IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.46 of 2003

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Sri Banke Bihari Rai, r/v-Bir Kuar Singh University Campus, Japani Farm Kalilahra, PS-Nawada, District-Bhojpur

... ... Appellant/s

Versus

1. The State of Bihar
2. The Central Bureau of Investigation

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Ajay Kumar Thakur
	:	Mrs.Vaishnavi Singh
	:	Mr.Ritwik Thakur
	:	Mr.Pranshu Singh
	:	Mr.Gyan Prakash
For the Respondent/s	:	Mrs.Nivedita Nirvikar, SC, CBI
	:	Mr.Pravin Kumar
	:	Mrs.Shashi Priya
	:	Mr.Amar Shakti

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 29-01-2025

1. The criminal appeal is arising out of the judgment in Special Case No. 01 of 1983/RC No. 39/1982 on the file of Special Judge, CBI, South Bihar, Patna dated 12.12.2002 wherein the appellant was convicted for the offence punishable under Section 5(1)(e) read with Section 5(2) of Prevention of Corruption Act, 1947 and was sentenced to undergo rigorous imprisonment for a period of three years.

2. The case of the prosecution is that the appellant, Banke Bihari Rai, joined the Central Bank of India as an

Assistant in the month of December 1969 and was posted at the Central Bank of India, Ara Branch. He was promoted as Sub-Accountant at the Central Bank of India, Muradpur Branch, Patna, in the year, 1978 and served there until April 1982. The appellant was suspended from service in the month of May 1982 and was reinstated in the year, 1984.

3. The allegation against the appellant is that he amassed wealth disproportionate to his known sources of income, for which he failed to provide a satisfactory account during the check period. The check period was specified as December 1969 to May 1982. It was further alleged that the appellant's total income from his salary and other sources, during the check period was to a tune of Rs. 1,66,462.79, while his total expenditure during the said period was Rs. 52,810.86. Therefore, his total savings after deducting expenses (Rs. 1,66,462.79 - Rs. 52,810.86) amounted to Rs. 1,13,651.93. However, the appellant was allegedly found in possession of assets to a worth Rs. 3,48,064.89. After deducting the savings of Rs. 1,13,651.93 from the total assets, the appellant was required to satisfactorily explain the

remaining amount of Rs. 2,34,412.96. Since the appellant failed to provide a satisfactory explanation for the possession of assets worth Rs. 2,34,412.96, it was inferred that he had acquired them through corrupt and illegal means.

4. An FIR was registered against the appellant on 28.12.1982 at 14:00 hours, based on information provided by R.K. Singh, Inspector of Police, CBI, Patna. Upon perusal of the FIR, it is evident that informant/R.K. Singh received reliable information that the appellant, while functioning as Branch Manager of the Central Bank of India, Muradpur Branch, during the period of 1977 to 1981, amassed wealth in the form of movable and immovable properties disproportionate to his known sources of income.

5. It is pertinent to mention that the fardbeyan of Shri R.K. Sinha, as well as the FIR dated 28.12.1982 in RC No. 39 of 1982, were not brought on record for reasons best known to the prosecution, i.e., the CBI. Additionally, it is relevant to note that the informant was not examined before the Court. The records disclose that PW-17, K.N. Sinha, Inspector of Police, CBI,

Patna, filed the chargesheet against the accused before the CBI Court, Patna, vide Chargesheet No. 15 of 1985, dated 25.10.1985. Along with the chargesheet, the Investigating Officer produced 26 other documents, and 30 witnesses were listed.

6. The Learned Special Judge, CBI, framed charges against the appellant on 13.06.1989 for the offence punishable under Section 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act, 1947. Alternatively, he also framed a charge under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988. The contents of the charge were read over and explained to the appellant. The appellant pleaded not guilty and claimed to be tried.

7. It is important to note that the trial court convicted the appellant for the offences punishable under Section 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act, 1947, which corresponds to Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988.

8. As per the contents of the chargesheet, the check period of the appellant was taken from the month

of August-1978 to April-1982. However, the appellant's income was considered from the month of December 1969 to May 1982, amounting to Rs. 1,66,462.79. The assets which were accounted in the chargesheet are as follows:-

Sl. No.	Description of assets	Value in Rupees
1.	Plot of Land	Rs. 9000.00
2.	Cost of construction of the house	Rs.2,16,636.00
3.	Value of movable assets during the search on 14.06.1982	Rs. 27,177.00
4.	Balance in Account No. 2292 in the Bank as on 31.12.1982	Rs. 4,362.60
5.	Balance in Account No. 1477 in the Bank account as on 31.12.1982	Rs. 1,520.59
6.	Fixed Deposits in the name of Shri B.B.Rai and his son	Rs. 10,000.00
7.	Jewelleries (Ornaments)	Rs. 45,842.70
8.	Deposits in LIC policies	Rs. 12,726.00
9.	Cost of Fiat Car bearing No. BRA.3943	Rs. 13,000.00
10.	Cost of one Lambretta Scooter bearing No. BRA.768	Rs. 3,000.00
11.	Purchase of share in cooperative	Rs. 2,000.00
12.	Purchase of Radio	Rs. 2,800.00

Sl. No.	During the Check Period	Amount in Rupees
1.	Income	Rs. 1,66,462.79
2.	Assets	Rs. 3,48,064.89
3.	Expenses	Rs. 52,810.86

The total expenses of the appellant have been estimated from the month of December, 1969 to May, 1982 as Rs. 52,810.86.

9. In order to ascertain the amount disproportionate to the known sources of income, the Investigating Officer deducted the expenses, i.e., Rs. 52,810.86, from the income, i.e., Rs. 1,66,462.79, which resulted in likely savings of Rs. 1,13,651.93. These savings were further deducted from the total worth of assets, i.e., Rs. 3,48,064.89 - Rs. 1,13,651.93 = Rs. 2,34,412.96, which was shown as acquired through corrupt and illegal means and not satisfactorily explained by the appellant. The chargesheet also disclosed that a sanction order was obtained from the department for prosecuting the appellant.

10. During the course of the trial, the prosecution has examined PWs-1 to 17 and marked Exhibits-1 to 13. On behalf of the defense, DWs-1 to 7 were examined, and Exhibits-A to D were marked.

11. Upon appreciating the entire evidence on record, the trial court convicted the appellant as aforesaid.

12. The points for determination in this appeal are:-

(i.) Whether the prosecution is able to bring home the guilt of the accused beyond reasonable doubt for the offence punishable under Section 5(1)(e) read with Section 5(2) of Prevention of Corruption Act, 1988?

(ii) Whether the trial court has rightly convicted the appellant for the aforesaid offence?

13. Heard the rival contentions of the Learned counsel for the appellant Shri Pranshu Singh as well as Learned Senior counsel Smt. Nivedita Nirvikar for the CBI.

14. It is contended by the Learned counsel for the appellant that, despite non-examination of the informant and failure to bring the FIR and the complaint copy onto the record, the trial court found the appellant guilty, which is arbitrary in nature. Further, the counsel for the appellant also contended that the Valuation Report brought on record, i.e., Exhibit-6 for the jewellery and Exhibit-8 for the evaluation of the house, does not contain any proper assessment or evaluation by PW-7 and PW-9, respectively, to prove that the appellant amassed wealth to the tune of Rs. 2,34,413/-.

Additionally, the evaluation made by the CBI is also incorrect. In support of his contentions, the Learned counsel for the appellant relied upon various judgments of the Apex Court and this Court. Therefore, the counsel prayed for the acquittal of the appellant by setting aside the conviction and sentence order of the trial court dated 28.12.2002.

15. On the other hand, the Learned Senior counsel appearing for the CBI contended that the prosecution successfully proved the guilt of the appellant for the aforesaid offence. It was contended that the burden is on the accused to prove that he did not amass wealth to the tune of Rs. 2,34,413/- and as he failed to provide a satisfactory explanation, the trial court has rightly convicted the appellant, and therefore, the Senior counsel prayed for the confirmation of the trial court's judgment.

16. In order to determine the points at issue, it is necessary to re-appreciate the oral evidence of the witnesses as well as the documentary evidence on record. The trial court relied on the evidence of Pws-3, 7, 9, 11, 12, 16 and 17 to establish that the appellant

possessed unaccounted movable properties, such as gold and silver, allegedly kept in his locker. Therefore, it is necessary to scrutinize the evidence of these witnesses.

17. PW-3, Suresh Singh, is an officer of the Central Bank of India. His evidence discloses that he was in charge of the locker facility on the date of the CBI's inspection at the bank. His testimony further reveals that Banke Bihari Rai (the appellant) had a locker in the branch, held jointly in the name of the appellant and his wife. The certified copy of the appellant’s account concerning the locker is Exhibit-2. The locker facility was provided to the appellant and his wife on 12.12.1981.

18. PW-7, Mr. Baijnath Prasad, is the owner of the jewellery shop, Alankar Jewellers. His evidence discloses that he was a registered evaluator for the government and that D.L. Rai was a government employee. It is important to note that PW-7 was not a party to the search of the inventory, that took place on 01.12.1983 at the Central Bank of India, Ara. His evidence further disclose that he checked and evaluated the ornament

seized by the CBI from the Ara Branch, Central Bank of India, and Exhibit-6 is the Valuation Report given by him.

19. In cross-examination, PW-7 admitted that he assessed the valuables, as per the orders of the CBI Inspector. He further admitted that the jewellery was not seized from the locker in his presence, and that he made the evaluation based on the document/printed proforma containing the value and measurements of the ornaments. He also admitted that Exhibit-6 contains a declaration in the prescribed format, stating, "I have personally inspected the jewellery," but he further admitted that he had never personally inspected the jewellery.

20. On perusal of Exhibit-6, dated 02.12.1983, it is evident that different columns are mentioned in the Valuation Report, specifying the description, gross weight, net weight of the precious metal, value of the precious metal, description of precious and semi-precious stones, their weight in carats, value of the stones, and the total value of each of the item. It is evident that the description of the ornaments, gross

weight of the ornaments, net weight of the metal, valuation of the metal, including the valuation of the stones, and the total value were mentioned separately in the aforesaid columns. This Court is unable to understand how the gross weight and net weight were recorded by PW-7, without inspecting the ornaments. Even the Inventory Report (Exhibit-4/A) does not disclose the gross weight and the net weight of the ornaments. Furthermore, the Inventory Report mention about the quality of gold in carats, which is also noted in Exhibit-12. However, the ornaments are listed as being either 22 carats or 24 carats without any testing. This aspect remains unexplained by the CBI. The date of purchase of ornaments is very crucial for assessing their valuation, as there is a possibility of fluctuations in the prices of gold and silver ornament over time. In the absence of the date of purchase, the valuation of the ornament noted in Exhibit-6 also remains unexplained by the prosecution. Therefore, the evidence of PW-7 cannot be considered reliable with regard to the valuation of the silver or gold ornament, as he did not inspect the ornament prior to issuing Exhibit-6, the Valuation Report.

21. Admittedly, D.L. Rai accompanied the CBI officers and prepared the inventory list on 01.12.1983, whereas the Valuation Report of PW-7 is dated 02.12.1983.

22. The trial court relied on the evidence of PW-9/H.K. Bhattacharya, who was an Assistant Surveyor of Works in the Kolkata Central Public Works Department. His evidence discloses that he evaluated the building of the appellant and took the details of the measurements. The report is of four pages long and was prepared under his dictation and typed by his stenographer, D. Mallick, which is Exhibit-8. There is no incriminating evidence against the appellant in the testimony of this witness, except for the statement that the appellant had a locker in the Central Bank of India since 12.12.1981.

23. In cross-examination, it is admitted by PW-9 that he went to assess the value, at the discretion of his office. He did not mention the Khata of the plot number or the boundaries where the house is situated. He also admitted that he did not specify the area over which

the building was constructed. He further admitted that he did not mention the number of rooms on the first, second, and third floors, nor the length and breadth of any of the rooms in the house, and he cannot say the number of windows or doors of the house. In the cross-examination, it is admitted that he prepared the drawing, but without looking at the said drawing, he cannot provide the details of the house. He also admitted that he did not submit the drawings along with the report. He denied the suggestion that, without the drawing, possession of the house or the ratio of rooms used in the house cannot be determined to fix the value, and that it is essential to assess the price of the materials used. He also admitted that he had not dug the earth to inspect the construction of pillers beyond the ground level. He further admitted that he had not recorded the statement of the appellant separately, and there is no documentary evidence on record to prove that the measurements were given by the appellant. He testified that he prepared the field book during the course of inspection, but did not file it along with the report. He further deposed that the building was incomplete, and several items remained unfinished. The entire building was at an unfinished stage, and he did not mention the quality and quantity of the electrical wire used. He also admitted that he could not obtain the price index of the materials used, from the office of the Bihar Government and relied on the price index of PW-1. He further stated that he could not obtain the price index from recognized firms in the locality, nor ascertain whether the price of materials varied from place to place.

24. On perusal of the Valuation Report, i.e., Exhibit-8, it is evident that PW-9 inspected the building of the appellant along with two other junior engineers, S.K. Dey and D.C. Bhattacharya, and they prepared their Valuation Report from the Year 1981 to 1984. However, the Valuation Report does not contain details, about how much building material (sand, cement, iron chips, electrical fittings, sanitary fittings) was used for the construction of the ground floor, first floor, second floor, and third floor of the unfinished house of the appellant. In the absence of material details, as to how much material was used or about the market value of the

materials for the concerned year, a proper valuation of the construction could not be ascertained.

25. PW-11, P.N. Agrawal, was a service holder posted at the Central Bank of India, Ara Branch, in the year 1982. His evidence discloses that on 01.12.1983, the CBI searched locker No. 23 belonging to the appellant in his presence. Ornaments made of gold and silver were recovered from the locker; however, they were not seized. One D.L. Rai, a representative of Alankar Jewellers, was also present with the CBI team. He further testified that the jewellery was weighed, and its price was estimated by the said D.L. Rai. Subsequently, an Inventory Report was prepared in his presence as well as in the presence of the appellant. The Inventory Report is Exhibit-4 and his signature thereon is Exhibit-4/A. Pursuant to the Inventory Report, the jewellery was placed back in the locker, which was then sealed, and a Search List was prepared which is Exhibit-3, and his signature thereon is Exhibit-3/A. His evidence further discloses that the appellant was a staff member of the Central Bank of India and used to live in a rented house.

26. In cross-examination, he specifically testified that he did not know who owned the ornaments and did not remember the amount of time taken to obtain and prepare the inventory list or the names of the persons who prepared it. He also testified that he had neither weighed nor assessed the quality of the ornaments. This witness was examined on 26.06.1995, and after a lapse of three months, he was again re-examined on 24.09.2002.

27. Through the witness, the salary details of the appellant were marked as Exhibit-12. In cross-examination, he testified that bank employees receive various allowances such as overtime, bonus, checking allowance, travelling allowance, and calling allowance from the bank, which are part of the income of the employees. He further testified that overtime was not mentioned in the salary sheet, and he prepared the salary sheet based on the records available at the bank. The witness also admitted that the gross earnings details of the employees were available in the salary details. On perusal of the salary details (Exhibit-12), it is evident that this document is an extract allegedly

written from the register of the Central Bank of India. However, on examination of the details, it is clear that the appellant received a salary of Rs. 375 in the month of April-1979, Rs. 375 in the month of July-1979, Rs. 362 in the month of September-1979, and again Rs. 375 for the months of September, October, November, and December 1979. From January-1980 to April-1980, he received an amount of Rs. 405, and in the month of May and June-1980, he received an amount of Rs. 750. In the month of July-1980, his salary was Rs. 900, and in the month of August-1980, his salary was reduced to Rs. 860. In the month of September-1980, it was further reduced to Rs. 820, and in the month of October-1980, his salary increased to Rs. 940. For the months of November, December-1980 and January-1981, he received a salary of Rs. 860. The exhibit further discloses that from the month of February-1981 to September-1981, the appellant received Rs. 435. There is no explanation from the prosecution as to why the salary of the appellant varied on different dates. Therefore, such a document cannot be relied upon, to prove the income of the appellant or to conclude that he amassed enormous wealth apart from his savings or salary account. The witness further testified that the salary of the appellant had been credited since January 1969. The head office provides a receipt of the Provident Fund for its employees every six months. The receipt for the Provident Fund of Rs. 13,354/- which is Exhibit-C. However, Exhibit-12/the salary details of the appellant, indicates details starting from August 1978. He also testified that it was decided during the course of the inventory that D.L. Rai would submit the Valuation Report, for which he made the signature, and that there is a difference of the price for the gold of 24-carats and 22-carats.

28. As per the evidence of PW-11, it can be construed that one D.L. Rai, an employee of Alankar Jewellers, was present along with the CBI team on 01.12.1983 when the appellant’s locker was opened, and the search of the inventory took place. It is important to note that the said D.L. Rai was not examined by the CBI for reasons best known to the prosecution. Exhibit-4/A is the inventory list of the ornaments (gold and silver) found in the locker. Upon

perusal of Exhibit-4/A, it is evident that the description of the articles, the quantity of gold and silver articles, and the weight of the gold and silver articles were mentioned in the inventory list. However, the prosecution has not explained as to how the quality of the articles was noted as 22 carats and 24 carats in the inventory list. Further, the inventory list (Exhibit-4/A) discloses that the jewellery found in the locker was duly weighed by the representative of Baijnath Prasad of M/s Alankar Jewellers, Patna, and the Valuation Report of the articles was submitted by D.L. Rai in due course. The inventory report does not disclose details of the wealth amassed, which was used during the course of the inventory assessment, or of the date of production of the articles or the mode by which the appellant acquired the articles. Additionally, the inventory report discloses that after the preparation of the inventory report, the articles were kept back in Locker No. 23, which was subsequently locked, an additional lock was placed, and it was sealed. The key was also then seized from the appellant by the CBI authorities.

29. PW-12/Kamal Narayan Jha is the Vigilance Officer of Central Bank of India, Zonal Office, Patna. His evidence disclose that on 21.12.1983, he went to the Central Bank of India, at Ara along with CBI Inspector namely, K.N. Sinha, Jyoti Kumar and also with representative of Alankar Jewellers namely, D.L. Rai and in the presence of the appellant, locker No. 23 was opened, a search was conducted and the ornaments were measured and weighed by the D.L. Rai for which an Inventory List was prepared and later the jewellery were placed back in the locker, locked with a separate lock and sealed. In the cross-examination, it was testified by PW-12 that the duty of the bank officer includes writing of letters and post vouchers. There is no incriminating material found from the evidence of PW-12, except for corroborating the evidence of PW-11, regarding the search and inventory of the articles, found in Locker No. 23 of the appellant.

30. PW-16/Yamuna Pandey is the Circle Inspector. His evidence discloses that details of the appellant’s land are recorded in a document written by Halka Clerk, Kailash Bihari, and signed by the Circle Officer, Arvind

Kumar Choudhary, which is Exhibit-11. However, the document is admittedly not an original revenue record providing the details of the appellant's land. The manner in which the said document was marked through witnesses by the trial court is also not clear to this Court.

> *"It is evident that in order to have the documents marked by the Court as Exhibits, a party must satisfy the Court that there is sufficient material in order for the Court to arrive at a prima facie view that:*
>
> *a) The "contents" of the document are proved (i.e. the document exists).*
>
> *(b) The signature or handwriting on the document, if any, are proved (i.e. the document is genuine).*
>
> *(c) In some cases, the witness who seeks to tender the document in evidence has personal knowledge of the document (i.e. that the witness is in a position to prove the accuracy or truth of the contents of the document);*
>
> *(d) The document is not inherently or ab initio inadmissible on some other legal ground (e.g. irrelevance, privilege, non-registration); and*

(e) The document has been appropriately stamped, if so required by law.

In order to prove contents of a document, the witness through whom the document is sought to be tendered must produce the document in court. The Evidence Act provides, in essence, that the "contents" of documents must ordinarily be proved by "primary" evidence.

As the second step in getting a document marked, the witness who introduces the document must identify the signature or handwriting on the document, if there is any. The mere production of a document is not sufficient for the document to be marked as an exhibit.

Thirdly, in order to lay a foundation for marking a document, if the document contains any statement(s) of fact, and the party propounding the document relies on the truth or accuracy of those statements, then the witness. who tenders the document must demonstrate personal knowledge and the familiarity of the document.

Fourthly, in some cases, irrespective of a party's ability to satisfy the criteria set *out above, a law might prohibit some documents from being considered admissible in evidence. Such documents cannot be marked in evidence. Once a document is marked, it becomes the part of the record but has to be considered by the Court about its admissibility and relevancy of the such document. Marking of document alone will not give any right to read the contents of the documents or about the admissibility of the documents."*

31. PW-17 is the Investigating Officer who testified that he searched the locker, but did not seize any document and did not receive any document from the concerned office. In the cross-examination, it is admitted by PW-17 that the appellant was inducted into service in the year 1969. However, when asked whether the accused had earned money through illegal means from 1977-1981, the witness remained silent. He also testified that during the course of the investigation, he did not find any evidence suggesting that the appellant had led a luxurious life, and deposed that women generally receive jewellery from their parent's home and that the cost of the house was estimated in the FIR

without any supporting documents. He also admitted that his brother, Lakhan Sinha, is a Clerk in the Central Bank of India. He denied the suggestion that he got the loan sanctioned for the third floor and that he purchased a tractor from the loan sanctioned by the Central Bank of India.

32. On perusal of the Valuation Report, it is evident that the third floor and ground floor were in an unfinished stage, and the woodwork was incomplete. However, it is noted the construction of the third floor was completed in the year 1982, whereas PW-9 testified before the Court that the third floor was constructed in the year 1983, which falls beyond the check period.

33. It is also pertinent to mention that the trial court completely relied upon the evidence of the investigating officer, concerning the immovable properties. The allegations made by the investigating officer in the chargesheet disclose that the ground floor of the appellant's house was constructed in the year 1977, the first and second floors in the year 1979, and the third floor was constructed in the year 1983. The cost of the building which includes sanitary, water

supply, and electrical installations, was estimated to an amount of Rs. 2,38,300/-. However the valuation was based on the average cost of materials for the year 1979 and 1981, and an amount of Rs. 2,16,636/- was assessed for the appellant's house, excluding the land, which was valued at Rs. 9,000/-. The chargesheet further disclose that an amount of Rs. 45,000/- was attributed to movables including Fixed Deposits worth Rs. 10,000/-, LIC policies worth Rs. 7,000/-, a Fiat car valued at Rs. 19,000/-, an old Murphy radio costing Rs. 2,800/- and a scooter costing Rs. 3,000/-. These valuations were added to determine the total assets of the appellant, amounting to Rs. 3,48,604/-. After deducting the savings, the chargesheet concludes that the appellant acquired disproportionate assets to the tune of Rs. 2,34,413/- through illegal and corrupt means.

34. The CBI team visited the house of the appellant on 04.06.1982, noted the movable articles found on the ground floor, bedroom, kitchen and other rooms of the upper floors and evaluated the articles in the Inventory List which is Exhibit-4.

35. On perusal of the details of the Inventory List, it can be seen that every movable article found in the house was incorporated in Exhibit-4, including the valuables belongings including the wearing apparels of the appellant and his family members, with approximate prices mentioned against those articles. However the prosecution failed to explain as to how such valuation was determined for the movable articles. Therefore, this Court cannot rely upon Exhibit-4 to conclude that the appellant has not provided a satisfactory explanation.

36. At this juncture, it is relevant to rely on the citations made by the appellant, in the case of **Narabada Devi Gupta vs. Birendra Jaiswal** reported in **2003(8) SCC 745,** their Lordships have held at para 16 which reads as follows:-

> "*16.Reliance is heavily placed on behalf of the appellant on the case of Ramji Dayawala & Sons (P) Ltd. The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held*

to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the "evidence of those persons who can vouchsafe for the truth of the facts in issue". The situation is, however, different where the documents are produced, they are admitted by the opposite party, signatures on them are also admitted and they are marked thereafter as exhibits by the court. We find no force in the argument advanced on behalf of the appellant that as the mark of exhibits has been put on the back portions of the rent receipts near the place where the admitted signatures of the plaintiff appear, the rent receipts as a whole cannot be treated to have been exhibited as admitted documents."

Similarly, in **Jagmail Singh and Anr. vs. Karamjit Singh and Ors.** reported in **2020 (5) SCC 178,** their Lordships have held at para 17 which reads as follows:-

> *"17. Needless to observe that merely the admission in evidence and making exhibit of a document does not prove it automatically unless the same has been proved in accordance with the law."*

In **Ramji Dayawala and Sons vs. Invest Import** reported in **1981(1) SCC 80,** their Lordships have held at para 16 which reads as follows:-

> *"16. Incidentally it was urged by Mr. Majumdar that even if the court proceeds on the assumption that the letter and the cable were received , it is not open to this Court to look into the contents of the letter and the cable because the contents are not proved as the Managing Director of the appellant-company who is supposed to have signed the letter and the cable has neither entered the witness-box nor filed his affidavit proving the contents thereof. Reliance was place on Judah v. Isolyne Shrojibasini Bose. In that case a*

letter and two telegrams were tendered in evidence and it was observed that the contents of the letter and the telegram were not the evidence of the facts stated therein. The question in that case was whether the testatrix was so seriously ill as would result in impairment of her testamentary capacity. To substantiate the degree of illness, a letter and two telegrams written by a nurse were tendered in evidence. the question was whether in the absence of any independent evidence about the testamentary capacity of the testatrix the contents of the letter could be utilised to prove want of testamentary capacity. Obviously, in these circumstances the Privy Council observed that the fact that a letter and two telegrams were sent by itself would not prove the truth of the contents of the letter and, therefore, the contents of the letter bearing on the question of lack of testamentary capacity would not be substantive evidence. Undoubtedly, mere proof of the handwriting of a document would not tantamount to proof of all the contents or the facts *stated in the document. If the truth of the facts stated in a document is in issue mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence, ie. by the evidence of those persons who can vouchsafe for the truth of hte facts in issue. But in this case Bhikhubhai Gourishankar Joshi who filed an affidavit on behalf of the appellant has referred to the averments in the letter and the cable. He is a principal officer and constituted attorney of the appellant-company. Once the receipt of the letter and the cable are admitted or proved coupled with the fact that even after the dispute arose and before the suit was filed, in the correspondence that ensued between the parties, the respondent did not make any overt or covert reference to the arbitration agreement and utter failure of the respondent to reply to the letter and the cable controverting the averments made therein would unmistakably*

> *establish the truth of the averments made in the letter. What is the effect of averments is a different question altogether but the averments contained in the letter and the cable are satisfactorily proved. "*

In **Birad Mal Sanghvi vs. Anand Purohit** reported in **1988 (suppl.) SCC 604,** their Lordships have held at para 14, which reads as follows:-

> *"We would now consider the evidence produced by the respondent on the question of age of Hukmi Chand and Suraj Prakash Joshi. The respondent examined Anantram Sharma PW 3 and Kailash Chandra Taparia PW 5. Anantram Sharma PW 3 has been the Principal of New Government High Secondary School, Jodhpur since 1984. On the basis of the scholar's register he stated before the High Court that Hukmi Chand joined school on June 24, 1972 in Ninth class and his date of birth as mentioned in scholar's register was June 13, 1956. He made this statement on the basis of the entries contained in the scholar's register Ex. 8. He admitted that entries in the scholar's*

register are made on the basis of entries contained in the admission form. He could not produce the admission form in original or its copy. He stated that Hukmi Chand was admitted in Ninth class on the basis of transfer certificate issued by the Government Middle School, Palasani from where he had passed eight standard. He proved the signature of Satya Narain Mathur the then Principal who had issued the copy of the scholar's register Ex. 8. Satya Narain Mathur was admittedly alive but he was not examined to show as to on what basis he had mentioned the date of birth of Hukmi Chand in Ex. 8. The evidence of Anantram Sharma merely proved that Ex. 8 was a copy of entries in scholar's register. His testimony does not show as to on what basis the entry relating to date of birth of Hukmi Chand was made in the scholar's register. Kailash Chandra Taparia PW 5 was Deputy Director (Examination) Board of Secondary Education, Rajasthan, he produced the counterfoil of Secondary Education Certificate of Hukmi Chand Bhandarı. a copy of which has been *filed as Ex. 9., He also proved the tabulation record of the Secondary School Examination 1974, a copy of which has been filed as Ex. 10. In both these documents Hukmi Chand's date of birth was recorded as June 13, 1956. Kailash Chandra Taparia further proved Ex. 11 which is the copy of the tabulation record of Secondary School Examination of 1977 relating to Suraj Prakash Joshi. In that document the date of birth of Suraj Prakash Joshi was recorded as March 11, 1959. Kailash Chandra Taparia stated that date of birth as mentioned in the counterfoil of the certificates and in the tabulation form Ex. 12 was recorded on the basis of the date of birth mentioned by the candidate in the examination form. But the examination form or its copy was not produced before the court. In substance the statement of the aforesaid two witnesses merely prove that in the scholar's register as well as in the secondary school examination records the date of birth of a certain Hukmi Chand was mentioned as June 13, 1956 and in the tabulation record of secondary school examination a certain*

Suraj Prakash Joshi's date of birth was mentioned as March 11, 1959. No evidence was produced by the respondent to prove that the aforesaid documents related to Hukmi Chand and Suraj Prakash Joshi who had filed nomination papers. Neither the admission form nor the examination form on the basis of which the aforesaid entries relating to the date of birth of Hukmi Chand and Suraj Prakash Joshi were recorded was produced before the High Court. No doubt, Exs. 8, 9, 10, 11 and 12 are relevant and admissible but these documents have no evidentiary value for purpose of proof of date of birth of Hukmi Chand and Suraj Prakash Joshi as the vital piece of evidence is missing, because no evidence was placed before the court to show on whose information the date of birth of Hukmi Chand and the date of birth of Suraj Prakash Joshi were recorded in the aforesaid document. As already stated neither of the parents of the two candidates nor any other person having special knowledge about their date of birth was examined by the respondent to prove the date of birth as *mentioned in the aforesaid documents. Parents or near relations having special knowledge are the best persons to depose about the date of birth of a person. If entry regarding date of birth in the scholar's register is made on the information given by parents or someone having special knowledge of the fact, the same would have probative value. The testimony of Anantram Sharma and Kailash Chandra Taparia merely prove the documents but the contents of those documents were not proved. The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else* *who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value. Merely because the documents Exs. 8, 9, 10, 11 and 12 were proved, it does not mean that the contents of documents were also proved. Mere proof of the documents Exs. 8, 9, 10, 11 and 12 would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents. Since the truth of the fact, namely, the date of birth of Hukmi Chand and Suraj Prakash Joshi was in issue, mere proof of the documents as produced by the aforesaid two witnesses does not furnish evidence of the truth of the facts or contents of the documents. The truth or otherwise of the facts in issue, namely, the date of birth of the two candidates as mentioned in the documents could be proved by admissible evidence i.e. by the evidence of those persons who could vouchsafe for the truth of the facts in issue. No evidence of any such kind was produced by the respondent to prove the truth of the facts, namely, the date of birth of Hukmi Chand and of*

Suraj Prakash Joshi. In the circumstances the dates of birth as mentioned in the aforesaid documents have no probative value and the dates of birth as mentioned therein could not be accepted."

In case of **Noor Hasan vs. The State of Bihar** reported in **Cr. App. (SJ) 68 of 2004** relevant paragraphs are para-15-16.

"15. It is pertinent to mention that followings are criteria for marking a document:-
In order to have a documents marked by the Court as an Exhibit, a party must satisfy the Court that there is sufficient material in order for the Court to arrive at a prima facie view that:-
"It is evident that in order to have the documents marked by the Court as Exhibits, a party must satisfy the Court that there is sufficient material in order for the Court to arrive at a prima facie view that :
(a) The "contents" of the document are proved (i.e. the document exists).

(b) The signature or handwriting on the document, if any, are proved (i.e. the document is genuine).

(c) In some cases, the witness who seeks to tender the document in evidence has personal knowledge of the document (i.e. that the witness is in a position to prove the accuracy or truth of the contents of the document);

(d) The document is not inherently or ab initio inadmissible on some other legal ground (e.g. irrelevance, privilege, non-registration) and

(e) The document has been appropriately stamped, if so required by law.

16. (i). In order to prove contents of a document, the witness through whom the document is sought to be tendered must produce the document in court. The Evidence Act provides, in essence, that the "contents" of documents must ordinarily be proved by "primary" evidence.

(ii). As the second step in getting a document marked, the witness who introduces the document must identify the signature or handwriting on the document, if any. The mere production

of a document is not sufficient for the document to be marked as an exhibit.

(iii). Thirdly, in order to lay a foundation for marking a document, if the document contains any statement(s) of fact, and the party propounding the document relies on the truth or accuracy of those statements, then the witness. who tenders the document must demonstrate personal knowledge and the familiarity of the document.

(iv). Fourthly, in some cases, irrespective of a party's ability to satisfy the criteria set out above, a law might prohibit some documents from being considered admissible in evidence. Such documents cannot be marked in evidence. Once a document is marked, it becomes the part of the record but has to be considered by the Court about its admissibility and relevancy of the such document. Marking of document alone will not give any right to read the contents of the documents or about the admissibility of the documents.

The Learned counsel for the appellant also relied on the judgment of Hon'ble Division Bench of this Court in the case of **Sukhi Yadav v. The State of Bihar** reported in **2014 SCC OnLine Pat 5721** wherein their Lordships have held as follows:-

> *"9. We fail to appreciate as to which law permits such a thing and how a Judge of standing of Additional Sessions Judge could do such a thing. First thing we must notice that P.W.9 is an Assistant to an Advocate Clerk, who has nothing to do with the case, yet the Court permits him to step in as a prosecution witness. Moreover we have coined such witness as "Sankat Mochan witness". What more scandalized us is the trial court, which permits a person, who was nobody, to pick up the entire case diary from paragraphs 1 to 121 and prove it and make it a part of evidence. The court then proceeds further to mark it as Ext. 3 and then the court sits down to read entire case-diary in order to appreciate evidence. Nothing can be more scandalous. No such step is permissible in law. The trial court forgot the true import of section 172(2) of the Code of Criminal Procedure (for short 'Cr.P.C.'), which clearly states that any criminal Court may use such diaries, not as evidence in the case, but to aid it in*

such enquiry or trial. What the trial court has done is using it as evidence, making it as evidence and appreciating it as evidence, which is wholly impermissible in law. The diary can never be proved in a Court, for it cannot be used as evidence. No part of diary can be proved because if any one is proving it for the purposes of making it an evidence, such act is prohibited by law. The law contemplates a reference to the diary only for the purposes of refreshing memory or contradicting the statements of witnesses in the Court with the statements made during the course of investigation. Only when it is used for refreshing memory, the procedure as envisaged under section 145 of the Evidence Act is to apply but that does not mean that diary can become evidence. Law prohibits such thing. We have found in cases after cases that in the State of Bihar, the Sessions Courts do not know or understand this distinction in law and in cases after cases the statements of witnesses recorded under section 161 of the Cr.P.C. are proved as evidences or other materials in the case-diary are *proved as evidence and marked as exhibits. This is a practice that should end, the sooner the better. The other thing is that as to who is permitted to prove a document. It appears that in this State every Tom, Dick and Harry, the expression we have formed now "Sankat Mochan Witness", could come and prove any official document. In this case, an Assistant to Clerk of an Advocate, who has nothing to do in the case, has been permitted by the trial court to prove the entire case-diary and mark it as exhibit. This practice is deprecated and it must come to an end. A person, who is author of a document or in absence of author, which absence has to be explained, a person familiar with the handwriting of the author can only prove the document. The procedure adopted by the trial court is unknown to law. No sooner this practice ends than better it would be."*

37. The above citations squarely apply to the present facts and circumstances of the case. Initially, the Inventory Report was made by one D.L. Rai, but

PW-7 assessed the value of the ornaments, and Exhibit-6 has come into existence. Exhibit-11 is marked through PW-16, who has no knowledge about the document. The prosecution has miserably failed to explain as to why the CBI could not produce the original or the certified copies of the documents of the appellant. It is testified by PW-16 that the document was prepared, on the basis of the Khatiyan, and contained an endorsement by the Circle Officer. However, Circle Officer Arvind Kumar Choudhary was also not examined before the Court, to prove the document. Therefore, the document, Exhibit-11, cannot be considered.

38. As stated earlier, the appellant has led evidence in his defense, i.e., DWs 1 to 7, to prove that he owned land and property apart from his salary, which is corroborated by the evidence of his father. Furthermore, he has led evidence from his brother-in-law and mother-in-law, which has been found satisfactory by this Court. Additionally, there is not a single piece of evidence before the court, to establish that the house belongs to the appellant or that the land was in the name of the appellant, to connect the appellant with the crime.

39. The cardinal principle of criminal law is that the prosecution must prove the guilt of the accused beyond a reasonable doubt; until then, the accused will be presumed innocent.

40. It is the specific contention of the Learned Counsel for the CBI that the burden is on the appellant to prove that he did not amass wealth through corrupt or illegal means and that a satisfactory explanation was provided by him. It is contended that Section 20 of the Prevention of Corruption Act provides a presumption against the public servant.

Section 20 of the Prevention of Corruption Act reads as follows:-

> *"20. Presumption where public servant accepts gratification other than legal remuneration.—(1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal*

remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under Section 12 or under clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2),

> *the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn."*

41. On perusal of the said section, it is evident that the presumption applies to a public servant if he accepts illegal gratification. However, this case is not a matter of illegal gratification but a case under Section 13(e) of the 1988 Act or under Section 5 of the 1947 Act. Therefore, the presumption under Section 20 would not apply, and the appellant need not prove his innocence in relation to the offence. In the present case, there is no material available on record, to connect the appellant with the crime or to prove that he amassed enormous wealth through illegal and corrupt means and that the appellant did not provide a satisfactory explanation.

42. In view of the above discussion, this Court is of the considered view that benefit of doubt has to be extended to the appellant, as the prosecution has miserably failed to prove the guilt of the accused

beyond reasonable doubt. Therefore, the judgment and conviction of the trial court are liable to be set aside.

43. In result, the appeal is allowed and the judgment of conviction and order of sentence dated 12.12.2002 on the file of the Special Judge, CBI, Patna is hereby set aside, acquitting the appellant for the charges levelled against him.

44. The bail bond of the appellant shall stand cancelled.

(G. Anupama Chakravarthy, J)

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