prove as to the forgery of dossiers and the nomination letters. More so, since the learned trial Court has already acquitted the accused under Section 468 IPC on account of lack of evidence and due proof of allegations as to the forgery for the purpose of cheating, and how the learned trial Court came to the conclusion in the absence of any tangible evidence that it was the accused, the present appellants who have been convicted, who have fraudulently and dishonestly used as genuine such dossiers/nomination lists to procure such an employment in the Government Department and when even the very question of the power to take cognizance after the period of limitation of such an offence under Section 471 IPC which provides imprisonment upto 3 years has already elapsed, in the light of the fact that the alleged occurrence having taken place in the year 1991 and the prosecution has been lodged

after almost 10 years, certainly makes this cognizance of the offence to be undesirable and illegitimate one.

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

It has been brought to the notice of the Court that the Attorney General of India vide opinion dated 7.1.2017 has stated that no substantial question of law requires for filing of an appeal before the Supreme Court of India. The noting reads as under :-

"Joint Secretary/Incharge, CAS

Ld. Attorney General for India is requested to kindly look into the matter and give his considered opinion regarding the feasibility of filing SLP in the instant case.

Sd/-
(Anil Kumar Gulati)
Joint Secretary
Incharge, CAS
6.1.2017

Shri Mukul Rohtagi, Ld. AG

Office of Attorney General for India
Supreme Court of India
New Delhi

Notes above

I have examined the notings. I have also gone through the High Court judgment Mr. Justice Fateh Deep Singh dated 10.5.2016.

2. I find that the case does not involve any substantial question of law which requires interpretation by the Supreme Court of India. I also find that the alleged offence is of 1991. Prosecution was launched only in 1989. 26 years have elapsed since then. I see no purpose of filing an SLP.

Sd/-
(Mukul Rohatgi)
Attorney General for India
7.1.2017"

It is also brought to the notice of the Court that the accused, who were acquitted in the said case filed petitions before the Central Administrative Tribunal challenging their termination, which was allowed by the Tribunal and, thereafter, Union of India preferred writ petitions before this Court, which were dismissed on 10.3.2022.

The prosecution case, as set up by the CBI is that the accused persons obtained appointments on the post of Stenographers, Upper Division Clerks, Lower Division Clerks and Inspectors in the Income Tax Department, North-West Region, Chandigarh during the period 1990 to 1992 on the basis of fake nomination letters purported to be issued by the Staff Selection Commission, New Delhi, though their names did not figure in the result.

One of the accused P.C. Chhatwal has already died and accused Suresh Kumar Sharma, who was posted as the Tax Assistant in the Confidential Branch of the Office of the Chief Commissioner of Income Tax, Patiala was assigned the duty of dealing with the staff

vacancies position and recruitment, whereas accused Satnam Singh was posted as Head Clerk in the Accounts Branch. It is further the case of the prosecution that Suresh Chand Sharma entered into a criminal conspiracy with accused P.C. Chhatwal and other accused and allowed the candidates, who were neither selected nor were in the select-list on the various posts as noted above in the Income Tax Department. It is further stated that 13 nomination letter and 25 dossiers of all the candidates were not sent by the Staff Selection Commission and were found old and fake documents and photographs of the candidates also did not contain special emboss, seal of 'SSC' and signatures of Regional Director, RNSSC.

During investigation, it is revealed that P.C. Chhatwal and others obtained money from the accused persons for giving them the letters of appointment and, therefore, the offence under Sections 120-B, 420, 467, 468 and 471 read with Section 13(1)(d) and 13(2) of the Prevention of Corruption Act was committed by accused Suresh Chand Sharma and P.C. Chhatwal (since deceased) and Satnam Singh, along with the other accused. The challan was presented under the aforementioned sections and the evidence of the prosecution was recorded. PW1 Raksha Devi, Senior Tax Assistant stated that on receiving the nomination letter dated 19.2.1992, she made entries in the receipt registers and put up the seal on the nomination letters Ex.PW1/1 and PW1/2.

PW2 S.S. Chugh, Inspector (Retd.) of Income Tax Department proved on record the Annual Confidential Reports of accused Suresh Chand Sharma and PW2/1 to PW2/10.

Another witness Promila Bhardwaj, who appeared as PW3 stated that she is Commissioner of Income Tax and proved the sanction order to prosecute Suresh Chand Sharma and Satnam Singh as Ex.PW3/1 and PW3/2.

PW4 Shiv Dass, Assistant Grade-I, FCI, Regional Office, Chandigarh proved Ex.PW4/1 to PW4/8, the specimen handwriting and signatures sheets of one Nirmal Singh. Similarly of one Bimala as Ex.PW4/9 to Ex.PW4/16.

Similarly, PW5 Yog Raj and PW6 Raj Kumar also proved the handwriting and signatures sheets of accused Vijay Rani, accused Satnam Singh and M.P. Singh.

PW7 Pawan Sharma and PW8 Anil Singla also proved the specimen handwriting and signatures of Lakhan Singh, P.C. Chhatwal and K.C. Katoch.

PW9 also proved the specimen handwriting and signatures of Jagdish Singh, Jarnail Singh and Surender Pal Singh. All the accused persons as Ex.PW9/2 to Ex.PW9/198.

PW10 A.K. Kaul, Income Tax Officer, Mohali, proved the certain documents as Ex.PW10/1 to PW10/H96. Similarly, S.N. Bhardwaj

PW11 Inspector, Income Tax Department (Retired) also proved the dossier file of Gurmit Singh as PW11/A and other accused PW11/J. Similarly, PW12 Sant Ram and PW13 M.S. Bhatia also proved the appointment letters of the accused persons. This witness also proved police verification reports of the accused persons in his detailed statement.

PW14 Raman Chopra, Director ITA stated that an investigation was conducted regarding nomination form received from Staff Selection Commission and found that it is not bearing the emboss seal of 'SSC' and, thereafter, CBI was informed regarding the fraudulent appointments in the department. A letter was written to the Staff Selection Commission in this regard in which, reply was received along with list of roll numbers, in which accused names were not found. This witness also proved certain communications between the Income Tax Department and CBI during the investigation.

PW15 Neelam Sharma, Income Tax Officer stated that she was working the Confidential Branch, Income Tax Department, Patiala and she also proved the nomination letters and some dossiers entered in the register. She also proved the notings prepared by the different officials regarding making entries in the register. Mohinder Singh, Income Tax Commissioner (Retd.) appeared as PW16 and stated that the dossier file was received from the Chief Commissioner of Income Tax, Chandigarh in the Office of Commissioner, Income Tax Department,

Jalandhar and he issued an order dated 16.9.1993 under his signatures issuing the appointment letters.

PW17 Jagtar Singh and PW18 Ranju Bala, Superintendent proved certain letters of appointments of the accused persons.

PW19 Kartar Chand Katoch, Director, Northern Region, Selection Commission, New Delhi proved the compiled rank/merit-wise list after declaration of the joint exams of Clerks, Stenographers, Auditors, Junior Accountants and UDC and Inspectors, Central Excise and Income Tax. This witness has stated that the letters Ex.PW1/1, Ex.PW1/2, Ex.PW13/1, Ex.PW13/3, Ex.PW13/5 to Ex.PW13/11, Ex.PW13/13 and Ex.PW18/38 do not bear the genuine signatures and stamp of his office and stated that the same are fake. Another witness Ved Parkash Gora, Director, Administration, Ministry of Health and Family Welfare also stated that he has supplied the information regarding genuineness of the nomination forms of PW Raman Chopra. B.S. Dhillon, Income Tax Department (Retired) appeared as PW21 and also proved certain documents; like dossier and signatures of his predecessor. Arun Kumar, Chief Commissioner of Income Tax (Retired) appeared as PW23 stated that appointment letters were issued by the Confidential Branch at three levels, PAI, Inspector and ITO (Headquarters) level. This witness also stated that case file was put up by the ITO for approval and sending letters for police verification of the police persons.

PW23 C. Jeeva Kumaran, Deputy Secretary, Ministry of Earth Science proved a letter dated 16.7.2004 issued by V.P. Vohra addressed to Raman Chopra, Deputy Commissioner of Income Tax, Headquarters, Chandigarh and another letter dated 10.8.2004 and 3.9.2004 that candidate Gurmit Singh is not qualified. He further stated that the letter issued by him and V.P. Vohra was containing correct information of the 25 candidates were not nominated by SSC, Northern Region, New Delhi.

PW24 H.R. Malhotra, Joint Commissioner (Retd.), Income Tax, stated that he was the Head of Confidential Branch and Shally Kwatra, Neelam Sharma and accused Suresh Chand Sharma were under him in the Branch and has stated that certain nomination letters, purported to be signed by him, in fact, were not signed by him.

PW25 Shelly Kwatra, Upper Division Clerk in Income Tax Department submitted that she received the dossiers, which were marked by the headquarters and under the guidance of accused Suresh Chand Sharma, she put up the same before the higher officer. The noting to be sent to the headquarters was approved by Ex.PW21/1. Thereafter, the dossiers were sent for police verification.

PW26 Raj Kumar Malhotra, Inspector stated that Suresh Chand Sharma was dealing with transfers and postings and he had dealt with some of the dossiers of the accused. This witness has detailed the

procedure adopted by the department by sending the dossiers to the different persons as well as to the police for verification.

PW27 Subhash Taneja proved the specimen sheets of accused Sunita Rani. R. Chandra PW28 stated that documents were received from his office Superintendent of Police, CBI, ACB, Chandigarh for comparison of the disputed signatures and he has prepared the report after examination of the signatures and specimen signatures as well as handwriting and specimen handwriting of the witnesses and accused persons on the disputed documents.

PW29 Vinod Kumar Sharma proved the seizure memo of the documents, which were handed over to Inspector CBI.

PW30 B.S. Rattan also proved the dossier files and sending communication. Baldev Singh PW31 was declared hostile. Jai Singh, Inspector of Police PW32 was the investigating Officer stated about the investigation conducting by him regarding the accused persons. Recovery of the various documents, recordings of the statement of witnesses, various seizure memos of the documents seized from the accused persons. The memos regarding the handwriting and the signatures of the witnesses, the documents sent for comparison to the expert for the report.

After the prosecution evidence was concluded and the statements of the witnesses were recording under Section 313 Cr.P.C.,

the Public Prosecutor confronted the accused with all the incriminating evidence which has come against them. All the accused denied the same and pleaded the innocence and have suggested their respective line of defence. A common defence raised by all the accused is that the original record has been withheld by the prosecution and no discrepancy was pointed out by any of the prosecution witnesses and there was no criminal conspiracy with the accused persons and they have been falsely implicated as they were rightly selected on respective posts.

Some of the accused persons led defence evidence pleading innocence and accused Satnam Singh raised an argument that on the similar set of allegations he stands acquitted by the by the Special Judge, Patiala vide judgment dated 16.5.2011. Suresh Chand Sharma stated that he had not dealt with the dossier/nomination letters and he has no Knowledge that who had led the same. He has also raised the same argument that vide judgment issued dated 16.5.2011, **CBI Vs. Naveen Kumar Sharma** CC No.11 of 8.9.1003, he stands acquitted. Some of the accused, who are appellants have raised argument that the original record has been withheld by the prosecution and the nomination forms along with the dossiers were received by the Income Tax Officers personally by name and the same were processed through many channels and after proper verification of the correctness of the nomination letters and dossiers, they were appointed. The appointment

letters were sent by the Staff Selection Commission, wherein they had appeared for written examination and cleared the same and were given appointment in due process.

Learned trial Court, thereafter, framed the following as many as 07 points for determination :-

1. Whether accused Suresh Chand Sharma and Satnam Singh remained public servants at the relevant time and the sanction orders for prosecuting them are legal and valid ?
2. Whether the accused entered into criminal conspiracy to commit the offences of this case ?
3. Whether all accused cheated the department of Income Tax by dishonestly inducing the department to deliver the appointment letters and pay salary etc. ?
4. Whether all accused forged dossiers and nomination letters intending these to be used for purpose of cheating ?
5. Whether all the accused fraudulently or dishonestly used as genuine fake dossiers and nomination letters knowing the same to be forged documents ?
6. Whether accused Suresh Chand Sharma knowing that offence has been committed, caused the original files in which fake dossiers-nomination letters were dealt with, to be destroyed, with the intention of screening himself and other accused from legal punishment ?

7. Whether accused Satnam Singh and Suresh Chand Sharma being public servants by corrupt or illegal means or by abusing their official position obtained pecuniary advantage ?

On Point No.1, it was held that the two of the accused Suresh Chand Sharma and Satnam Singh were public servants and sanction for their prosecution was granted in a legal manner.

With regard to Point No. 2 to 7, the trial Court in paragraph 85 observed that the common argument raised by the accused persons that no original dossiers or nomination were produced on record to ascertain whether the fake documents were bearing a different seal than the genuine one. However, on the basis of the statement of PW9 it was observed that the seal bears a different alphabets than the original one and, therefore, the trial Court recorded the finding that the documents are forged.

The trial Court further in para 98 of the impugned judgment observed that the accused persons have joined the Income Tax Department on the basis of some fake documents, however, simultaneously observed as under :-

"Therefore, it is proved that accused No.1 to 25 entered into a criminal conspiracy with unknown officials of the Staff Selection Commission and that of Income Tax Department in order to dishonestly and fraudulently, cheat the Income Tax Department by using forged documents by

using forged documents knowingly that these were forged, in procuring the appointment orders and drawing the salaries from the Income Tax Department. However, the prosecution has not led any evidence to prove, as to who actually forged the dossiers and the nomination letters. This Court is not inclined to agree with the argument advanced by the learned Public Prosecutor for the CBI that accused No.1 to 25 being beneficiaries must have themselves forged these documents, because no such presumption can be drawn. The onus was on the prosecution to lead positive evidence to prove as to who actually forged the dossiers/ nomination letters in question. But no such evidence has been led on record by the prosecution. In these circumstances, this Court has no hesitation in holding that charge under Section 467 and 468 IPC of the Indian Penal Code is not proved against the accused."

The trial Court on the aforesaid observation held the accused guilty of committing the offence under Sections 120-B, 420 and 470 IPC, though acquitted all of them under Sections 467 and 468 IPC and sentenced them to undergo imprisonment for a period of two years for the substantive sentence.

Learned Senior Counsel for the petitioner has argued that on the same set of allegations and evidence, when some of the co-accused against whom there were similar allegation for joining the

Income Tax Department on the basis of the forged document of Staff Selection Commission, were convicted vide judgment dated 16.5.2011, they preferred CRA-S-1508, 1510 and 1530-SB of 2011 which were allowed vide judgment dated 10.5.2016 as noticed above. Learned Senior Counsel has further submitted that though it was preferred by the CBI against the said judgment and consequently, the said persons preferred application before the Central Administrative Tribunal, which set aside the termination order of their services and reinstated them back.

Union of India filed CWP-420-2022 and CWP-111-2022 with some other writ petitions in which relying upon the judgment of acquittal passed by the co-ordinate Bench in CRA-S-1508-2022, the appeal filed the Union of India, challenging the re-instatement of the accused was dismissed on 3.2.2022.

Learned Senior counsel for the appellants on merit has argued that, in fact, the trial Court on same set of allegation has acquitted the accused persons under Sections 467 and 471 IPC by observing that the forgery of the documents was done by unknown persons of Staff Selection Commission as well as the Income Tax Department in conspiracy with the accused, who faced the trial.

Learned Senior counsel has further argued that in the investigation conducted by the CBI nothing has come on record regarding the identity of those unknown persons in whose conspiracy

the appellants have forged the documents and therefore, in the absence of any accused brought to fore or in the absence of accused ;having facing the trial for conspiracy with the appellants, the charged under Section 120-B IPC is not at all made out as the appellants have been convicted only on the basis of presumption that they conspired with unknown persons of Income Tax Department and Staff Selection Commission. Learned Senior Counsel further submits that once part of the evidence led by the prosecution was disbelieved by the trial Court while acquitting the accused persons under Sections 467 and 468, there was no occasion to hold them guilty under Sections 120-B, 420 and 471 IPC.

Learned Senior Counsel has further argued that the employees of Income Tax Department, i.e. co-accused Suresh Chand Sharma and Satnam Singh were acquitted by observing that they were not the part of the conspiracy as there is no evidence to substantiate the allegations that any gratification was paid to accused P.S. Chhatwal (since deceased) through aforesaid Satnam Singh. In view of the said findings, the appellants cannot be held guilty of conspiracy with the unknown officials of the two departments. Learned Senior Counsel has further argued that once the trial Court has disbelieved the same set of evidence against few of the accused, however, convicted the appellants on the same set of allegations without their being any evidence, the appellants are entitled for acquittal.

It is argued that neither the Income Tax officer who was holding the most responsible for processing the dossiers/letters of appointment/ nomination letter, which as per the impugned judgment originated from the Confidential Branch of Income Tax Department nor the CBI investigation could identify such persons as no such person was ever arrayed as an accused. It is further argued that, in fact, acquittal of the accused Suresh Chand Sharma and Satnam Singh, the officials Income Tax Department itself proved that the prosecution has failed to prove the evidence against the appellants. It is next argued that when there is no evidence regarding the forgery or fabrication of the nomination letters as per own finding recorded by the trial Court, though the case of the prosecution at the very inception is that the same was done in conspiracy with the Satnam Singh, UDC, P.S. Chhatwal, ITO and Suresh Chand Sharma, Tax Assistant, who were posted in the Confidential Branch in the office of Chief Commissioner, Income Tax, Patiala, having been exonerated by the trial Court, the entire prosecution case fall flat as the very originators of the crime stands acquitted and, therefore, there cannot any criminal conspiracy qua the appellant.

Learned State counsel further argued that it is unbelievable that a private person can manage to get appoint letters of their own though it is own case of the prosecution that the letters of appointment/dossiers were received by the Department through various

channels and after due enquiry and police verification, they were allowed to join the services on a particular post, drawing salaried, perks and were granted seniority and worked on the post for more than 10 years. Learned Senior Counsel argued that in the absence of any cogent evidence from the Office of Staff Selection Commission, merely on the statement of PW19 that there is variation in the seal of the department, the appellants have been wrongly convicted.

Learned Senior Counsel has further relied upon the statement of PW25 Shally Kwatra (whose statement was disbelieved by this Court in judgment dated 10.5.2016) who at the relevant time was working in the office of Income Tax at Patiala and has admitted that as per the procedure of dealing with such dossiers, which were received in a closed envelope were endorsed by the Admn. Office of Income Tax, Headquarters, North-West Region, Patiala and, therefore, they were processed through various channels. Learned Senior Counsel has submitted that the appellants has no occasion to participate in any such process which was the internal procedure of the Income Tax Department, wherein the letters of nomination/dossiers were process by various channels. After conducting the final verification, the joining of the candidates was permitted as per the procedure of Staff Selection Commission in the nomination letters itself. This witness has even further stated that the sealed nomination were addressed to the Income Tax Officer, Headquarters at Patiala and the appellants were working for

11 years after they were duly appointed. Learned Senior counsel has referred to the statement of PW19 KC. Katoch, who in cross-examination has stated that he has never seen the result sheets for the relevant period when the exam was conducted only the selections were made and appellants were given the appointments and, therefore, in the absence of any verification regarding the correctness and genuineness of the nomination letters by the Staff Selection Commission, the trial Court has convicted the appellants merely on presumption while acquitting the officials of the Income Tax Department on the same set of allegations.

It is next argued by the learned Senior Counsel for the appellants that the offence of forgery can be committed in relation to the original documents and not with respect to the copies which are produced before the trial Court record. It is next argued that non-production of the original documents negates the conclusion drawn by the trial Court as merely exhibition of photocopies of the documents is contrary to the provisions of Section 65 of the Indian Evidence Act, 1872 and these documents, therefore, could not be made basis of holding the appellants guilty of offence. It is further argued that all the documents produced by the prosecution are the photocopies as the originals were never produced before the trial Court and, therefore, this cannot be termed even the secondary evidence in terms of Section 65 of the Evidence Act at it is not the case of the prosecution that a proper

procedure was adopted to lead secondary evidence to prove the documents. Learned Senior Counsel has further argued that the examination of the photocopy of the documents by the handwriting expert is against the well settled principle of law that the photocopies cannot be compared.

It is lastly argued that all these points were duly considered by the co-ordinate Bench while deciding the three appeals in which on the same set of evidence, the accused were acquitted vide judgment dated 10.5.2016.

In reply, the learned Senior Counsel for the CBI has argued that the prosecution has led sufficient evidence to prove that the appellants, in conspiracy with unknown persons of the Staff Selection Commission and Income Tax Department have forged the documents which were believed to be genuine by the Income Tax Department and in that manner the appellants succeeded in getting the postings and continue to work for a long period despite the fact that they were not eligible appointed persons.

It is also argued that the documents exhibited by the prosecution are based upon the testimony of the witnesses which suggest that the appellants were never selected for the post as their names were never recommended by the Staff Selection Commission to the concerned departments.

However, on a Court query, it could not be disputed that the judgment dated has attained finality as no appeal was filed in terms of the letter of Attorney General of India dated 7.1.2017.

After hearing learned counsel for the parties, I find merit in the present appeal for the following reasons :-

- (a) It is the case of the CBI that two challans were presented for the same offence against two sets of accused persons. The Challan No.11 arising out of FIR No. P.C9(A)/1999 dated 26.2.1999 was tried by the Special Judge, Patiala. Three of the accused, namely, P.C. Chhatwal, Satnam Singh and Suresh Chand Sharma, who were the official of the Income Tax Department, Patiala are common accused in both challans. Vide judgment dated 12.1.2015, the trial Court acquitted the accused persons other than the three employees the Staff Selection Commission and Income Tax Department, whereas in the three appeals filed by the similarly situated appellants, who are also given similar appointments were allowed holding that the trial Court recorded a finding that the conspiracy was hatched in secrecy and no direct evidence has come on record, the Court cannot lose sight that there need to be a semblance of cogent and reliable evidence to prove the guilt of the appellant, which is missing in the case. It was also observed that since the trial Court has already acquitted the accused under

Section 468 IPC in the absence of any evidence, it is difficult to uphold the judgment of the trial Court that the charge under Section 471 IPC is proved. The Co-ordinate Bench of this Court further recorded the finding that the conviction recorded by the trial Court in the said case is only based on circumstantial evidence, which chain is missing as the trial Court recorded a finding that there were some unknown persons in whose conspiracy the documents were forged and, therefore, in the absence of the identification of the said unknown persons, the circumstantial evidence is not proved.

- (b) The appellate Court also recorded a finding that in the absence of the original documents having been produced before the trial Court, no finding could be recorded that the accused are guilty of the offence.

It has been held in '**Budh Ram v. State of Haryana**' 2010(2) RCR (Criminal) 352 that the offence of forgery can only be committed in relation to original documents and not with respect to copies thereof which negates the conclusion that it has been drawn by the trial Court as the original documents were never brought before the Court and they were never established.

- (c) In this case also, the trial Court has recorded a similar finding that some unknown persons of Income Tax Department and Staff Selection

Commission in conspiracy with the appellant has prepared those dossiers/appointment letters, though there is no direct evidence as to who committed such offence.

- (d) The trial Court also in this case acquitted the two accused, namely, Suresh Chand Sharma and Satnam Singh (P.C. Chhatwal has died) as they were acquitted in the earlier trial as well of the offences of similar evidence led by the Central Bureau of Investigation.
- (e) It is well settled principle of law as held in case held in '**Sait Tarajee Khimchand and others v. Yelamarti Satyam and others**' 1971 AIR (SC) 1865; '**Karnail Singh v. M/s Kalra Brothers, Sirsa**' 2009(2) RCR(Civil) 380; '**LIC of India & another v. Ram Pal Singh Bisen**' 2010(4) SCC 491; and '**Muddoru Rajappa Tipanna v. State of Karnataka**' 2015(4) RCR(Criminal) 485 that to prove the document a party is required to lead cogent evidence either by primary evidence or by way of secondary evidence. Mere Exhibition of the documents in the absence of any permission to lead secondary evidence is not due proof of the original document. It was the prosecution which was to prove the case beyond reasonable doubt and, therefore, exhibiting the photostat copies of the copies of the documents is not in consistent with the provision of Section 65 of the Indian Evidence Act when no permission by

the Court for leading secondary evidence under Section 63 of the Evidence Act was granted.

- (f) Even with regard to compliance of the electronic record, the requirement laid down under Section 65-A and 65-B of the Evidence Act has not been complied with and in view of the judgment of the Hon'ble Supreme Court '**Anvar P.V. vs. P.K. Basheer and others**' 2014(4) RCR(Civil) 504; '**Tomaso Bruno and another v. State of U.P.**' 2015(1) RCR(Criminal) 678; and '**Kaliya vs. State of Madhya Pradesh**' 2013(3) RCR(Criminal) 958, no reliance can be placed on the documents produced by the prosecution.
- (g) Even otherwise, there is nothing on record to prove that the handwriting/signatures on the disputed documents were proved by the Expert evidence as per Section 45 and 47 of the Indian Evidence Act. The statement of the two experts was already disbelieved in the earlier judgment dated 16.5.2016 and, therefore, the execution of the documents is not established by way of comparison with the admitted handwriting/signatures of the concerned witnesses and, therefore, the questioned documents cannot be accepted as evidence led by the prosecution is not beyond doubt.
- (h) Even otherwise, the entire case of the prosecution is based on the circumstantial evidence once a finding recorded that the

conspiracy is proved to be with unknown persons. It has been held by the Hon'ble Apex Court in '**Alamgir v. State (NCT, Delhi)**' 2002(4) RCR(Criminal) 834 that while leading circumstantial evidence, the conclusion of the guilt should be fully established on the facts which should be consistent with the guilt of the accused and the chain of evidence should be completed so as to leave no doubt regarding the innocence of the accused. In this case, once the trial Court has recorded a finding that the conspiracy was with the unknown employees of the two departments, the said chain is missing.

- (i) Even otherwise, in the statement under Section 313 Cr.P.C., the incriminating evidence which has come on record was put to the accused, in the absence of the original documents, it cannot be said that the material evidence which essential to be put to the accused to call their explanation so as to enable them to lead their defence evidence was not proved. Therefore, in view of the settled law that the statement under Section 313 Cr.P.,C. are not mere formality, the conviction of the appellants cannot be upheld.

Therefore, this Court finds that this case is squarely covered by the judgment dated 10.5.2016 passed in CRA-S-1508-SB of 2011, which has attained finality.

Accordingly, both the above mentioned appeals are allowed, the impugned judgment of conviction and order of sentence dated 12.1.2015 arising out of RC8-A of 2004 dated 31.3.2004 under Sections 120-B read with Sections 420, 467, 468, 471 IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, registered at Police Station SPE/CBI, ACB, Chandigarh, are set aside and appellants stand acquitted.

**(ARVIND SINGH SANGWAN)
JUDGE**

May 23, 2022
satish

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No