IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

CRIMINAL REVISION APPLICATION NO.163 OF 2013

1. Arun Gourishankar Gupta,
aged about 54 years,
occupation : business.

2. Ashok Gourishankar Gupta,
aged about 37 years,
occupation : business,
both r/o 144, Ramdaspeth,
Nagpur. ..... Applicants.

:: V E R S U S ::

1. State of Maharashtra,
through Police Station
Officer,
Police Station Kotwali,
district : Nagpur.

2. Mahesh Babulal Gupta,
aged about 63 years,
occupation : business,
r/o Gupta Niwas, 144,
Ramdaspeth, Nagpur. ..... Non-applicants.

Shri Subodh Dharmadhikari, Senior Counsel assisted by Shri Chinmay Dharmadhikari and Shri S.U.Dable, Advocates for the Applicants.
Shri A.J.Gohokar, Additional Public Prosecutor for Non-applicant No.1/State.
Shri Nishant Patil, Counsel for the Non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 23/07/2025
PRONOUNCED ON : 09/09/2025

JUDGMENT

1. By this revision, the applicants have challenged judgment and order of conviction and sentence dated 8.2.2007 passed by learned Judicial Magistrate First Class, Court No.7, Nagpur in Criminal Case No.288/2007 (Old RCC No.46/1987) and Criminal Case No.289/2007 (Old RCC No.213/1987) convicting the applicants for offences punishable under Sections 120-B, 468, 471, and 420 of the IPC which has been confirmed by judgment and order dated 7.8.2013 passed by learned Additional Sessions Judge, Nagpur in Criminal Appeal No.52/2007.

2. For the offence under Section 120-B of the IPC, the applicants are sentenced to suffer rigorous imprisonment for 6 months and to pay fine Rs.1000/-, in

default, to suffer further rigorous imprisonment of 1 month.

For the offence under Section 468 of the IPC, the applicants are sentenced to suffer rigorous imprisonment for 1 year and to pay fine Rs.1000/-, in default, to suffer rigorous imprisonment of 1 month.

For the offence under Section 471 of the IPC, the applicants are sentenced to suffer rigorous imprisonment for 3 months and to pay fine Rs.500/-, in default, to suffer rigorous imprisonment of 15 days.

For the offence under Section 420 of the IPC, the applicants are sentenced to suffer rigorous imprisonment for 1 year and to pay fine Rs.1000/-, in default, to suffer rigorous imprisonment of 1 month.

3. Brief facts necessary for disposal of the revision are as under:

Complainants Mahesh Gupta, his father Babulal and the applicants are partners of firm M/s.Gourishankar Ramchandra dealing with clothes business. There is another firm by name M/s.Laxmikant Gupta & Company wherein the mother of the applicants was partner along with co-accused Laxmikant and the mother of the applicants Kamlabai. Acquitted accused Gourishankar Gupta was in control and possession of firm M/s.Gourishankar being one of partners of the said firm. As per the allegations, due to the dispute between the parties, the complainants and their parents stopped visiting the firm office and looking after the business. They have opened the accounts in the Bank of Maharashtra under Compulsory Deposit Scheme (CDS) accounts. The pass books of the said CDS accounts were in the firm office under the custody of acquitted accused and applicant No.1. Complainant Mahesh Gupta and his father Babulal and Kashibai were holding separate accounts under the CDS with the Bank of Maharashtra, Itwari Branch, Central Avenue Road, Nagpur. On 25.5.1983, complainants Mahesh Gupta visited the Bank of Maharashtra, Itwari Branch, Central Avenue Road, Nagpur to verify the CDS accounts. He came to know that from the CDS Account No.522/76 amount of Rs.1213.70 was withdrawn on 29.7.1982. From the account of his Babulal Gupta, bearing CDS Account No.152/74 amount of Rs.1687.10 was withdrawn on 29.7.1982 and from the CDS Account of his mother Kashibai bearing No.542/1976 amount of Rs.1868.10 was withdrawn on 29.7.1982. Therefore, the complainant enquired with his parents and they disclosed that they have not withdrawn the amounts as shown above. Therefore, he immediately, on 25.5.1983, approached to the Branch Manager of Bank of

Maharashtra and made complaint about withdrawal of the amounts from their accounts. The Branch Manager informed him that the money was withdrawn from aforesaid accounts maintained under CDS by cross cheques taken by the said person who got these cheques cleared through bank i.e. Bank of Baroda, Gandhibagh Branch, Central Avenue Road, Nagpur through current account of M/s.Laxmikant Gupta & Company. On 1st June, acquitted accused Gourishankar has deposited total amount of Rs.4768.90 The withdrawal amount in the credit account of Bank of Maharashtra, Itwari Branch, Central Avenue Road, Nagpur in all the three accounts separately. The complainant has lodged written complaint against co-accused Gourishankar on 11.6.1983. On the direction of the Commissioner of Police, the crime was registered against the applicants and other co-accused. During the investigation, the investigating officer seized various documents by drawing seizure panchanama. He has also recorded the supplementary statement of the complainant and the witnesses. The disputed documents are forwarded to the handwriting expert by obtaining specimen signatures of the complainant and his parents, applicants and the other co-accused. The natural handwriting of the complainant, his parents and the applicants and other co-accused was also seized. After completion of the investigation, he has submitted chargesheet against the applicants and other co-accused. During pendency of the trial, the handwriting expert opinion was received by the investigating officer, which was also filed before the trial court.

4. The trial court has taken cognizance and framed charge vide Exh.70. In support of the prosecution case, the prosecution has examined as many as 14 witnesses, which are as follows:

PW Nos.	Names of Witnesses	Exh. Nos.
1	Mahesh Babulalji Gupta	34
2	Arvind Bapat, Bank Manager	73
3	Bhargavrao Kalve, Bank Officer	92
4	Suresh Gupta, the brother of the complianant	96
5	Prabhakar Makome	97
6	Dhansukhlal Somaiyya	103
7	Anil Atkar	104
8	Jairam Jathar	112
9	Dilip Ahilwale, Handwriting Expert	119
10	Shivkumar Jaiswal, pancha on specimen signatures	128
11	Vimal Bagdi, pancha	218
12	Kashmirilal Beri, pancha	345
13	Maniram Maheshkar	348
14	Ajabrao Awachat, Investigating Officer	360

5. Besides the oral evidence, the prosecution relied upon some documentary evidence i.e. report Exh.34, seizure memo Exh.36, seizure memos Exhs.37 and 38, memorandum of partnership Exh.50, seizure memox of relevant documents seized from the Bank of Maharashtra

Exhs.74 and 75, seizure memo as to the seizure of the documents in the name of the complainant, his parents i.e. account opening forms Exh.363, application for opening account under CDS of the complainant, Exh.312 of Babulal, Exh.313, and Exh.311 of Kashibai, application for opening of accounts of co-accused Laxmikant Exh.341, seizure memos as to the seizure of documents from Bank of Baroda Exhs.105 and 106, panchanama as to the obtaining the specimen handwriting of Kamlabai Gupta, mother of the applicants Exh.129, panchanama as to obtaining specimen handwriting of the complainant and his parents Exh.347, the specimen handwriting of co-accused Gourishankar Exhs.130 to 152, the specimen signatures of Kashibai in the handwriting of co-accused Gourishankar Exhs.223 to 225, the specimen signature of Babulal Gupta in the handwriting of co-accused Gourishankar Exhs.226 to 228, specimen signature of complainant Mahesh in the handwriting of co-accused Exhs.229 to 231, specimen handwriting of co-accused Laxmikant Exhs.153 to 175, specimen handwriting of co-accused Laxmikant Exhs.176 to 181, specimen handwriting of Kashibai in the handwriting of co-accused Laxmikant Exhs.233 to 235, specimen handwriting of Babulal Gupta in the handwriting of co-accused Laxmikant Exhs.236 to 235, specimen handwriting of complainant Mahesh in the handwriting of Laxmikant Exhs.239 and 240; specimen signature of applicant No.1 Exhs.182 to 217, specimen signature of Kashibai in the handwriting of applicant No.1 Exhs.242 to 244, signature of Babulal in the handwriting of applican6t No.1 Exhs.145 to 247, specimen signature of complainant Mahesh in the handwriting of applicant No.1 Exhs.248 to 250, specimen signature of Kashibai in the handwriting of applicant No.2 Exhs.251 to 253, specimen signature of Babulal in the handwriting of applicant No.2 Exhs.254 to

256, specimen signature of complainant Mahesh in the handwriting of applicant No.2 Exhs.257 to 258, specimen handwriting of applicant No.2 Exhs.260 to 283, specimen handwriting of Shrikrushna Govindrao Exhs.284 to 286, specimen signature of Babulal in the handwriting of Shrikrushna Govindrao Exhs.287 to 289, specimen signature of complainant Mahesh in the handwriting of Shrikrushna Govindrao Exhs.290 to 293, specimen handwriting of Prabhakar Laxman Makome Exh.s296 to 301, specimen handwriting of the mother of the complainant Exhs.302 to 304, specimen handwriting of complainant Exhs.305 to 307, specimen handwriting of Babulal Gupta Exhs.308 to 310, and handwriting expert opinion Exh.121.

6. On the basis of the oral as well as the documentary evidence, learned trial court held the applicants guilty along with co-accused Laxmikant.

7. Being aggrieved and dissatisfied with the same, the applicant presented the appeal before Sessions Judge at Nagpur which came to be dismissed confirming the sentence passed by the trial court. Being aggrieved and dissatisfied with the same, the present revision is preferred.

8. Heard learned Senior Counsel Shri Subodh Dharmadhikari for the applicants, learned Additional Public Prosecutor Shri A.J.Gohokar for the State, learned counsel Shri Nishant Patil for non-applicant No.2.

9. Learned Senior Counsel for the applicants submitted that the entire conviction is on the handwriting expert opinion which is not substantive evidence. The prosecution placed reliance on Exhs.311, 312, and 313 and handwriting on withdrawal forms. The parents of the complainant are not examined. In fact, the material examined by the handwriting expert

requires to be authentic. The Investigating Officer has seized Exhs.111 to 113 which is not referred to the handwriting expert for seeking an opinion. The evidence as to the handwriting is not proved beyond shadow of doubt. The specimen signature was not compared with the disputed signatures. The evidence ought to have been appreciated in the light of the fact that applicants and the complainant and his father were partners of M/s.Gourishankar Firm. The said business was family business. The common interest was involved. The dispute arose between the partners in the year 1980. The trial court has not appreciated the facts and circumstances and the law applicable. In fact, the applicants were not concerned with the alleged pay orders and even the applicants have not raised any doubt in the FIR as they were not named in the FIR. The conviction is based on the opinion of handwriting expert which is extremely weak type of evidence and cannot be relied upon without there being any substantive evidence to connect the applicants with the alleged crime. In absence of any legally admissible evidence, the conviction is erroneous and liable to be set aside. The ingredients of the offences alleged are not at all established and particularly when the applicants were not in any manner beneficiaries of the same. Mere report of an expert cannot be the basis for conviction. Thus, learned trial court as well as the first appellate court wrongly appreciated the evidence and based their verdicts only on the basis of the expert evidence. Perusal of the evidence reveals that Exh.Q-1(A), when only name of Babulal is mentioned which does not bear his signature. Exh.Q-7 is the pay slip which has no relevance in the present case. Exh.Q-14 allegedly is in the handwriting of the applicant No.1 but the authenticity is not proved. Seizure of the documents is also not in presence of panchas. Thus, the conviction is only on the basis of surmises and conjectures.

10. In supports of his contentions, learned Senior Counsel for the applicants placed reliance on the decision of the Hon'ble Apex Court in the case of **State of Maharashtra vs. Sukhdev Singh and anr, reported in (1992)3 SCC 700**.

11. *Per contra,* learned Additional Public Prosecutor for the State submitted that the conviction is not based only on the basis of the handwriting expert, but the opinion of the handwriting expert is corroborated by the evidence of the material witness i.e. PW1 Mahesh Gupta, who deposed that relevant documents, pass books of their CDS accounts were in the custody of the applicants. The evidence of PW2 Arvind Bapat, Branch Manager of the Bank of Maharashtra, shows that pay orders are forged by the applicants and amounts were withdrawn.

The evidence of PW2 is also corroborated by PW3 Bhargavrao Kalve, who is also a bank witness. PW4 Suresh Gupta, the brother of the complianant, has also corroborated the version of the complainant. Whereas, PW6 Dhansukhlal Somaiyya was working with Gourishankar firm who submitted three pay orders of Bank of Maharashtra in Bank of Baroda. PW6 is also employee of the accused firm who has also stated about the documents of the firm and deposed that the documents of the firm were used to be in the office of the firm. PW7 Anil Atkar is the Bank Officer of the Bank of Baroda, who narrated about the seizure of the documents and depositing of pay orders for clearing by the applicants. Thus, he submitted that the conviction is not based on only expert evidence but the expert is corroborated not only by the documents but the oral evidence of the prosecution. Thus, the prosecution has completed the chain to establish the charge against the applicants. The seizure of the documents is also proved by the prosecution.

12. In support of the contentions, learned Additional Public Prosecutor for the State placed reliance on the decision in the case of **Padum Kumar vs. State of UP, reported in AIR 2020 SC 447.**

13. Learned counsel for non-applicant No.2 submitted that the written notes of argument by which it was submitted that the trial court and the first appellate court have relied on the opinion of the handwriting expert along with other corroborative evidence. Taking into consideration these facts, the applicants have been convicted. The finding of handwriting expert appreciated by the Sessions Judge shows that the English writing as "in the name of Babulal", marked as Q-1(A) on the E-Form at Exh.313 is in the handwriting of applicant No.2 who wrote specimen at Exhs.266 to 271

(D-16 to D-21) and and his nature handwriting at Exh.338 (DN-1 and DN-2) and Q-1(A) is the code given by the handwriting expert which is written on E-Form (withdrawal form of the complainant's father). Exh.313 withdrawal form of the complainant's father is seized under seizure panchanama at Exh.74. The said seizure is proved by the Bank Manager PW2 and PW3 Bank Superintendent. The specimen handwriting of applicant No.2 is at Exhs.266 to 271 and PW10 Shivkumar Jaiswal acted as a pancha proved the said panchanama. The First Appellate Court has also considered the evidence, document Q-5(A), which was in the name of Kashibai, Exh.99, the mother of the complainant, is in the handwriting of applicant No.2. This Exh.99 is seized under seizure panchanama Exh.74 and seizure is proved by PW2 Arvind Bapat, Branch Manager of the Bank of Maharashtra and PW3 Bhargavrao Kalve. The English writing "Rupees Two Thousand Nine Hundred and 80

Paise" marked as Q-7 in the pay is at Exh.319(I) in the handwriting of applicant No.1 who wrote corresponding specimen handwriting at Exhs.206 to 211 (C-34 to C-39). Exh.319 is pay slip in the handwriting of applicant No.1. Exh.319 is seizure under seizure panchanama Exh.105 and proved by PW7 Anil Atkar who is the bank officer. All these documents corroborate the evidence of the handwriting expert. He submitted that the applicants nowhere denied the handwriting on the seized documents. The handwriting expert has compared the same and given the opinion. Thus, the evidence of the handwriting expert is not only corroborated by the documents but also by the evidence of the witnesses.

14. Considering the scope of revision, the entire evidence is perused and following facts reveal from the same:

(i) Firm M/s.Gourishankar Ramchandra dealing with clothes business consists of partners complainants Mahesh Gupta, his Babulal, acquitted accused Gourishankar and applicants;

(ii) There was another firm by name M/s.Laxmikant Gupta and Company having partners, co-accused Laxmikant, Kashibai mother of the complainant, and Kamlabai mother of the applicants;

(iii) Acquitted accused Gourishankar was in control and possession of firm M/s.Gourishankar;

(iv) As per the allegations, the pass books of CDS accounts wherein the firms are under custody of said Gourishankar and applicants;

(v) The complainant and Babulal have separate CDS accounts in Bank of Maharashtra, Itwari Branch, Nagpur;

(vi) On 25.5.1983, complainant Mahesh went to the Bank of Maharashtra at Itwari Branch to verify CDS accounts and came to know withdrawal of the amount of Rs.1213.70 on 29.7.1982 and CDS accounts on 29.7.1982 bearing No.522/76 which is in the name of the complainant, amount of Rs.1687.8 was withdrawn on 29.7.1982 from CDS account No.152/74 which is the name of his father Babulal and amount of Rs.1868.8 was withdrawn on 29.7.1982 from CDS account in the name of mother of the complainant Kashibai;

(vii) The complainant on the same date i.e. on 29.7.1982 made grievance to the Bank Manager, Bank of Maharashtra, Itwari Branch.

(viii) On 30.5.1982, the complainant was informed that the money withdrawn from the said accounts by cross cheques taken by the same persons who got these cheques cleared through the Bank of Baroda, Gandhibagh Branch, Central Avenue, Nagpur through current account of M/s.Laxmikant Gupta;

(ix) On 1.6.1982, acquitted accused Gourishankar deposited total amount of Rs.4768.90, the amount withdrawn as the aforesaid in Sundry Credit Account of Bank of Maharashtra, Itwari Branch in all above three accounts separately; and

(x) The applicants along with co-accused Laxmikant committed forgery by issuing pay orders and have withdrawn the amount and thereby committed the offence.

15. To prove the said charges, the prosecution placed reliance on the evidence of complainant PW1 Mahesh, who has deposed that under the CDS for the income tax payers, there was account in the Bank of Maharashtra, Itwari Branch, Nagpur. Somebody has withdrawn the amounts from these accounts. He enquired with his parents and it revealed to him that his parents have not withdrawn the amounts. On enquiring with the bank, he was informed that the amounts were withdrawn by way of cross cheques through current account of M/s.Laxmikant Gupta. The evidence of PW1 further shows that the said pay orders do not bear his signature or sign his parents. Therefore, he approached to the police and lodged the report. His evidence

specifically shows that key forms in their names do not bear his signature or signature of his parents. This evidence remained unchallenged. The evidence on record shows that neither the complainant nor his parents put signatures on E-Forms and had not withdrawn CDS amounts from their respective accounts. He further deposed that during investigation, the investigating officer has obtained his specimen signatures and specimen signatures of his parents vide Exh.347, panchanama. Exhs.305 to 307 are his specimen signatures, Exhs.308 to 310 are specimen signatures of his father Babulal and Exhs.302 to 304 are specimen signatures of Kashibai his mother. The evidence of the Investigating Officer PW14 Ajabrao Awachat shows that specimen signatures of the complainant and his father Babulal and mother were sent to handwriting expert who is State Examiner of Documents for comparison with questionnaire, Exh.364.

PW9 Dilip Ahiwale is the handwriting expert whose evidence shows that on comparing specimen signature admitted signatures of the complainant, his father and his mother revealed signatures on Exhs.311 312 and 313, which are E-Forms are not their signatures and gave the opinion.

16. The evidence of the complainant further shows that he along with his father and both the applicants and co-accused Gourishankar were partners in Gourishankar Firm, which is 30 years old. Due to dispute, they stopped vising firm and co-accused Gourishankar was managing the firm. This fact is further confirmed through the cross examination on behalf of the applicants that the complainant and his parents stopped taking active part in the said firm. The evidence of complainant further shows that all concerned documents relating to CDS account and bank saving accounts belonging to him as well as his parents were in the

custody of applicant No.1. This version is corroborated by PW4 Suresh Gupta, the brother of the complianant who stated that all documents regarding bank transaction were in the office of the firm including cheque books and pass books and other documents. This fact is further corroborated by PW6 Dhansukhlal Somaiyya, working in the Gourishankar firm, who stated on oath that those documents used to be in the office of the firm. His cross examination shows that five people used to sit in the shop (firm office) and they five were working in the office and out of them one was looking bank transaction. Gourishankar used to open the shop. Thus, the cross examination also shows that PW6 was working in the said firm and the documents of the complainant and his parents were kept in the firm which were under the control of applicants and co-accused and the evidence of PW6 Dhansukhlal Somaiyya was not shattered.

17. Thus, as far as evidence of PW1 Mahesh Gupta that he along with his father was partner and due to dispute he was not visiting the office of the firm and documents were kept in the firm and applicants were having control over the firm is established by the prosecution.

18. PW2 Arvind Bapat, Bank Manager of the Maharashtra, was examined vide Exh.73, who deposed that accused were having bank accounts in the Bank of Maharashtra. He pointed out entries in inward register Exh.320 of the Bank of Maharashtra on page No.248 at Sr.Nos.7650 7656 shows that accused were having bank accounts in the Bank of Maharashtra. His evidence further shows that the CDS accounts of the complainant and his parents were also opened in the said bank. The applicant No.1 submitted 7 E-Forms which were in the name of the complainant, his parents, applicants and co-accused Gourishankar and mother of the applicants. His

evidence further shows that on submission of the E-Forms by the applicant No.1 the payment was made. This fact is also corroborated by PW3 Bhargavrao Kalve who is also bank employee. The entries regarding pay order in Exh.320 shows seven withdrawal forms were submitted by applicant No.1. Exhs.36 and 37 are seizure panchanamas. PW11 Vimal Bagdi, acted as a pancha, also proved the contents of the panchanama as to the handwriting of the applicant Nos.2 and 3. The complainant being family member of the applicants deposed that he was aware about handwriting of present applicants. Exh.74 is the panchanama as to seizure of E-Forms, Exhs.311 to 333 and pay orders Exh.99 to Exh.101. Thus, the seizure of relevant documents is proved by PW2 Arvind Bapat, Branch Manager of the Bank of Maharashtra, PW3 Bhargavrao Kalve, who is also a bank witness, and Investigating Officer PW14 Ajabrao Awachat.

19. PW3 Bhargavrao Kalve, also acted as a pancha on the said panchanama Exh.74. The Investigating Officer specifically stated that he has seized CDS account of the complainant and his parents. The evidence of the complainant shows that neither his nor his parents signature is on the E-Form. Then, question arises who has prepared the said E-Form Exhs.311 to 313. The cross examination on behalf of accused persons to the complainant specifically shows that since 1981 the complainant and his parents stopped taking active part in the said firm. The complainant also stated that documents relating to CDS and bank saving account belonging to him as well as his parents were in the custody of applicant No.1 in the firm office. The evidence of bank employees that it was the applicant No.1 who gave seven withdrawal forms in the bank and the bank has made the payment. The entries regarding in pay order in Exh.320 are in respect of seven

withdrawal forms submitted by applicant No.1. The cross examination suggesting the complainant that other partners used to fill up the slip forms each other speaks for itself and supports the facts that the E-Forms were not filled by the complainant and his parents, but it was filled by somebody else.

20. Perusal of the evidence shows that the investigating officer has seized documents containing dispute and forged documents, natural handwriting, specimen signatures of the applicants and co-accused and the complainant and his parents. The said seizure panchanama is proved by PW8 Jairam Jathar as well as the investigating officer. Exh.105 is seizure panchanama as to seizure of deposit slips and proved seizure of cheques, statement of account of co-accused Laxmikant, account opening form Exhs.106, 114, and 327 respectively. Exh.346 is the panchanama as to obtaining of specimen handwriting of accused No.4 Laxmikant.

Exhs.233 to 241 are specimen signatures of the complainant and his parents in the handwriting of accused No.4. Exhs.242 to 250 are specimen signatures of the complainant and his parents in the handwriting of the accused. Exhs.251 to 259 are specimen signatures of complainant and his parents in the handwriting of applicant No.2.

21. PW10 Shivkumar Jaiswal, pancha on specimen signatures, acted as pancha on panchanama Exh.129 in whose presence specimen signatures of the accused persons were obtained. Exhs.130 to 152; Exhs.153 to 175, and Exhs.176 to 181 are specimen handwriting of the applicants and other accused.

22. The evidence of PW9 Dilip Ahilwale, handwriting expert, deposed that Exh.Q-2 is in the handwriting of the person who wrote Exhibit marked as B7 to B9. The evidence shows that red encircled English

writing marked as Q-2 appears on Exh.312 which is E-Form of Mahesh was compared with B-7 to B-9 which are specimen of handwriting of Laxmikant Gupta co-accused correspondents to Exhs.239 to 241 and found that it is in the handwriting co-accused Laxmikant. The evidence of handwriting expert further reveals that red encircled English writing marked as Q-1(A) and opined that it is the handwriting of the person who wrote the Exhibit mark as D-16 to D21 and DN1 to DN-2. Red encircled English writing marked ads Q-1(a) appears on Exh.313 E-Form Babulal Gupta was compared with D-16 to D-21 and DN-1 to DN-2 which are documents of specimen and natural handwriting of applicant No.2 correspond to Exhs.261 to 271 and 339 and opined that it is in the handwriting of accused Ashok Gupta. The above opinion of PW9 handwriting expert corroborates the story of prosecution that co-accused Laxmikant and accused No.2 prepared forged documents

E-Forms i.e. applications for withdrawals of CDS accounts of PW1 Mahesh Gupta his parents.

23. The evidence further shows that pay orders were in custody and possession of applicant No.1 since he obtained it from Bank of Maharashtra which are forged by co-accused Laxmikant Gupta. Pay order Exh.99 is in the name of Kashibai was deposited with Bank of Baroda for clearing and credited Rs.1863.10 in the accounts of firms M/. Laxmikant Gupta & Company. Exh.99 is pay order having rubber stamp and sealed of Bank of Baroda with endorsement "clearing." The entry in the statement of account of co-accused Laxmikant Gupta Exh.114 clearly shows amount of Rs.2900.80 credited to his account on 11.8.1982.

24. Thus, from the evidence on record it reveals that:-

(1) co-accused Laxmikant put signature of complainant Mahesh Gupta on Exh.312, the appreciation for repayments of deposits under CDS;

(2) applicant No.2 has written name of Babulal Gupta in the applicant for repayment deposit under CDS Exh.313;

(3) applicant No.1 has submitted application for repayment of deposit Exhs.311 to 313 which were basis for issuance of pay order Exhs.99 to 100 at Bank of Maharashtra issued in the name of the complainant and his parents along with pay order in the names of accused No.1 Gourishankar through the applicants and Kamlabai;

(4) there is endorsement on the reverse side of the pay order Exhs.99 to 101 “please pay to Laxmikant Gupta & Company:. The said handwriting on Exh.99 is of applicant No.2;

(5) all these pay order were deposited in the Account No.1057 in the name and style of M/s.Laxmikant Gupta & Company and the sent to Bank of Baroda for clearing;

(6) PW5 Prabhakar Makome working in Gourishankar Firm has deposited said pay slips together with pay order Exhs.99 to 101 in Bank of Baroda which were handed over to him by applicant No.1, and

(7) pay order Exh.99 cleared on 6.8.1982, Exhs.100 and 101 cleared on 11.8.1982 and amounts are credited in the account of

Laxmikant Gupta & Company. Thus, involvement of applicants along with co-accused Laxmikant Gupta revealed.

25. The evidence of handwriting expert shows that red encircled English writing marked as Q-2 appears on Exh.312 which is E-Form in the name of Mahesh Gupta was compared with specimen handwriting of Laxmikant Gupta and found that it is in handwriting of said Laxmikant Gupta. Red encircled English writing marked as Q-1(a) and opinion as to handwriting given was that it is the handwriting of the person who wrote Exhibit marks as D-16 to D21 and DN-1 to DN-2. Red encircled English writing marked Q-1(a) appears on Exh.313 E-Form in the name of Babulal was compared with D16 to D21 and DN-1 to DN-2 which are documents of specimen and natural handwriting of applicant No.2 correspond to Exhs.267 to 271 and 339 and opinion given by the handwriting expert shows that it is in the

handwriting of applicant No.2. The opinion of PW9 handwriting expert is also supported by PW3 Bhargavrao Kalve relating to the submission of E-Form along with CDS pass book by applicant No.2 Exhs.312, 313, and 311 which were basis of issuance of pay order Exh.100 in the name of Mahesh, Exh.101 in the name of Babulal and Exh.99 in the name of Kamlabai. While delivering these seven pay orders on 30.7.1982, signature of person was obtained by the bank on local dispatch register Exh.320 at page No.248 against 7 pay orders. PW9 handwriting expert examined the same red encircled English writing marked as Q-14 appears on local dispatch register of the Bank of Maharashtra with C-14 to C-45 and CN-3 to CN-6 and opined that it is in the handwriting of the person wrote C-14 to C-45 and CN-2 to CN-6 which are documents specimen and natural handwriting of applicant No.1 and correspond Exhs.212 to 217, 329, 328, 336, and 330. Exhs.328, 329, and 336 are bills of Arun Sales Agencies whereas Exh.330 is bill of Laxmikant Gupta & Company. Thus, the evidence of PW3 corresponds the evidence of handwriting expert that applicant Arun Gupta submitted seven E-Forms to the bank and obtained pay orders mentioned in Exh.320 including pay orders of PW1 and his parents.

26. The evidence on record further shows that PW1 Mahesh Gupta and PW2 Arvind Bapat, Branch Manager of the Bank of Maharashtra, deposed that E-Forms Exhs.311 to 313 were received by the bank. PW3 Bhargavrao Kalve stated that the Bank of Maharashtra made the pay order in the names of Mahesh Gupta (Exh.100 for Rs.1213.70), Babulal Gupta Exh.101 for Rs.1687.10 and Kashibai (Exh.99 for Rs.1668.10). Thus, the pay orders are crossed one and were issued on 29.7.1982 duly signed by the bank officials. The Bank of Maharashtra debited the amount of respective pay order to their CDS accounts, ledger and on statements CDS

accounts Exhs.76, 77, and 78. This evidence remained unchallenged on behalf of the applicants and other accused which shows that amount was debited from the account of complainant Mahesh and his parents on the basis of pay orders which were obtained on the basis forged E-forms i.e. applications for repayment of CDS amounts.

27. Thus, not only the opinion of the expert but also the oral evidence corroborated by the documentary evidence shows that seven E-forms were submitted by applicant No.1 against which seven pay orders were issued and payment was made. The Application Forms for repayment are in the handwriting of applicant No.2 and pay orders and forged signatures are of co-accused Laxmikant Gupta.

28. Thus, the evidence sufficiently shows that the involvement of the applicants in the forgery as well as in

withdrawing the amount and using the forged documents as a genuine one. The involvement of the applicants also reveals in the cheating.

29. Learned Senior Counsel for the applicants submitted that the conviction of the applicants is not maintainable on the basis of sole opinion of the handwriting expert. In support of his conviction, he referred the decision of the Hon'ble Apex Court in the case of **State of Maharashtra vs. Sukhdeo Singh and anr, reported in 1992 AIR 2100** wherein the Hon'ble Apex Court by referring various decisions observed that, "what emerges from the case law referred to above is that handwriting expert is a competent witness whose opinion evidence is recognised as relevant under the provisions of the Evidence Act and has not been equated to the class of evidence of an accomplice. It would, therefore, not be fair to approach the opinion evidence with suspicion but the correct approach would be to

weigh the reasons on which it is based. The quality of his opinion would depend on the soundness of the reasons on which it is founded. But the court cannot afford to overlook the fact that the science of identification of handwriting is an imperfect and frail one as compared to the science of identification of finger- prints; courts have, therefore, been wary in placing implicit reliance on such opinion evidence and have looked for corroboration but that is not to say that it is a rule of prudence of general application regardless of the circumstances of the case and the quality of expert evidence. No hard and fast rule can be laid down in this behalf but the Court has to decide in each case of its own merits what weight it should attach to the opinion of the expert.

30. It is well settled that evidence regarding the identity of the author of any document can be tendered (i) by examining the person who is conversant and familiar with the handwriting of such person or (ii)

through the testimony of an expert who is qualified and competent to make a comparison of the disputed writing and the admitted writing on a scientific basis and (iii) by the court comparing the disputed document with the admitted one.

31. In the present case, the prosecution has not only examined the handwriting expert PW9 Dilip Ahiwale but also examined complainant PW1 Mahesh Gupta who is not only acquainted with the handwriting of his parents but also acquainted with the handwriting of present applicants who are his relatives and they worked in one firm.

32. In the case of **Ram Narain v. State of U.P., reported in (1973)2 SCC 86** wherein the Hon'ble Apex Court held that it is no doubt true that the opinion of a handwriting expert given in evidence is no less fallible than any other expert opinion adduced in evidence with

the result that such evidence has to be received with great caution. But, this opinion evidence which is relevant may be worthy of acceptance if there is internal or external evidence relating to the document in question supporting the view expressed by the expert.

33. The similar view was expressed in the case of **Bhagwan Kaur vs. Maharaj Krishan Sharma, reported in (1973)4 SCC 46 wherein** it has been observed that, “the evidence of a handwriting expert, unlike that of a fingerprint expert is generally of a frail character and its fallibilities have been quite often noticed”.

34. The Hon’ble Apex Court in the case of **Murari Lal s/o Ram Singh vs. State Of Madhya Pradesh, reported in 1980(1) SCC 704** held that, “expert testimony is made relevant by S.45 of the Evidence Act and where the Court has to form an opinion upon a

point as to identity of handwriting, the opinion of a person `specially skilled' in questions as to identity of handwriting is expressly made a relevant fact. There is nothing in the Evidence Act, as for example like illustration (b) to S.114 which entitles the Court to presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars which justifies the court in assuming that a handwriting expert's opinion is unworthy of credit unless corroborated. The Evidence Act itself (S.3) tells us that `a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists'. It is necessary to occasionally remind ourselves of this interpretation clause in the Evidence Act lest we set an artificial standard of proof not warranted by the provisions of the Act. Further, under S.114 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to facts of the particular case. It is also to be noticed that S.46 of the Evidence Act makes facts, not otherwise relevant, relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant. So, corroboration may not invariably be insisted upon before acting on the opinion of handwriting expert and there need be no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard and fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it".

It has been further observed that, "we are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystalized into a rule of law, that opinion evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach, as we indicated earlier, should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight".

35. In case of **Padum Kumar vs. State of UP** supra wherein also the similar observation is made by the Hon'ble Apex Court by referring the judgment of **Murari Lal s/o Ram Singh vs. State Of Madhya Pradesh** *supra.*

36. Thus, it is now settled law that a handwriting expert is a competent witness whose opinion evidence as relevant under the provisions of Evidence Act. Only caution is to be taken while accepting the evidence and placing implicit reliance on such evidence and look for corroboration, but having corroboration is not either a rule of law or rule of prudence.

37. On going through the evidence in the present case, as observed earlier, the trial court and the first appellate court not only relied upon the evidence of

expert but also considered the evidence of complainant PW1 Mahesh Gupta, PW2 Arvind Bapat, Branch Manager of the Bank of Maharashtra, PW3 Bhargavrao Kalve who is bank employee, and the investigating officer who seized various document and the seizure panchanamas proved by PW10 Shivkumar Jaiswal, PW11 Vimal Bagdi, and PW12 Kashmirilal Beri as well as PW14 the Investigating officer which unerringly points out the involvement of the applicants in forgery and fabrication of the documents using the said documents as genuine one.

38. The applicants are also convicted for offence under Section 120-B of the IPC. The ingredients the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the same agreement should be for doing of an illegal act or for doing by illegal menas, and act which by itself may not be illegal. In other words, the

essence of criminal conspiracy is an agreement to do an illegal act and such agreement can be proved either by direct evidence or by circumstantial evidence or by both and in the matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even, if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of that agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only the such circumstances are in capable of any other reasonable explanations. In other words, an offence of criminal conspiracy, cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and available evidence.

39. Thus, to prove the charge of conspiracy within the ambit of Section 120-B of the IPC, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold person guilty for the offence under Section 120-B of the IPC.

40. In the present case, admittedly, there is no direct evidence available to show that there was meeting of minds between the applicants and other co-accused as far as conspiracy is concerned. Admittedly, no direct evidence would be available, but even there are no

circumstances brought on record to show that some acts are committed by the applicants in furtherance of conspiracy. As far as conspiracy is concerned, there is absolutely no evidence to show that there was agreement between the applicants and the accused and in pursuance of the said conspiracy, they have done some illegal acts. Therefore, conviction under Section 120-B of the IPC is not sustainable which requires to be quashed and set aside.

41. In the light of the above discussion, the findings of the trial court, as far as involvement of the applicants in committing the offence of forgery using the forged documents as genuine one and intention to cheat the complainant is concerned, are established. The reasoning given by both the courts below are cogent and sustainable. The findings as to the involvement in criminal conspiracy are concerned, the same are without

any evidence and to that extent only the revision deserves to be allowed partly.

42. In the light of the above discussion, I proceed to pass following order:

ORDER

(1) The Criminal Revision Application is **allowed partly**.

(2) The conviction and sentence dated 8.2.2007 passed by learned Judicial Magistrate First Class, Court No.7, Nagpur in Criminal Case No.288/2007 (Old RCC No.46/1987) and Criminal Case No.289/2007 (Old RCC No.213/1987) convicting the applicants for offences punishable under Section 120-B of the IPC which has been confirmed by judgment and order dated 7.8.2013 passed by learned Additional Sessions Judge, Nagpur in Criminal Appeal No.52/2007 is quashed and set aside.

(3) The applicants are acquitted of offence under Section 120-B of the IPC.

(4) Rest of the sentence under Sections 468, 471, and 420 of the IPC is maintained.

Corrected as per the Hon'ble Court's order dt.11.9.25

(5) The applicants shall surrender before the Central Prison, Nagpur on 25.9.2025 to undergo the jail sentence.

Revision stands **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!