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T Narayanappa Vs. State

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Court : Karnataka

Decided On : Jan-14-2020

Judge : K.Somashekar

Appeal No. : CRL.A 552/2010

Appellant : T Narayanappa

Respondent : State

Advocate for Pet/Ap. : Shri. Nagendra Naik

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE14H DAY OF JANUARY, 2020 BEFORE THE HONBLE MR. JUSTICE K. SOMASHEKAR CRIMINAL APPEAL No.552 OF 2010 CONNECTED WITH CRIMINAL APPEAL No.565 OF 2010 CRIMINAL APPEAL No.570 OF 2010 CRL.A. 552/2010: BETWEEN T. NARAYANAPPA S/O LATE SHRI THIMMAIAH AGED ABOUT55YEARS FORMERLY W/AS BRANCH MANAGER STATE BANK OF MYSORE BAZAAR BRANCH, ARASIKERE RESIDING AT VENKATADRI NILAYA4H LINK ROAD, 6TH CROSS VIJAYANAGAR, TUMKUR. (BY SRI.P. N. HEGDE - ADVOCATE) AND STATE BY INSPECTOR OF POLICE, CBI REPRESENTED BY STANDING COUNSEL FOR CBI IN THE HONBLE HIGH COURT BANGALORE.

... APPELLANT

(BY SRI. P. PRASANNA KUMAR- SPL. P. P)

... RESPONDENT

2THIS CRL.A. IS FILED UNDER SECTION3742) OF THE CR.P.C PRAYING TO, SET ASIDE THE CONVICTION SENTENCE PASSED BY THE SPL., JUDGE FOR CBI CASES AND XXXII ADDL. CITY CIVIL AND SESSIONS JUDGE, AT BANGALORE IN SPL.C.C.NO.75/2006 CONVICTING THE APPELLANT/ ACCUSED FOR THE OFFENCE P/U/S120B) R/W420 468, 471, 477(A) IPC R/W511IPC, BESIDES A-1 FOUND GUILTY FOR THE OFFENCE P/U/S131)(d) R/W132) OF PREVENTION OF CORRUPTION ACT1988 THE APPELLANT/ACCUSED SENTENCED TO UNDERGO SIMPLE IMPRISONMENT FOR EIGHT MONTHS FOR THE OFFENCE P/U/S120 OF IPC R/W511IPC. THE APPELLANT / ACCUSED SENTENCED TO UNDERGO S.I. FOR SIX MONTHS FOR THE OFFENCE P/U/S420R/W511IPC AND SHALL PAY FINE OF RS.10,000/- AND IN DEFAULT OF FINE, HE SHALL UNDERGO S.I. FOR6MONTHS AND ETC., CRL.A.565/2010: BETWEEN SRI K. MOHAN DAS S/O LATE KRISHNAN KUTTY NAIR AGED ABOUT55YEARS R/O NO.156, 7TH CROSS3D MAIN, M.S.R. NAGAR BANGALORE. (BY SRI. RAJENDRA .K .R, FOR SRI L. SRINIVAS BABU - ADVOCATES)

... APPELLANT

3AND STATE BY INSPECTOR OF POLICE, CBI ACB, BANGALORE REP. BY HIGH COURT PUBLIC PROSECUTOR HIGH COURT OF KARNATAKA BANGALORE. (BY SRI. P. PRASANNA KUMAR SPL. PP)

... RESPONDENT

THE APPELLANT CITY, AGAINST CONVICTING THIS CRL.A. IS FILED UNDER SECTION3742) OF THE CR.P.C PRAYING TO, SET-ASIDE THE ORDER OF CONVICTION AND SENTENCE PASSED ON2704.2010 IN SPL.C.C.NO.75/2006 BY THE XXXII ADDL., CITY CIVIL AND S.J., AND SPL., JUDGE, FOR CBI CASES, BANGALORE THE APPELLANT/ACCUSED FOR THE OFFENCE

P/U/S120B) R/W420 468, 471, 477(A) IPC R/W511IPC, BESIDES A-1 FOUND GUILTY FOR THE OFFENCE P/U/S131)(d) R/W132) OF PREVENTION OF CORRUPTION ACT1988 THE APPELLANT/ACCUSED SENTENCED TO UNDERGO SIMPLE IMPRISONMENT FOR EIGHT MONTHS FOR THE OFFENCE P/U/S120 OF IPC R/W511IPC. THE APPELLANT / ACCUSED SENTENCED TO UNDERGO S.I. FOR SIX MONTHS FOR THE OFFENCE P/U/S420R/W511IPC AND SHALL PAY FINE OF RS.10,000/- AND IN DEFAULT OF FINE, HE SHALL UNDERGO S.I. FOR6MONTHS AND ETC., 4 CRL.A.570/2010: BETWEEN SRI K. L. AGARWAL S/O LATE P.L. AGARWAL AGED ABOUT68YEARS NO.21, AMARJYOTHI LAYOUT3D MAIN ROAD SANJAY NAGAR BANGALORE.

... APPELLANT
(BY SRI. R. NAGENDRA NAIK - ADVOCATE) AND STATE BY INSPECTOR OF POLICE, CBI/ACB GANGANAGAR BELLARY ROAD BANGALORE. (BY SRI. P. PRASANNA KUMAR SPL. PP)

... RESPONDENT

THIS CRL.A. IS FILED UNDER SECTION3742) OF THE CR.P.C PRAYING TO, SET-ASIDE THE JUDGMENT OF CONVICTION DATED2704.2010 PASSED IN SPL.C.C.NO.75/2006 ON THE FILE OF XXXII ADDL., CITY CIVIL AND SESSIONS JUDGE AND SPL., JUDGE FOR CBI CASES, BANGALORE - CONVICTING THE APPELLANT/ACCUSED FOR THE OFFENCE P/U/S120b) R/W420 468, 471, 477(A) IPC R/W APPELLANT/ACCUSED THE511IPC. 5 SENTENCED TO UNDERGO SIMPLE IMPRISONMENT FOR EIGHT MONTHS FOR THE OFFENCE P/U/S120 OF IPC R/W511IPC. THE APPELLANT / ACCUSED SENTENCED TO UNDERGO S.I. FOR SIX MONTHS FOR THE OFFENCE P/U/S420R/W511IPC AND SHALL PAY FINE OF RS.10,000/- AND IN DEFAULT OF FINE, HE SHALL UNDERGO S.I. FOR6MONTHS AND ETC., THESE CRIMINAL APPEALS COMING ON FOR HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

As all the three appeals arise out of a common judgment, they are taken up for hearing together and are disposed of by this common judgment.

2. Crl.A.No.552/2010 has been preferred by accused No.1 T. Narayanappa; Crl.A.No.565/2010 has been preferred by Accused No.3 K. Mohan Dass and Crl.A.No.570/2010 has been preferred by Accused No.2 K.L. Agarwal. All these three appeals have been filed by the respective accused challenging the common judgment of conviction and order of sentence rendered by the Trial Court 6 in Spl.C.C.No.75/2006 dated 27.04.2010 and praying to set aside the same. By the said judgment of the Trial Court, Accused Nos.1 to 3 were convicted for the offences punishable under Sections 120(b), 420, 468, 471, 477(A) IPC read with Section 511 IPC. Besides, Accused No.1 was convicted for offence under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 as well. As regards sentence, Accused Nos.1 to 3 were sentenced to undergo simple imprisonment for eight months for the offence under Section 120B read with 511 IPC; to undergo simple imprisonment for six months and to pay a fine of Rs.10,000/- each for the offence under Section 420 read with Section 511 IPC and in default of payment of fine to undergo simple imprisonment for six months; to undergo simple imprisonment for eight months and to pay a fine of Rs.10,000/- each for the offence under Section 468 read with 511 IPC and in 7 default of payment of fine to undergo simple imprisonment for six months; to undergo simple imprisonment for eight months and to pay a fine of Rs.10,000/- each for the offence under Section 471 read with 511 IPC and in default of payment of fine to undergo simple imprisonment for six months; to undergo simple imprisonment for six months and to pay a fine of Rs.10,000/- each for the offence under Section 477 read with 511 IPC and in default of payment of fine to undergo simple imprisonment for six months. Further, Accused No.1 was sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.10,000/- for the offence under Section 13(2) read with Section 13(1)(d) of the PC Act and in default of payment of fine to undergo simple imprisonment of six months. All the sentences were to run concurrently.

3. Factual matrix of the appeals as per the case put forth by the prosecution is as follows:

8. Accused No.1 T. Narayanappa was working as the Branch Manager in the State Bank of Mysore, Bazaar Branch, Arasikere from February 2004 to July 2004. During the said period, it is stated that Accused No.1 being a public servant, entered into a criminal conspiracy with Accused No.2 K.L. Agarwal who was the Proprietor of M/s. Nu-Horizon Data Technologies, Bengaluru and Accused No.3 K. Mohan Dass who was the Proprietor of M.S.M. Private Ltd and committed illegal acts of cheating, forging valuable security using forged document. In that, it is alleged that Accused No.1, abusing his position as a public servant, created false entries of credit and debit in respect of the current account of Accused No.2 bearing No.01050007420. As on 12.05.2004, Accused No.1 had first shown credit of a sum of Rs.525,32,11,000/- in the said account though any such amount was not deposited into the said account through cash or cheque and further had shown 9 debit of the very same amount on the same day. Further, as on 20.05.2004, Accused No.1 had shown credit of a sum of Rs.568,13,29,000/- in the very same account though any such amount was not deposited into the said account through cash or cheque and further had shown debit of the very same amount on the same day. Further, it is stated that he did not prepare any corresponding vouchers for the said two huge credit entries. Subsequently, he had also issued two Certificates of Balance dated 21.05.2004 and 03.06.2004 respectively to the Account holder Shri K.L. Agarwal Accused No.2 stating that a balance of Rs.564,13,33,975/- was available in the account of M/s. Nu Horizon Data Technologies. Thus, it is alleged in the sources of information secured by the Investigating Agency of the CBI / ACB that Accused No.1 T. Narayanappa who was the Branch Manager, State Bank of Mysore, Bazaar Branch, Arasikere during 10 February 2004 to July 2004, being a public servant had colluded with Accused Nos.2 and 3 and had hatched a criminal conspiracy and involved in the said corrupt and illegal act to obtain for himself or others pecuniary advantage by abusing his position as a public servant, thus attempting to cause loss to the Bank. Thus Narayanappa had willfully flouted the norms prescribed by the State Bank of Mysore in order to extend some kind of pecuniary advantage to the Proprietor of M/s. Nu Horizon Data Technologies as well.

4. The genesis of the case arose when one Joy Abraham, a native of Trichur who was looking for financial assistance to the tune of about Rs.36 crores for

purchasing an estate in Kerala approached Shri Narayanappa Accused No.1, Branch Manager of State Bank of Mysore, Bazaar Branch, Arsikere. Accused No.1 had in turn introduced Joy Abraham to one Shri K.L. Agarwal Accused No.2, informing that Shri 11 Agarwal was maintaining a very huge balance of Rs.564,13,33,975/- in his Current Account bearing No.01050007420 and that he would extend the required financial assistance for purchasing the said estate. To evidence the same, Accused No.1 had also issued a letter to Joy Abraham on the letter-head of State Bank of Mysore dated 21.05.2004 showing a balance of Rs.564,13,33,975/- in the account of M/s. Nu Horizon Data Technologies, knowing fully well that the account was not having any such balance or any heavy transactions. It is also stated that the transaction was facilitated by one Sukumaran Nair from Kerala who had approached K.L. Agarwal Accused No.2 through K. Mohan Dass Accused No.3 and one Saifuddin Kunju for availing required finance on interest. It is the further allegation in the FIR that though the Advocate of Shri Joy Abraham preferred a complaint to State Bank of Mysore about the said fraudulent transaction, 12 Accused No.1 Narayanappa had got the complaint closed on 05.08.2004 by producing a letter asking that the complaint be withdrawn, by fraudulently fabricating the signature of the complainant, on the letter. Further it was also disclosed that Accused No.1 was also in possession of a cheque of Rs.6 crores issued by Shri L.K. Agarwal Accused No.2 from the account of M/s. Nu Horizon Data Technologies, with ICICI Bank, Malleswaram Branch, Bangalore. Further, though the Arasikere Branch of State Bank of Mysore was computerized, the bogus credit and debit entries of these huge amounts in the account of M/s. Nu Horizon Data Technologies were made manually in the pass-book of the said account before issuing the letter showing the balance of Rs.564,13,33,975/- in the said account. Hence, it was alleged in the FIR that the above acts of Narayanappa in conspiracy with others in dishonestly and fraudulently fabricating the entries in 13 the Current Account of M/s. Nu Horizon Data Technologies and in issuing a letter showing such huge balances in the account, knowing fully well that the balances were non-existent, by abusing his official position, with an intent to defraud the bank, prima facie discloses an attempt to commit criminal misconduct to obtain for himself, or for any other persons, any valuable thing or pecuniary advantage, amounting to offences

punishable under Sections 120-B, 420, 511, 477A IPC and Section 15 read with Section 13(2) and 13(1)(d) of the PC Act, 1988. The FIR pertaining to the said case was filed only as on 20.07.2005 on the allegation of criminal conspiracy, cheating, falsification of accounts and attempt to commit offence of criminal misconduct, based on the sources of information secured by the CBI/ACB. Whereas the complaint at Exhibit P-129 as regards the alleged misconduct was lodged with the 14 General Manager, State Bank of Mysore, Head Office, Bangalore, as early as on 15.07.2004 itself by one Shri M.V. Gopalakrishnan, Advocate of Shri Joy Abraham. The said complaint at Exhibit P-129 is to the effect that his clients relative Mrs. Elamma Chacko, W/o. Chacko Rosevilla, Kottayam, was looking for financial assistance to purchase an estate in Kerala for a total consideration of Rs.36 crores. Out of the said amount, his clients relative had already paid a substantive amount as advance. When Joy Abrahams relative was in search of financial assistance for raising the balance sale consideration, one Mr. Mohan Dass Accused No.3 had introduced Mr. Joy Abraham to Accused No.1 Narayanappa, Branch Manager of State Bank of Mysore, Arasikere Branch. It is averred that the Branch Manager Narayanappa had promised to Joy Abraham that he would make necessary arrangements in providing the required financial assistance. In 15 furtherance, Narayanappa had informed Joy Abraham that one Mr. K.L. Agarwal Accused No.2 was his close friend who is holding a Current Account in his Branch who would provide the said financial assistance since the said person has a balance of Rs.564,13,33,975/- in his account. Certifying the same, Narayanappa had also issued a letter in the Banks letter-pad using the office seal. Further, Accused No.1 had introduced Joy Abraham to one Mr. Agarwal Accused No.2 who had assured that he would provide the required financial assistance, in favour of which, Joy Abraham would have to pay a commission of Rs.1 crore. In order to receive the said financial assistance, Joy Abraham had initially paid a sum of Rs.75,000/- to Accused No.1 - Narayanappa as on 03.06.2004. But however on subsequent enquiry, it was revealed to Joy Abraham that all representations made in this behalf by Narayanappa Accused No.1 were false and the 16 certificate issued by him was also fabricated. Only later he came to know that in order to extract money from Joy Abraham on the pretext of getting financial assistance from Shri Agarwal, Accused No.1 had misused his

position and represented falsely. Hence, by urging the above contents, the said Advocate M.V. Gopalakrishnan by his complaint at Exhibit P-129 had requested the Bank to enquire into the matter and take appropriate action against Accused No.1. Thereafter the legal notice at Exhibit P-139 was issued by the said Advocate Shri Gopalakrishnan.

5. However, the CBI Officer based on the sources of information received had registered a case and proceeded with the case for investigation and had seized the concerned documents from the Bank, recorded the statement of the witnesses and on completion of investigation, filed a charge-sheet. Subsequent to laying charge-sheet against the accused by the I.O. of 17 the CBI / ACB before the Special Court, the case in Spl.C.C.No.75/2006 came to be registered for the aforesaid offences. Then accused Nos.1 to 3 were secured and thereafter were released on bail. Thereafter on hearing the parties, the charge was framed and read over and explained to the accused, wherein the accused pleaded not guilty and claimed to be tried. In order to substantiate the case against the accused, the prosecution in all examined 21 witnesses as PW-1 to PW-21 and got marked several documents at Exhibits P- 1 to P-147 and also got marked material objects as MO- 1 to MO-4. Subsequent to closure of the evidence of the prosecution, the accused were examined as required under Section 313 Cr.P.C. to enable them to answer the incriminating statements appearing against them. But the accused denied the truth of the prosecution evidence adduced so far. Subsequently, the accused 18 were called upon to enter into any defence evidence as contemplated under Section 233 Cr.P.C. But the accused did not come forward to adduce any defence evidence or even mark any documents on their side. Thereafter, the Trial Court, on hearing the arguments advanced by the Special Prosecutor and the learned Defence counsel for Accused Nos.1 to 3, and on analyzing the evidence of PW-1 to PW-21 and also the relevant documents got marked by the prosecution, convicted and sentenced the accused as aforesaid. It is this judgment which is under challenge in these criminal appeals by Accused Nos.1 to 3 urging various grounds.

6. The learned counsel Shri P.N. Hegde for the appellant in Crl.A.No.552/2010 has taken me through the evidence of PW-1 K. Rangan who speaks in his evidence

regarding production of certain documents during the course of investigation done by the I.O of the 19 CBI/ACB relating to the offences lugged against the accused. PW-2 V.R. Prasad also speaks about production of documents during the course of the inquiry made by the CBI / ACB relating to the terms of the complaint Exhibit P-129 forwarded by PW-14 M.V. Gopalakrishnan, Advocate. The drafted complaint made by him is based upon the instruction issued by his client namely Joy Abraham. PW-3 Shivaswamy has also spoken about receiving of a complaint and verification of the account of Accused No.2 Agarwal and noticing irregularities. PW-4 Vijayakumar P who was working as the Branch Manager of SBM, Arasikere from June 2004 to July 2007 has spoken about production of certain documents during the course of investigation done by the CBI / ACB in order to proceed with the case for inquiry in terms of the complaint at Exhibit P-129. 20 PW-5 M. Malathi, an official witness who was working as a Clerk at SBM, Bazaar Branch, Arasikere has spoken about the fact of she having worked at the Cash Counter in the month of April and May 2004. PW-6 Abdul Razak an official witness who was also working as a Clerk at SBM, Bazaar Branch, Arasikere from 1994 to 2004 has stated about he having entered a huge amount in crores into the account of M/s. Nu Horizon Data Technology Ltd on the direction of Accused No.1 and he himself having reversed the said entry after ten minutes. PW-7 Usman Ali Baig has spoken about the fact of himself having signed the account opening form and introducing Accused No.2 to the SBM for opening his current account. PW-8 Shivakumar K.P. who was working as a Peon at SBM Bazaar Branch, Arasikere has given 21 evidence to the effect that he had entered the outward register as per the direction of Accused No.1. PW-9 P. Sridhara who was working as Chief Manager, SBM, Hassan from 2003 to 2006 has spoken about conducting preliminary inquiry in respect of high credits in the account of M/s. Nu Horizon Data Technology Ltd. PW-10 N. Nagarathnamma who was working as the Chief Managar GM(O), Secretariat, SBM Head Office, Bangalore from 2004 to 2006 has spoken about receiving a complaint against Accused No.1 an closure of the complaint. PW-11 Ganesha Hegde who was working as a Deputy Manager, GM(O), SBM Head Office, Bangalore from 2003 to 2006 has spoken about receiving complaint regarding high debit and credit in the account of M/s. Nu Horizon Data Technology Ltd. And 22 about Accused No.1 having Rs.75,000/-.

received bribe of PW-12 Jyothi Ganesh V.S. who was working as an Asst. Manager at SBM, Bazaar Branch, Arasikere has spoken about he having handed over the English Typewriter and date seal of his Bank to the I.O. of CBI / ACB. PW-13 Z.H. Macci who was working as a Chief Manager, Vigilance Department, SBM, Head Office, Bangalore from 2002 to 2005 has spoken about he having conducted preliminary investigation and submitted a report in respect of the allegation made against Accused No.1 T. Narayanappa. PW-14 Gopalakrishna M.V. being an Advocate by avocation has drafted the complaint as per Exhibit P-129 as per the instruction of his client Joy Abraham. PW-15 M.D. Vishakantaiah was working as a Manager of SBM, Raghavendranagara Branch, Tumkur 23 has spoken that on receiving a complaint about Accused No.1, he had obtained an explanation from A-1 and forwarded the same to the AGM, State Bank of Mysore. PW-16 S. Yaseen, an acquaintance has spoken to the effect that he knew Accused No.1 Narayanappa as well as Accused No.2 Agarwal, who was introduced to him by CW-18. PW-17 Salil Mishra was working as a General Manager (Operations) in the SBM, Bangalore. He was the one who had accorded sanction to prosecute the case against Accused No.1 Narayanappa as per the letter of sanction at Exhibit P-137. PW-18 Sukumaran Nair, an acquaintance of Smt. Elamma Joseph has spoken about the fact that Elamma Joseph was in need of money to purchase an estate and that a broker had introduced him to Accused No.2 Agarwal and Accused No.3 Mohandas. 24 PW-19 Joy Abraham has spoken about the fact that his aunt Smt. Elamma Joseph was in need of loan of a sum of Rs.12 crores for which she had approached PW-19. PW-19 in turn had approached PW-18, who had assured that he would arrange such amount through Accused No.3 Mohandas at Arasikere. PW-20 Vijayashankar, Assistant Government Examiner by occupation is the person who examined the questioned writings and typed writings, rubber sheet impression and standard materials and he had submitted his opinion at Exhibit P-141. PW-21 M. Raja who was working as an Inspector of Police, CBI / ACB, Bangalore is the Investigating Officer who collected the sources of information and recorded the FIR and proceeded with the case for investigation and thoroughly investigated the case and laid a charge-sheet against the accused. 25 These are the evidence let in by the prosecution in order to prove the guilt of the accused.

7. The primary contention of the learned counsel for the appellant in Crl.A.No.552/2010 Accused No.1 is that the Trial Court has grossly erred in holding that the sanction for the prosecution of the Appellant as per Exhibit P-137 dated 24.3.2006 accorded by PW-30 Shri. Salil Mishra, General Manager (Operations), SBM, examined as PW-17 in this case is valid in law and that the reasoning of the Learned Special Judge in his judgment at Paragraphs 12 to 38 as regards the validity of sanction order, is totally incorrect. It is contended that the sanction accorded by PW-17 is invalid due to non-application of mind, in the case. Further, the Trial Court grossly erred in not considering the material discrepancies elicited in the cross examination of PW-17 that he did not apply his mind before issuing the sanction order though he replied to a question in cross 26 examination to the effect that documents such as copies of FIR, statements of witnesses, Investigation report of CBI and other connected documents were seen by him before according PSO. In fact PSO ExP-137 only discloses that he has seen copies of the documents such as FIR, statement of witnesses, Investigation report of CBI and other connected documents. During the examination of PW-17, he has deposed that he looked into the facts of the case, gone through all the papers, applied his mind and accorded sanction for prosecution. Whereas in the cross-examination, he has deposed that he does not remember the statement of witnesses and when Accused No.2 opened the Current Account in SBM, Arasikere. Further, he has wrongly mentioned that there were no entries made as on 12.04.2004 and 20.04.2004. In fact on the said date the said account itself was not opened. Further, if he had gone through all the papers submitted by the Investigating Agency, he 27 would have got ample doubt regarding the statements made by the witnesses pursuant to the date on which credit and debit entries were made in the Account of Accused No.2. The statement of witnesses of the Prosecution in respect of the above said entries which are entered, are contrary to the case on hand. In that, it is contended that the official witnesses who were responsible persons at their work, they themselves were not sure as on which date the above mentioned entries were made in the Account of Accused No.2. If PW-17 had really gone through the said statement of witnesses of prosecution, he would have not only doubted whether the entries were fictitious but also whether the entries were in fact made or not. Further, as regards the allegation regarding

forgery under Section 368 of IPC stating that Accused No.1 had forged the signature of PW-14 and had withdrawn the complaint is concerned, it is contended 28 that PW-17 Sanctioning by the learned counsel Authority has stated in his cross-examination that he has not at all verified the reports of hand-writing experts. It is contended by the learned counsel that the Investigating Agency had collected the legal notice, complaint and the purported withdrawal letter from PW-14 and sent for the opinion of the Handwriting Expert in order to prove the allegation of forgery committed by Accused No.1. But however, the Handwriting Expert on comparing the signatures had opined that the signatures in the questioned Documents at Q-11 to Q-13 (which are the copies of withdrawal of Complaint by PW-14) were the reproduction of the Specimen signatures at S-37 of PW-14 and they tallied with each other. Thus, the learned counsel for Accused No.1 contends that the signature of PW-14 has not been forged by Accused No.1 as alleged, and hence contends that the charge of forgery is not at all proved. 29 Even the I.O. PW-21 has taken the specimen signature of Appellant-Accused No.1 for getting the opinion on the signatures present in the Certificate of Balance purportedly issued by Accused No.1. But truth came to light in the Opinion of PW-20 Ex-P-141, that no opinion could be rendered against the remaining questioned documents based on the material on hand. Hence, the learned counsel contends that it can be concluded that no forgery was done by Accused No.1. Hence, the learned counsel contends that the above discussion is most required for the defense because for according Prosecution Sanction Order (PSO) to prosecute a Public Servant on the allegations of forgery, opinion of the GEQD is only the base, under which the allegations can be proved. The I.O. PW-21 never submitted the opinion of GEQD to PW-17 who is the Sanctioning Authority, and PW-17 without any basis of allegation of forgery by Accused No.1 and without 30 application of mind, he has mechanically issued PSO against accused No.1, which proves that PW-17 has acted mechanically and as such it has occasioned in miscarriage of justice due to omission or irregularity caused by PW-17 due to his non-application of mind, which is fatal to the case of the prosecution. Hence the learned counsel contends that Accused No.1 deserves to be acquitted on this sole ground. In support of the said ground, he has placed reliance on the following authorities. a) In the case of Mohammed Iqbal Ahmed v/s State of AP (AIR 1979 SC677, the

Honble Apex Court has held in Paragraphs 3 and 4 that it is incumbent on the Prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. Hence the burden of proof that a valid sanction has been accorded in a given case is on the Prosecution. The Apex Court in the above case quashed the judgment of conviction of the accused 31 solely on the ground that sanction accorded for prosecution of accused is invalid and acquitted the accused. b) In another case of the Apex Court in the case of State of Karnataka v/s Ameer Jan (JT200711) SC183 it is held in Paragraph 13 that when the sanction order is held to be wholly invalid or a nullity suffering from non application of mind, Sec. 19(3) and 19(4) of P C Act cannot be resorted to. Hence, the learned counsel contends that the Trial Court ought to have held that the sanction order Exhibit P-137 is invalid due to non-application of mind and as such ought to have rejected the prosecution case on that ground alone. Hence, the learned counsel contends that the Trial Court grossly erred in holding that the prosecution has proved the charges against the appellant beyond reasonable doubt.

8. Secondly, it is contended that the Trial Court ought to have held that the evidence of the hand writing 32 expert PW-20 P. Vijaya Shankar cannot be relied upon due to the fact that the Prosecution has failed to prove the alleged forged signatures of the Appellant. Further, the Learned Special Judge has failed to appreciate that the signatures of the Appellant are not decipherable and hence his signatures cannot be identifiable by hand writing expert. It is further contended that since the learned Special Judge failed to appreciate that the prosecution has failed to examine the Sr. Clerk namely M V Sheshachala to prove that the Appellant attempted to obtain wrongful pecuniary advantage, adverse inference has to be drawn under Section 114(g) of the Evidence Act against the Prosecution in view of the judgment in Habeen Mohammed v/s State of Hyderabad (AIR 1954 SC51. The learned counsel further contends that the learned Special Judge has also grossly erred in inferring 33 that the appellant had falsified the account, issued Certificate of Balance and forged the same, as such there is no iota of evidence to prove the same beyond reasonable doubt. Learned counsel for the appellant in Crl.A.No.552/2010 further contends that PW-5 being an official witness who was working as a Clerk in SBM, Arasikere Branch claims to have been allotted with a

User ID and password and he has given evidence to the effect that Accused No.1 T. Narayanappa being the Manager of the Bank, was aware of PW-5s user ID and Password. Further, PW-6 also an official witness who was as well working as a Clerk in SBM, Arasikere Branch was also allotted with a User ID and password. Both PW-5 and PW-6 have given evidence to the effect that on the instructions of Accused No.1 Narayanappa, they had credited and debited the account of Agarwal Accused No.2 using their own user 34 ID and password. But the question that arises is, when Accused No.1 Narayanappa himself was aware of their User ID and password, he could have used their User IDs to login into their accounts and could have effected the credit and debit in the account of Agarwal Accused No.2 himself even without the knowledge of PWs 5 and 6. If really Accused No.1 intended to commit such a fraud, it is doubtful as to why he could have effected the wrongful transaction through PWs 5 and 6 disclosing both of them of his fraud and wrong intent. This circumstance casts a serious doubt as regards the credibility of the evidence of PWs 5 and 6, which could not be trustworthy in order to come to the conclusion of convicting the accused. Hence, the learned counsel contends that the Trial Court has erred in convicting Accused No.1. The further circumstance that has to be taken into consideration is that in view of effecting the alleged 35 transaction of huge debit and credit into the Current Account of Accused No.2 Agarwal, there has been no loss caused to the Bank. Pursuant to the complaint being lodged based on source information, PWs 5 and 6 had faced Departmental inquiry and were exonerated of the charges leveled against them. Further, on the complaint based on source information, domestic inquiry was also initiated against Accused No.1 Narayanappa and subsequently he has been exonerated of the charges leveled against him. Accused No.1 as well as PWs 5 and 6 were exonerated of the charges only in view of the fact that there was no loss caused to the Bank in view of the alleged wrongful debit and credit. Hence, the learned counsel for the appellant contends that this circumstance requires to be taken into consideration by this Court in order to acquit Accused No.1 of the offences leveled against him. 36 Another flaw which is noticed is that PW-14 M.V. Gopalakrishnan, Advocate who drafted the complaint as per Exhibit P-129 based upon the instruction issued by his client namely Joy Abraham, was not examined as a witness on the part of the prosecution. Either there is no document secured

by the Investigating Officer during the course of investigation to prove the allegation in the complaint that Joys Abrahams relative was in need of financial assistance of Rs.36 crore to purchase an estate in Kerala. Further, the prosecution has not produced any cogent and corroborative evidence to probabilise that Accused No.1 had hatched a conspiracy with Accused Nos.2 and 3 and also meeting of minds between the parties in order to cause wrongful loss to the Bank as narrated in the substance of the charge sheet laid by the Investigating Officer against the accused. 37 Learned counsel for Accused No.1 / appellant in Crl.A.No.552/2010 has relied on the following citations in support of his case: i) C.K. JAFFER SHARIEF vs. STATE (THROUGH CBI) (2013) 1 SCC205ii) R. SAJ BHARATHI vs. J.

JAYALALITHA AND OTHERS (2004) 2 SCC9The relevant portion of the judgment in the case of C.K. JAFFER SHARIEF (supra), reads as under:

14. A bare reading of the aforesaid provision of the Act would go to show that the offence contemplated therein is committed if a public servant obtains for himself or any other person any valuable thing or pecuniary advantage by corrupt or illegal means; by abusing his position as public servant or without any public interest. The aforesaid provision of the Act, i.e, Section 13(1)(d) are some what similar to the offence under Section 5(1)(d) of the Prevention of Corruption Act, 1947. 38 15. Adverting to the facts of the present case it has already been noticed that the only allegation against the appellant is that he had prevailed upon RITES and IRCON to take the four employees in question on deputation for the sole purpose of sending them to London in connection with the medical treatment of the appellant. It is also alleged that neither RITES nor IRCON had any pending business in London and that none of the four persons had not performed any duty pertaining to RITES or IRCON while they were in London; yet the to and fro air fare of all the four persons was paid by the above two Public Sector Undertakings. On the said basis it has been alleged that the accused appellant had abused his office and caused pecuniary loss to the two Public Sector Undertakings by arranging the visits of the four persons in question to London without any public interest. This, in essence, is the case against the accused-appellant.

16. A fundamental principle of criminal jurisprudence with regard to the liability of an accused which may have application to the present case is to be found in the work Criminal 39 Law by K.D. Gaur. The relevant passage from the above work may be extracted below: Criminal guilt would attach to a man for violations of criminal law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, actus non facit reum, nisi mens sit rea. It signifies that there can be no crime without a guilty mind. To make a person criminally accountable it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a mental element, usually called actus reus and mens rea respectively.

17. It has already been noticed that the appellant besides working as the Minister of Railways was the Head of the two Public Sector Undertakings in question at the relevant time. It also appears from the materials on record that the four persons while in London had assisted the appellant in performing certain tasks connected with the discharge of duties as a 40 Minister. It is difficult to visualise as to how in the light of the above facts, demonstrated by the materials revealed in the course of investigation, the appellant can be construed to have adopted corrupt or illegal means or to have abused his position as a public servant to obtain any valuable thing or pecuniary advantage either for himself or for any of the aforesaid four persons. If the statements of the witnesses examined under Section 161 show that the aforesaid four persons had performed certain tasks to assist the Minister in the discharge of his public duties, however insignificant such tasks may have been, no question of obtaining any pecuniary advantage by any corrupt or illegal means or by abuse of the position of the appellant as a public servant can arise. As a Minister it was for the appellant to decide on the number and identity of the officials and supporting staff who should accompany him to London if it was anticipated that he would be required to perform his official duties while in London. If in the process, the Rules or Norms applicable were violated or the decision taken shows an extravagant display of redundance it is the conduct and action of the appellant which may have been improper or contrary to 41 departmental norms. But to say that the same was actuated by a dishonest intention to obtain an

undue pecuniary advantage will not be correct. That dishonest intention is the gist of the offence under section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant. A similar view has also been expressed by this Court in M. Narayanan Nambiar vs. State of Kerala while considering the provisions of section 5 of Act of 1947. If the totality of the materials on record indicate the above position, we do not find any reason to allow the prosecution to continue against the appellant. Such continuance, in our view, would be an abuse of the process of court and therefore it will be the plain duty of the court to interdict the same. (emphasis supplied) Hence, the learned counsel prays that his appeal be allowed and the appellant Accused No.1 be acquitted of the offences leveled against him. Learned counsel Shri Rajendra K.R. appearing for the learned counsel Shri L. Srinivas Babu for the appellant 42 in Crl.A.No.565/2010 Accused No.3 contends that the order of the Trial Court convicting the appellant Accused No.3 is opposed to law, facts and circumstances of the case and that the Trial Court has grossly erred in not properly appreciating the oral and documentary evidence placed before it. The learned counsel contends that though the prosecution has marked Exhibits P-1 to P-147 in support of its case, there is no whisper about Accused No.3 in any of the said exhibits. The main accusation against Accused No.3 K. Mohan Das is that he handed over Exhibit P- 138 which is the Statement of Account pertaining to K.L. Agarwal Accused No.2 reflecting the balance of more than Rs.560 crore issued by the State Bank of Mysore, Arasikere Branch to PW-19 Joy Abraham and collected Rs.75,000/- from him. The same is clearly reflected from the evidence of PW-18 Sukumaran Nair. The said Sukumaran Nair has given evidence to the 43 effect that he knew that CW-21 Smt. Elamma Joseph was in need of money to purchase an estate. A broker had informed him that he would arrange for the said money at Bangalore and thereby took him to Bangalore in the month of May 2004. It was the said broker who had introduced Sukumaran Nair PW-18 to the present appellant Accused No.3 as well as to Accused No.2 Agarwal. Then the broker had taken PW-18 from Bangalore to State Bank of Mysore, Arasikere where he had seen Accused No.1 Narayanappa in the said Branch sitting in front of the computer. There, Accused No.1 had assured PW-18 that he would arrange the funds and had even shown him the account balance of Agarwal reflecting more than Rs.56

crores. But Accused No.1 had refused to issue the statement of account at that time. Then he had returned to Kerala. But however, Accused No.3 present appellant had called PW-18 and had informed him that he would meet him 44 with the Statement of account. Thereafter, Accused No.3 had gone to him and both of them had met Smt. Elamma Joseph and Accused No.3 had handed over the Statement of Account to her. Then it is stated that Accused No.3 had informed her that he needed Rs.1 crore as commission for release of the total amount. In reply, Smt. Elamma Joseph had told that she would pay Rs.75,000/- and had handed over the said Rs.75,000/- to Accused No.3 and told him that she has to verify regarding the availability of funds in his account. Later, Accused No.3 had returned to Bangalore with the said amount of Rs.75,000/-. This is the only evidence appearing against the accused. But the said evidence of PW-18 Sukumaran Nair against Accused No.3 has not been proved by the Trial Court beyond all reasonable doubt by putting forth positive and corroborative evidence. 45 The main contention of the learned counsel is that the Trial Court has erred in not noticing that the statement recorded by the complainant police of CW-16, 17, 18 and 19 speaks volumes about interested persons and not only about the present appellant. After discussion with all these witnesses, PW-21 Investigating Officer has falsely implicated the appellant as accused No.3 in this case though the appellant is innocent and has not committed the alleged offences. It is the contention of the learned counsel that the Trial Court erred in not noticing that there is gross infirmity and discrepancy in including the appellant as Accused No.3 in the case when his name does not find place in the complaint or FIR. The legal notice at Exhibit P-139 issued by Shri M.V. Gopalakrishnan, Advocate of Mr. Joy Abraham which is the basis for lodging of the above case clearly reveals that the sum of 46 Rs.75,000/- was paid to the Branch Manager, i.e., Accused No.1 as on 3.6.2004. However, the evidence of PW-19 Joy Abraham reveals that he paid Rs.75,000/- to Accused No.3 present appellant. Further, as noticed earlier, the evidence of PW-18 Sukumaran Nair revelas that Smt. Elamma Joseph paid Rs.75,000/- to Accused No.3 present appellant. Each one of the witnesses have stated differently in their evidence and in the legal notice which is the basis of the case, it is averred that the amount was handed over to Accused No.1. Hence, the learned counsel contends that there are inconsistencies in the statement of all the

witnesses, which has been lost sight of by the Trial Court while convicting the present accused. Thus he contends that the implication of the appellant in the alleged crime is an after thought. Further, the Trial Court also erred in not noticing that PW-12, 18 and 19 admitted in their cross 47 examination that either PW-18 or PW-19 did not lodge any complaint or issued legal notice or any other steps against the present appellant for having received the alleged amount of Rs.75000/- and did not proceed against the appellant for recovery of the alleged amount. If PW-19 had indeed paid the alleged amount of Rs.75000/- to the appellant, he would have certainly taken steps to recover the money from the appellant, but no such action is taken against the appellant. Hence, it clearly establishes that these witnesses have given false evidence against the appellant at the instance of the CBI Police. Further, there is also no recovery of the alleged amount from the appellant by the respondent police. It is his further contention that the Trial Court erred in not noticing that PW-21 who is Investigating Officer of this case also admitted in his cross examination that the name of the appellant has not 48 been included either in the F.I.R. or in the complaint and also he has admitted that he has not seized any document to show that PW-19 had paid Rs.75000/- to the appellant. Further, PW-21 I.O. has also admitted that the CW-23 Sri. Saifuddin Kunju has given statement before him that Either myself (CW23 or the appellant (A-3) did not receive any amount from Sri. Joy Abraham (PW-19). The said discrepancy goes to the root of the matter by making the case of prosecution as unworthy of acceptance. Further, the Trial Court also erred in not noticing that the alleged transaction though was worth a huge amount of Rs.36 crores, in order to establish the alleged transaction any kind of loan agreement or documents were not produced against the accused persons. Further if the case of prosecution were to be expected as true, Accused No.2 - Agarwal who was the lender of the money, who had huge bank balance in his account, by 49 any stretch of imagination would not have demanded Rs.1 Crore to lend his own money. Further, the name of the alleged broker who is said to have accompanied the present appellant has not at all been disclosed at any stage of the proceedings and the same being quite contrary to the contents of notice, speaks volumes about falsely foisting a case against the appellant. The further circumstance is that while handing over the Exhibit P-138 bank certificate of balance pertaining to Accused No.2 Agarwal, the

Trial Court has failed to notice that there was no basis for the appellant Accused No.3 to have demanded Rs.1 Crore as a commission, since there is no material evidence regarding the same. Even to evidence the fact that PW-19 had paid Rs.75000/- to the appellant, there is no material produced such as receipt or document and the 50 said submission is made in the air. It is least possible to believe the version of the PW-18 and 19, that anyone would pay such huge payment of Rs.75000/- to any person without obtaining any receipt or document. Hence it is the submission of the learned counsel that such evidence cannot be accepted by a Court of Law. Hence, the learned counsel contends that the Trial Court ought to have disbelieved the prosecution version and ought to have acquitted the appellant. On all these grounds, the learned counsel for the appellant in Crl.A.No.565/2010 Accused No.3 prays for allowing his appeal and thus setting aside the impugned order passed by the Trial Court. Learned counsel Shri Nagendra Naik appearing for the appellant in Crl.A.No.570/2010 Accused No.2 contends that the order of the Trial Court convicting the appellant Accused No.2 is opposed to law, facts and 51 circumstances of the case. The learned counsel contends that in fact there is no accusation against Accused No.2. He had just opened a Current Account in the Bank and had no role to play regarding the alleged misconduct. The allegation is solely against Accused No.1 Narayanappa who is said to have credited Accused No.2s account with a huge balance of more than Rs.560 crore and thereby debited the same. It is the contention of the learned counsel that the present appellant Accused No.2 was not even aware of the same and there is no direct overt act alleged against him. It was a broker who had introduced Sukumaran Nair PW-18 to the present appellant Accused No.2 as well as to Accused No.3. In clear terms PW-18 admits that he met Accused No.2 in Arsikere branch. However in the Chief Examination he has stated that he met A2 and A3 in Bangalore. However, in the cross-examination of PW-18, he has stated as follows: I was met A2 at 52 SBM. Arasikere. One Asharaf Khan was taken myself to the Bank. It is true to say that I have not seen A2 at the bank. Thus, it is seen that PW-18 has stated in his cross-examination that he saw Accused No.2 at SBM, Arasikere and that he had not seen A2 at the Bank. He has given contradicting statements that he has seen A2 and he did not see A2 in the Bank. Hence, the learned counsel contends that his evidence would be of no avail to

convict him since Accused No.2 had absolutely no role to play in the alleged transaction. That apart he has further stated that on 16/5/2004 he has seen the balance. On perusal of the Account extract, it could be found that there is no balance on 16/5/2004 as he stated. The evidence of the P.W. 18 and 19 has to be read together. P.W.19 has stated that A3 was introduced to him by C.W. 18 Afftab Khan. Therefore the very presence of the Accused No.2 in the branch is doubtful. None of the bank witnesses 53 have spoken about the presence of the Accused No.2 in the branch. The learned counsel further points out to the cross-examination in the evidence of PW-19 Joy Abraham wherein he has stated to the effect that he had not at all met Accused No.2 Agarwal personally and he never had any discussion with him. When PW-19 had not at all met the Account Holder present appellant, and did not at all confirm whether Accused No.2 would provide the required financial assistance to him, it was not proper for the Trial Court to have convicted Accused No.2 without any basis or without any cogent or convincing evidence to point out the guilt of the said accused. This evidence is very much crucial to the case of the prosecution to establish the fact that Accused No.2 was not at all involved in the alleged transaction, which has been totally ignored by the Trial Court. Hence, the learned counsel contends that Accused No.2 54 cannot be held guilty for the alleged huge credit and debit made in his current account by Accused No.1. The finding of the learned Trial Judge that the conduct of the Accused is relevant under Section 68 of Indian Evidence Act is not sustainable. The conviction solely based on the ground of conduct can be sustained when the conduct of the Accused leads to unimpeachable conclusion on role of the Accused in the commission of Crime. The version of the sole witness PW-18 is itself doubtful. Further, he is an interested witness. Such being the case, the evidence of such witness has to be read carefully. The contradictions of this witness in the chief and cross examination creates doubt about the presence of the Accused No.2 in the Bank. In such an event, the learned counsel contends that benefit of doubt has to be extended to the Appellant. The finding of guilt recorded by the Trial 55 Court is purely based on suspicion. Hence the learned counsel contends that the impugned judgment of conviction and sentence held against the appellant - Accused No.2 Agarwal cannot be sustained and liable to be quashed. In support of his contentions, learned counsel for Accused No.2 /

appellant in Crl.A.No.570/2010 has relied on the following citations in support of his case: i) NAND KUMAR SINGH vs. STATE OF BIHAR (AIR 1992 SC1939 ii) STATE (DELHI ADMINISTRATION) vs. DILBAGH RAI AND OTHERS (1986 CRI.L.J.138) iii) MANORANJAN DAS vs. STATE OF JHARKHAND (AIR 2004 SC3623 iv) KHUSHI RAM vs. STATE OF DELHI (LAWS (DLH) 1995 381 The relevant portion of the judgment in the case of NAND KUMAR SINGH (supra), reads as under:

56. 15. The questions are (1) whether both the Trial Court and the High Court are correct in drawing the conclusion that this appellant is also a party for cheating the LIC simply because he received the premium commission, bonus etc. and (2) whether the appellant was a party along with accused D.N. Singh in conspiring and then forging the policies. From the evidence which we have extracted above, of the prosecution that it was the accused D.N. it is manifest that the appellant has not been a party either for any conspiracy or for forging the documents and making use of the same, but it is a case Singh who forged the signature of P.K. Prasad as well as the appellant on the Agent's Confidential Report and used the documents which ultimately resulted the LIC sustaining some wrongful loss. The bonus commission, the incentive bonus etc. permissible to the appellant in accordance with the law in respect of the two policies were credited to his account only in the normal course. Further there is no acceptable evidence that the accused D.N. Singh did all with the knowledge and consent of the appellant. In these circumstances, as rightly pointed out by the learned Counsel Mr. Gobind Mukhoty the present appellant cannot be held 57 liable for any of the offences with which he now stands convicted, in the absence of any reliable evidence that the accused D.N. Singh did everything with the consent or knowledge of the appellant. Evidently, this must have been the reason for exonerating the appellant from any liability in the departmental inquiry. Reading of the judgment of the High Court gives an impression that the learned Judge of the High Court who delivered the judgment clubbing the case of the appellant along with other three cases in which accused D.N. Singh appeared as an appellant probably has been carried away by the abundant materials that are available as against D.N. Singh and fastened the appellant with the criminal charges indicted. But when the evidence is analyzed and carefully examined confining the same with reference to the Special Case

No.5 of 1979 giving rise to Criminal Appeal No.709 of 1983 before the High Court, we are of the firm view that the evidence is not sufficient to sustain the conviction as against the appellant. (emphasis supplied) 58 The relevant portion of the judgment in the case of STATE (DELHI ADMINISTRATION) (supra), reads as under:

14. Apart from what the learned Magistrate has said we may at once point out that the case being that of conspiracy, U. C. Madan accused can only be connected with the commission of the offence if the conspiracy is proved. It is true that there can be no direct evidence in respect of the conspiracy which are more or less always hatched in the stealth of darkness. The proof of conspiracy, however, can be inferred from the proved circumstances in the case. In the case with which we are dealing we find that there is absolutely no circumstances from which inference of conspiracy could be available. Since we have held in the case of Dilbagh Rai that the case against him is not proved, which in other words, means that there is no evidence in respect of conspiracy, forgery or cheating, the accused U. C. Madan also cannot be treated differently. In the absence of any proof of conspiracy, the accused U. C. Madan cannot be connected with the commission of crime as he could not have conspired with himself. With these 59 observations we find no force in this appeal. It is accordingly dismissed. (emphasis supplied) Hence, the learned counsel submits that viewed from any angle, the order of the learned Trial Judge is not supported by any evidence and the court below has not properly assessed the entire evidence on record in a proper perspective and therefore, the learned counsel submits that the impugned judgment of conviction and sentence dated 27.04.2010 requires to be set aside and accused No.2 / appellant in Crl.A.570/2010 be acquitted of the offences levelled against them.

6. Per contra, Shri P. Prasanna Kumar, the learned Special Public Prosecutor for the CBI / ACB respondent in these appeals contends that the impugned order passed by the court below is improper and the sentence imposed is inadequate and is liable to be interfered with by enhancing the order of sentence. 60 Exhibit P-139 dated 11.06.2004 is the legal notice issued to Accused No.1 through PW-14. Since there was no reply to the legal notice, a complaint was lodged on 15.07.2004 as per Exhibit P-129. He contends that Exhibit P-142 is the First

Information Report recorded by the Investigating Officer of the CBI / ACB. It is based upon the source information secured based on the complaint at Exhibit P-129 drafted by the Advocate M.V.Gopalakrishnan / PW-14 that the said FIR was lodged. Learned counsel contends that though the complaint has been lodged by the Advocate of Shri Joy Abraham, Exhibits P-129 and P-139 cannot be treated as having a bearing on the complaint as per Section 2(d) of the Cr.P.C. and further it is also not applicable to Section 190(a)(b) and (c) of Cr.P.C. It is further contended by the learned Spl.P.P for the respondent - CBI that when Accused No.1 61 Narayanappa was asked to furnish a reply, he fraudulently got the complaint closed by producing a fabricated document stating that the original complainant had withdrawn the complaint. After the letter by PW-14, the case against Accused No.1 came to be closed. But PW-19 Joy Abraham did not spell anything in his evidence regarding withdrawal of the complaint Exhibit P-129. After coming to know about the same, the said Advocate Gopalakrishnan PW-14 had filed a letter dated 04.02.2005 at Exhibit P-133 stating that the complaint given by him against the accused persons was not withdrawn. The said Exhibit P-133 has not been disputed by any of the accused and there is also no cross-examination on the said Exhibit P-133. The learned counsel further contends that since Accused No.1 Narayanappa was a public servant, sanction was duly obtained as per norms, which is at Exhibit P-137. The learned counsel contends that PW- 62 17 Salil Misra who was the Sanctioning Authority on perusing the Statement of Accounts of Arasikere Branch, the reports of the investigation conducted by the CBI and other related documents, has properly applied his mind before according sanction for prosecution of Accused No.1 and has thus accorded sanction after contacting the legal cell. Hence, he contends that the circumstance that PW-17 has not verified the reports of the handwriting expert before according sanction, would not in any way affect the sanction accorded by him. The further circumstance that is to be noticed is that the entries of huge debit and credit in the current account of Accused No.2 Agarwal were effected by Accused No.1 in the passbook manually, even though the SBM, Arasikere Branch was computerized. The said manual entry made by Accused No.1 indicates that he was hatching a criminal conspiracy with Accused Nos.2 63 and 3 in order to cause huge loss to the bank. Hence, the learned counsel vehemently contends that Accused No.1 being a public servant

who was discharging his duty as a Branch Manager of SBM, Arasikere Branch, has committed offences under Section 13(1)(d) read with Section 15 of the Prevention of Corruption Act. In that, T. Narayanappa Accused No.1 while functioning as the Branch Manager, State Bank of Mysore, Bazaar Branch, Arasikere, during the period from 2003-04, had abused his official position as Branch Manager and had entered into a criminal conspiracy with some unknown persons and had dishonestly and fraudulently attempted to obtain for himself or for other persons, valuable thing or pecuniary advantage, by corrupt and illegal means, and in furtherance of the said criminal conspiracy, he issued a passbook with bogus entries and a statement shown a huge balance in the account of a private party. One K.L. Agarwal Accused No.2 had opened a Current 64 Account in the Arasikere Branch of SBM on 16.04.2004 in the name of M/s. Nu Horizon Data Technologies, a Proprietory concern of Shri K.L. Agarwal, with an initial deposit of Rs.5,000/-. Though there were no major transactions in the account, Accused No.1 fraudulently showed credits of very huge amounts of Rs.525.321 crores on 12.05.2004 and Rs.568.1329 crores on 20.05.2004 in the said account of K.L. Agarwal which were thereafter shown as debited from the said account on the very same day of the credits, however without generating any debit or credit vouchers. Therefore, it is vehemently contended by the learned counsel for the CBI that Narayanappa had falsified the bank record pertaining to the current account of M/s. Nu Horizon Data Technologies, willfully, with an intent to defraud the bank and to perpetrate a fraud on the bank. The said fraudulent acts were done by Accused No.1 in view of the fact that one Joy Abraham, a native of Trichur 65 had approached him for financial assistance to a tune of Rs.36 crores to purchase an estate in Kerala. Then Accused No.1 had shown Joy Abraham the account extract of Shri K.L. Agarwal Accused No.2 reflecting more than Rs.564 crores in his account. Accused No.1 had also issued a letter on the letter-head of the State Bank of Mysore dated 21.05.2004 showing a balance of Rs.564,13,33,975/- in the account of M/s. Nu Horizon Data Technologies, knowing fully well that the account was not having any such balance or any heavy transactions. It is his further contention that though the State Bank of Mysore had exonerated the accused from the charges in view of the fact that there was no loss caused to the bank due to Accused No.1 having effected false debit and credit

entries in the account of Accused No.2, the learned counsel contends that if a particular account is shown to have huge credit balance, the 66 concerned customer could use the Statement of Account to claim huge transactions in his account and could pave a way for him to establish his credit-worthiness and financial standing. Further, the learned counsel specifically points out to the evidence of PW-18 Sukumaran Nair who was approached through a broker wherein the broker took him to Bangalore and introduced him to Accused Nos.2 and 3. Further, PW-18 has stated in his evidence itself that he met Accused No.1 in the Bank as on 16.05.2004 at 2.00 p.m and Accused No.1 had shown him the Statement of Account of Accused No.2 having a balance of more than Rs.560 crores. Further PW-18 had asked Accused No.1 to provide the statement to which he has refused and had stated that he would send the statement through Accused No.3. Thereafter Accused No.3 had met PW-19 Joy Abraham and given the statement of account and had stated that he would 67 charge a sum of Rs.1 crore as commission for release of the fund. PW-19 in turn had paid Accused No.3 Rs.75,000/- and had told that he would verify as to the availability of funds in the Account of Accused No.2. The learned counsel Shri Prasanna Kumar contends that the evidence of PW-18 clearly proves that Accused No.1 was abusing his official capacity to assist Accused Nos.2 and 3, thus establishing meeting of minds between the accused and also the charge under Section 120B. Hence, he contends that the conduct of Accused No.1 providing false account statement of Accused No.2 proves the offence punishable under PC Act. Further, he contends that Accused Nos.1 to 3 using the said account statement as genuine, is also established. The learned counsel further contends that Accused No.1 not only issued a false account extract in the letter head of State Bank of Mysore but also got the complaint lodged by the Advocate of Joy Abraham 68 closed, by fraudulent means by fabricating the signature of the complainant, on the withdrawal letter dated 5.8.2004. Therefore, it is contended by the learned counsel for the CBI that Accused No.1 had intentionally flouted the norms of the State Bank of Mysore in order to obtain pecuniary advantage. Further, the learned counsel points out that PW- 15 M.D. Vishakantaiah, Manager, SBM, Tumkur had forwarded an explanation given by Accused No.1 Narayanappa to AGM which is at Exhibit P-135. The learned counsel contends that in the said explanation at Exhibit P-135,

Accused No.1 has clearly admitted that the alleged entries in the Current Account of Shri Agarwal were not based on actual transaction. In view of the said admission of Accused No.1 himself, the Trial Court was right in convicting the accused and sentencing him as aforesaid. 69 In support of his contentions, the learned counsel Shri P. Prasanna Kumar for CBI has placed reliance on the following authorities: i) MIR NAGVI ASKARI vs. CENTRAL BUREAU OF INVESTIGATION ((2009) 15 SCC643) ii) VINAYAK NARAYAN DEOSTHALI vs. CENTRAL BUREAU OF INVESTIGATION ((2015) 2 SCC553 iii) STATE OF KARNATAKA vs. J.

JAYALALITHA AND OTHERS ((2017) 6 SCC263 iv) NEERA YADAV vs. CENTRAL BUREAU OF INVESTIGATION ((2017) 8 SCC757 v) STATE REPRESENTED BY INSPECTOR OF POLICE, CHENNAI vs. N.S. GNANESWARAN ((2013) 3 SCC594 vi) R. VENKATKRISHNAN vs. CENTRAL BUREAU OF INVESTIGATION ((2009) 11 SCC737 It is relevant to refer to the decision of the Apex Court in MIR NAGVI ASKARI (supra) wherein the Honble 70 Apex Court has extensively addressed the issues relating to the offences under Sections 120-A and 120-B as well as the Banking norms. The relevant paragraphs reads as under:

60. Criminal conspiracy, it must be noted in this regard, is an independent offence. It is punishable separately. A criminal conspiracy must be put to action; for so long as a crime is generated in the mind of the accused, the same does not become punishable. Thoughts even criminal in character, often involuntary, are not crimes but when they take a concrete shape of an agreement to do or caused to be done an illegal act or an act which is not illegal, by illegal means then even if nothing further is done, the agreement would give rise to a criminal conspiracy.

61. The ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) an agreement must relate to doing or causing to be done either (a) an illegal act; (b) an 71 act which is not illegal in itself but is done by illegal means. Condition precedent for holding the accused persons to be guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of the fact which must be established by the prosecution, viz., meeting of

minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means.

62. The courts, however, while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is difficult, if not impossible, to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the accused persons took part are relevant. For the said purpose, it is necessary to prove that the propounders had expressly agreed to it or caused it to be done, and it may also be proved by adduction of circumstantial evidence and/ or by necessary implication. [See Mohammad Usman 72 Mohammad Hussain Maniyar & Ors. v. State of Maharashtra (1981) 2 SCC443 . . .

175. Moreover, it must be noted in this respect that Banking norms and established practices and procedures would contain directions of law prescribing the mode in which the trust is to be discharged. The expression direction of law in the context of sections 405 and 409 would include not only legislations pure and simple but also directions, instruments and circulars issued by an authority entitled therefor. The trust in this regard would therefore have to be discharged in terms of such directions. Acting in violation thereof causing wrongful gain to A3 and loss to the Bank would bring the action within Section 409 IPC. (emphasis supplied) The learned counsel contends that in the case on hand, meeting of minds has very well been established and direct evidence i.e., forged Statement of Accounts issued by Accused No.1 is also available in the case. 73 Hence, the learned counsel contends that the Trial Court has rightly convicted the accused. Secondly, in support of his contention that it was not necessary to prove that the accused had derived any benefit or caused any loss to the bank, the learned counsel relies on the judgment of the Apex Court in VINAYAK NARAYAN DEOSTHALI (supra). The relevant portion reads as under: It was not necessary to prove that the accused had derived any benefit or caused any loss to the Bank. The fact remains that action of the appellant involved unauthorized conversion of public funds to private funds of an individual. Issuing of Bank receipts for securities without existence of securities could not be justified except for illegal benefit to a private individual.

Patent illegality cannot be defended in the name of practice or direction of higher authorities. Mens rea is established from the fact that false Bank Receipts were issued for non-existent securities. 74 16. Thus, the offences of conspiracy, forgery, misappropriation and corruption stand established. The above judgment is squarely applicable to the case on hand, as non-existent Statement of Accounts were issued by accused No.1 in the letter-head of the Bank. Thus, the learned counsel contends that mens rea is established. The learned counsel further stresses on the point that corruption by a public servant has to be punished aptly, in support of which he relies on a decision in the case of STATE OF KARNATAKA vs. J.

JAYALALITHA AND OTHERS (supra), the relevant portion of which reads as under: Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. 75 Whenever a question of construction arises upon ambiguity or if two views are possible of a provision of an anti-corruption law, it would be the duty of the court to adopt that construction which would advance the object underlying the statute, namely, to make effective the provision for the prevention of bribery and corruption and at any rate not to defeat it. Procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the statute and the overall public interest and the social object is to be borne in mind while interpreting the various provisions thereof and in deciding cases under the same. Learned counsel further points out to the judgment of the Apex Court in the case of NEERA YADAV (supra) wherein Neera Yadav being the then Chairperson-cum-Chief Executive Officer of Noida, in conspiracy with other officials abused her position and committed grave irregularities in the matters of allotments and conversions of land in Noida, particular allegation being that she had allotted plots in the names 76 of her two daughters Ms. Sanskriti and Ms. Suruchi. In the said case, the Apex Court had confirmed the conviction judgment passed against her. Referring to the said judgment, the learned counsel for the respondent - CBI contends that Section 13 of the P.C. Act in general lays down that if a public servant, by corrupt or illegal means or otherwise abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage, he would be guilty of criminal misconduct. Sub-section (2) of Section 13 speaks of the punishment for

such misconduct. Section 13(1)(d) read with Section 13(2) of the P.C. Act lays down the essentials and punishment respectively for the offence of criminal misconduct by a public servant. Section 13(1)(d) reads as under:

13. Criminal misconduct by a public servant. (1) A public servant is said to commit the offence of criminal misconduct, 77 (d) if he, (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; He contends that a perusal of the above provision makes it clear that if the elements of any of the three sub-clauses are met, the same would be sufficient to constitute an offence of criminal misconduct under Section 13(1)(d). All the three wings of clause (d) of Section 13(1) are independent, alternative and disjunctive. Thus, under Section 13(1)(d)(i) obtaining any valuable thing or pecuniary advantage by corrupt or illegal means by a public servant in itself would amount to criminal misconduct. On the same reasoning obtaining a valuable thing or pecuniary advantage by 78 abusing his official position as a public servant, either for himself or for any other person would amount to criminal misconduct. Hence, the learned counsel contends that in view of the fact that Accused No.1 had secured Rs.75,000/- through Accused No.3 for the alleged act of giving false statement of account, which amounts to pecuniary advantage, he has committed criminal misconduct. Further, referring to the judgment in the case of N.S. GNANESWARAN (supra), the learned counsel contends that a suo motu move on the part of the police officer to investigate a cognizable offence impelled by the information received from some sources is not outside the purview of the provisions contained in Sections 154 to 157 of the Code of Criminal Procedure or any other provisions of the Code. Further, in reply to the contention of the learned counsel for the appellant that the Bank having 79 exonerated the accused, they ought to be acquitted by this court as well is concerned, the learned counsel points out to the judgment in R. VENKATAKRISHNAN (supra), the relevant portion of which reads as under:

150. In this regard, it must be emphasized that the submission of the learned counsel that the Banks have not initiated any proceedings and suffered any loss and thus the judgment of conviction and sentence of criminal breach of trust is wholly unsustainable, cannot be accepted for more than one reason. It is not the law that complaint petition under all circumstances must be made by the banks and financial institutions whose money had been the subject-matter of offence. It is also not the law that suffering of loss is a sine qua non for recording a judgment of conviction. It is now trite that criminal law can be set in motion by anybody. The prosecution was initiated on the basis of the information received by the Central Bureau of Investigation. (emphasis supplied) 80 Hence, on all these grounds urged as well as on the basis of the reliances placed above, he prays this court to dismiss all the three appeals preferred by Accused Nos.1 to 3 and thereby confirm the judgment of conviction and sentence rendered by the Trial Court in Spl.C.C.No.75/2006 dated 27.04.2010. On a careful consideration of the contentions advanced by the learned counsel for the appellants/accused Nos.1 to 3 and so also, counter made by learned Spl.P.P. for the respondent CBI/ACB as well as the material on record, it is relevant to refer to Ex.P137 letter issued by the competent authority according sanction to initiate the prosecution against accused No.1 Narayanappa. It was alleged that the said Accused No.1 who was working as the Branch Manager at State Bank of Mysore, Arasikere had made false credit and debit entries for Rs.525,32,11,000/- in the current account 81 of M/s.Nu-Horizon Data Technologies, Bangalore through one Abdul Razak Cashier-cum-Godown Keeper of the said Branch, without receiving any instrument or cash to that effect. Similarly, that Accused No.1, T-Narayanappa had made false credit and debit entries for a sum of Rs.568,13,29,000/- in the said current account on 20.05.2004, through Abdul Razak. But he did not prepare the corresponding vouchers for the above said entries. PW.19 Joy Abraham had approached his Advocate, PW.14 - Sri M.V.Gopalakrishnan in Trissur and gave instruction to him to issue notice in terms of Ex.P139 and so also based upon his instruction, he drafted Ex.P129 which is a complaint and the same has been forwarded by him to the General Manager of State Bank of Mysore at Bangalore. Based upon the allegation made in the complaint as per Ex.P.129, 82 proceedings were initiated against Accused No.1 T.Narayanappa by the Vigilance Unit of State Bank of Mysore. PW.5

M.Malathi was working as a clerk at State Bank of Mysore at Bazar Branch where accused No.1 T.Narayanappa was working as Manager in the said Branch. In her evidence she has stated that she was allotted user ID as MLT, but she had not told the said password to anybody in the said branch. The CBI officers did not enquire her regarding the use of said ID and the password and recorded her statement. In the month of April and May 2004, she was entrusted the work at Cash Counter and nobody was using her password whenever she was on leave but Accused No.1 was aware of her UID and password. Whereas, in the cross-examination she has stated specifically that one Abdul Razak was also working in the said Bank and she did not know whether he had friends outside and 83 further it is stated that she had been directed not to reveal her password to anybody. This witness is examined by the prosecution to substantiate its case against Accused No.1. PW.6 Abdul Razak has stated in his evidence specifically that he was working as a Clerk in SBM, Bazar branch, Arasikere. He had stated that he knew accused No.1 and PW.5 who were working in the said branch. In the month of May 2004 while Accused No.1 was Manager of the said Branch, he had directed PW-6 to enter the amount that he told in the account of M/s. NU Horizon Data Technology Ltd. The said entry was in crores. He entered the amount through the system by using his ID and password and within ten minutes it was reversed by him under the direction of Accused No.1. The said entry is marked as Ex.P120(c). One week thereafter, the entry was effected as per Ex.P120(b) as per the direction of Accused No.1. The 84 entry was not effected in the outward register. The CBI officer enquired him and recorded his statement but he did not identify Accused No.2. In the cross- examination, he has stated that he was not having knowledge regarding the amount available in all current accounts in the bank. He admitted that one Sheshachala was the Spl.Assistant who was looking after the outward clearing register. Further he admitted that DE was initiated against him and his statement regarding the entry made under the direction of Accused No.1 was not accepted by the Department. In further cross-examination, he states that the transaction of bank was up to Rs.8 to 10 lakhs. Accused No.1 was giving credit and debit vouchers to him for making entry. But he has not disclosed the said fact before the CBI officer. When questioned whether he would make the entry of such huge amount, he states that had to obey the order of the Branch Manager. He

denied the 85 suggestion that Accused No.1 did not instruct him to make such entry. PW.21 is the IO who registered the case by recording the FIR in R.C.No.15(A)/2005 against T.Narayanappa and others for the offences punishable under Section 120(B), r/w 420, 511, 477(A) of IPC and Section 15 r/w 13(2) and 13(i) (d) of the P.C.Act. On 21.7.2005 he sent a letter to the Chief Vigilance Office, SBM, Head Office, Bangalore with a request to furnish the documents. On 29.7.2005, he received ten documents under the seizure memo from PW.4 Vijayakumar. The documents are marked as per Exs.P113 to P127. On 2.8.2005, he seized 15 documents from Sri Subbaram, Manager, Vigilance, SBM, Head Office, Bangalore. On 5.8.2005, he seized three documents as per Exs.P1 to P3 from PW.1. He also seized various documents on different dates and recorded the statements of the prosecution witnesses. 86 On 30.1.2006, he sent the original documents along with the specimen signature to the GEQD, Hyderabad for examination. On 7.2.2006, he recorded statement of CW.23. On 6.3.2006 he sent the documents to the GEQD for furnishing the opinion. On 29.3.2006, he filed the charge sheet against A1 to A3. Further, he received the opinion from the GEQD on 10.4.2006. During the course of cross-examination of this witness, it is elicited that he visited the SBM, Arasikere Branch and admitted that the material objects like MO.1 to MO.4 were accessible to the other staff of the Bank. He has gone through the investigation report and he did not know whether PW.5 and PW.6 were punished in the departmental enquiry. Further, he has stated that the credit and debit entry in the account of Accused No.2 was made under the IDs of PW.5 and PW.6. He states that he did not collect the passwords of PW.5 and PW.6 who are the vital witnesses for the 87 prosecution in order to establish the guilt of the accused. Further, he states that for the credit entries, Accused No.2 did not issue any instruments to the bank. But he admits that regarding the debit and credit entry to the account of Accused No.2 there were no other documents. He admits that the name of Accused No.3 is neither mentioned in the complaint nor in the FIR. He admits that he has not seized any documents pertaining to Accused No.3. He has not seized any documents to show that CW.21 paid Rs.75,000/- to Accused No.3. He has not seized any bills regarding staying of Accused No.3, CW.21 to CW.23 in any other lodge of Bangalore or Thiruchur, Kerala. He further admits that CW.23 has stated before him that either himself or Accused No.3

received the amount from CW.21 Joy Abraham. 88 PW.19 Joy Abraham based upon the instructions of his Advocate filed a private complaint as per Ex.P129 and issued a notice as per Ex.P139. These documents are found to be similar to the contents narrated in his notice as well private complaint. The complaint was forwarded to the General Manager of SBM, Bangalore and in turn forwarded to Vigilance Unit of SBM Branch by him on 15.07.2004, but the FIR is said to be recorded on 20.07.2005 by the CBI/ACB based on source information. The entire case of the prosecution is revolving around the evidence of PW.14 Gopalakrishnan M.V. who is the author of complaint as per Ex.P129 and so also, legal notice as per Ex.P139 which was issued based upon the instruction given by PW.19 Joy Abraham. But PW.19 did not made any endeavour to file the complaint directly to the General Manager of the State Bank of Mysore at Bangalore regarding the 89 allegation made in the complaint that an amount of Rs.75,000/- has been paid. It is to be noticed that the said amount of Rs.75,000/- has not been received by accused No.1 T.Narayanappa said to be the Branch Manager. But however, in the current account of Accused No.2, false credit and debit entries are made for a sum of Rs.525,32,11,000/- on 12.05.2004 and Rs.568,13,29,000/- on 20.05.2004. It is pertinent to mention that PW.18 Sukumaran Nair who is a friend of PW.19 Joy Abraham has stated that he was helping the Aunt of PW.19 to secure finance in respect of purchase of an estate and for that purpose one broker took him to Bangalore as he said that he could arrange some loan for him. He further states that he had visited the SBM at Arasikere and met Accused No.1 at 7.00 p.m on 16.05.2004. But it is the contention of learned counsel for the appellant/accused No.1 that 16.5.2004 90 happened to be Sunday and the Banks never do business on Sundays. Therefore, this is a false theory put forth by the prosecution against the aforesaid accused. The entire case of the prosecution revolves around the evidence of PWs.5 and 6 said to be the official witnesses who were working at SBM, Arasikere Branch and so also, the evidence of PWs.14 and 19 in respect of the terms of complaint at Ex.P129 and notice at Ex.P139. Learned Spl.P.P. for CBI/ACB has relied upon the contents at Ex.P.135 which is the letter of explanation given by the accused No.1 acknowledging the guilt. But it is relevant to state that whether the prosecution has proved the guilt of the accused beyond all reasonable doubt that Accused No.1 T.Narayanappa, is a party to the

criminal conspiracy with Accused No.2 and 3 and by corrupt and illegal means obtained pecuniary 91 advantages by mis-conducting and abusing his position as a public servant attempted to cause loss to the bank during February 2004 to July 2004, is very much doubtful. There is no dispute that Accused No.1 was discharging his duties as a Branch Manager of SBM, at Arasikere. The charges were framed against Accused Nos.1 to 3 based upon the charge sheet laid by the CBI/ACB. But the criminal law was set into motion based upon the sources of information secured by the CBI/ACB which is based upon the terms of the complaint at Ex.P.129, a private complaint filed by PW.14 who is an Advocate. Section 2(C) of Cr.P.C defines cognizable offence means an offence for which, and cognizable case means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant. 92 Section 2(d) of Cr.P.C. defines complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. A conjoint reading of the definition of Cognizable offence and so also, the complaint as enumerated in the code of Criminal Procedure, it is relevant to refer to the terms of complaint at Ex.P129 and terms of notice at Ex.P.139. The same has been drafted by PW.14 Gopalakrishnan who is an Advocate, based upon the instructions given by PW.19 Joy Abraham. The same was forwarded to the General Manager, SBM, at Bangalore. But the criminal law was set into motion only after a lapse of 105 days based upon the terms of the complaint at Ex.P129. Ex.P129 is a drafted complaint based upon the instructions issued by PW.19 93 Joy Abraham. But neither crime nor FIR came to be registered. It is only based on the sources of information secured/collected by the CBI/ACB the crime was registered against Accused Nos.1 to 3. Therefore, the theory set up by the prosecution by putting forth the evidence of PW.14 and so also, the evidence of PW.19 Joy Abraham coupled with the evidence of PWs.5 and 6 who are the vital witnesses to the case of prosecution, has not been properly appreciated by the trial Court in a proper perspective. The theory put forth by the prosecution in order to substantiate their case is in camouflage and there is also clouds of doubts as to why in the account of Accused No.2 maintained in SBM, Arasikere Branch, a huge amount had been

credited and as to why the entries and were removed within a short span of time. Learned Spl.P.P. for CBI/ACB has taken me through the manual which has been maintained by the 94 CBI for recording the FIR and also proceeding with the investigation. But the crime came to be registered by recording FIR, only based upon source of information secured by the investigating agency during an enquiry regarding the allegation against the perpetrators/accused. Accordingly, on 20.07.2005 FIR came to be registered against Accused No.1 T.Narayanappa being the Branch Manager of SBM at Arasikere and accused Nos.2 and 3 who had hatched a criminal conspiracy. Thereafter, PW.21 being the I.O secured several documents and laid the charge sheet against the accused persons. It is relevant to refer the withdrawal cheques at Ex.P43 to P98. These documents were received/collected by the CBI/ACB during the investigation by recording FIR as per Ex.P2, the same has been recorded based upon the terms of complaint at Ex.P129 and so also, the source of information. 95 However, those cheques do not relate to the transactions of huge debit and credit entries effected in the account of Accused No.2 by PWs.5 and 6. Merely because several documents were secured during the course of inquiry by the CBI/ACB by referring to the FIR said to be recorded and also though the alleged offences were lugged against the accused, it cannot be said that the prosecution has proved the guilt of the accused beyond all reasonable doubt unless the evidence put forth by the prosecution is cogent, corroborative and acceptable to probabalise that the accused persons have committed the alleged offences. But in the instant case, as stated in the substance of charge sheet and also source of information secured/collected by the IO of CBI/ACB, the offences alleged have not been established by the prosecution against the accused persons. But at a cursory glance of the evidence of PW.14 said to be an Advocate who drafted the legal 96 notice at Ex.P139 and the complaint at Ex.P129, the contents of both the documents appears to be similar and also it reveals the offences under Sections 415 and 420 of IPC. It is specifically stated that as per the instructions issued by PW.19 Joy Abraham, he caused notice to the person by initiating civil/criminal cases against the accused No.1 in respect of Rs.75,000/- But the said amount is neither directly given to him or collected from any person. But accused Nos. 2 and 3 have been arraigned in the case alleging that they were hatching a criminal conspiracy with Accused No.1

T.Narayanappa in order to cause huge loss to the bank and also committed fraud on the bank. The motive, otherwise to say the intention of Accused No.1 T.Narayanappa being the Manager of SBM Branch, Arasikere in making such huge entries by forging the documents and also making use of forged documents in order to falsify the account are seriously 97 disputed. This aspect has not been established by the prosecution by putting forth cogent and corroborative evidence to bring home the guilt of the accused. The allegation of forgery also has not been proved and further that the forged documents were intended to be used for the purpose of cheating has also not been proved. Further, it is to be noticed that PW-14 M.V. Gopalakrishnan, Advocate who drafted the complaint as per Exhibit P-129 based upon the instruction issued by his client namely Joy Abraham, was not examined as a witness on the part of the prosecution. This is a serious flaw in the case which has been ignored by the court below, which circumstance as well comes to the aid of the accused. Another point which is to be noticed is that Accused No.1 did not intend to commit such a fraud in view of the fact that he himself knew the user ID and 98 password of PW-5, as per the evidence of PW-5 in order to effect the entry. When Accused No.1 himself knew the user ID and password, it is impossible to believe that he would have told PWs 5 and 6 to make the alleged huge credit and debit entries as alleged instead of himself making it. I find serious doubt as regards the credibility of the evidence of PWs 5 and 6, which could not be trustworthy in order to come to the conclusion of convicting the accused. It is also to be taken into consideration that in view of effecting the alleged transaction of huge credit and debit into the Current Account of Accused No.2 Agarwal, there has been no loss caused to the Bank. Pursuant to the complaint being lodged based on source information, PWs 5 and 6 had faced Departmental inquiry and were exonerated of the charges leveled against them. Further, on the complaint based on source information, domestic inquiry was also initiated 99 against Accused No.1 Narayanappa and subsequently he has been exonerated of the charges leveled against him. Accused No.1 as well as PWs 5 and 6 were exonerated of the charges only in view of the fact that there was no loss caused to the Bank in view of the alleged wrongful credit and debit. Hence, this is also a circumstance that goes in favour of the accused in order to acquit the accused. Further, the prosecution has not produced any cogent and corroborative

evidence to probabalise that Accused No.1 had hatched a conspiracy with Accused Nos.2 and 3 and also meeting of minds between the parties in order to cause wrongful loss to the Bank as narrated in the substance of the charge sheet laid by the Investigating Officer against the accused. The expression intent to defraud has not been defined anywhere in the Indian Penal Code, 1860. A person is said to deceive another when by practicing a 100 supressio veri or suggestio falsi or both, he intentionally induces another to believe a thing to be true. The same has been observed by the trial Court in so far as Accused No.1 T. Narayanappa who is a Government servant. At a cursory glance of the evidence of PWs.5 and 6 coupled with the evidence of PW.14 and PW.19, in this appeal it requires re-appreciation of evidence of these witnesses. The trial Court has not appreciated the evidence of these witnesses in a proper perspective where the case of the prosecution was revolving around their evidence to prove the guilt of the accused. In the doctrine of criminal justice system, unless the corroborative evidence is produced to prove the guilt of the accused persons beyond reasonable doubt, conclusion cannot be arrived to hold conviction against the accused. But in the instant case, accused Nos.1, 2 and 3 were facing several offences as recorded in the 101 charge sheet and also charges were framed against the accused for forging of documents and also signatures with an intention to defraud the bank and also causing loss of huge amount. Therefore, the aforesaid offences have been lugged against the accused persons. But, however, at a cursory glance of the evidence of the aforesaid vital witnesses and also in the totality of the facts and circumstances of the entire case, it is said that the prosecution has not been able to prove its case by producing cogent, corroborative and acceptable evidence to probabalise that accused Nos.1 to 3 were hatching a criminal conspiracy with an intent to defraud the bank and were attempting to commit criminal misconduct. It is well settled principle of criminal jurisprudence that the prosecution in order to bring home the guilt of the accused must come out with a version which is reasonable and probable and fits in with the circumstance of a given case. But the case as 102 set up by the prosecution does not inspire confidence in the mind of this court and the same appears to be improper and unreasonable. In view of the aforesaid reasons and findings, I am of the opinion that the impugned judgment rendered by the trial Court needs interference, if not, there shall be a miscarriage

of justice. Hence, the following: ORDER Crl.A.No.552/2010 preferred by accused No.1 T. Narayanappa, Crl.A.No.565/2010 preferred by Accused No.3 K. Mohan Dass and Crl.A.No.570/2010 preferred by Accused No.2 K.L. Agarwal are hereby allowed. Consequently, the judgment of conviction and order of sentence rendered by the XXXII Addl., City Civil and Sessions Judge and Special Judge for CBI Cases, Bangalore in Spl.C.C.No.75/2006 dated 27.04.2010 is hereby set-aside. Consequently, Accused Nos.1 to 3 are acquitted for the offences punishable under Sections 103 120(b) r/w 420, 468, 471, 477(A) IPC r/w 511 IPC. Further, Accused No.1 is also acquitted of the offences under Section 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988. The bail bond executed by them shall stand cancelled. KS / DKB Sd/- JUDGE

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