

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 942 OF 2009

[Arising out of SLP (Criminal) No. 7125 of 2007]

S.V.L. MURTHY

... APPELLANT

Versus

STATE REP. BY CBI, HYDERABAD

... RESPONDENT

WITH

CRIMINAL APPEAL NO. 945 OF 2009

[Arising out of SLP (Criminal) No. 7145 of 2007]

P. JAYAKUMAR

... APPELLANT

Versus

STATE OF ANDHRA PRADESH REP. BY CBI ... RESPONDENT

WITH

CRIMINAL APPEAL NOS. 943-944 OF 2009

[Arising out of SLP (Criminal) Nos. 7313-7314 of 2007]

VENUGOPAL LOYA & ORS.

... APPELLANTS

Versus

STATE OF A.P.

... RESPONDENT

J U D G M E N T

S.B. SINHA, J.

1. Leave granted.
2. These appeals arising out of a common judgment and order dated 17.07.2007 passed by the High Court of Andhra Pradesh at Hyderabad were taken up for hearing together and are being disposed of by this common judgment.
3. Accused No. 4 - S.V.L. Murthy was the Branch Manager of Begum Bazar Branch of State Bank of India (for short, "SBI"). Accused No. 1 - Venugopal Loya was proprietor of some business concerns, namely, M/s Shobhachand Shivijiram ("SS"), M/s Sreeji Industries ("SI") and M/s Harikrishan Roopchand ("HR"). Whereas SS and HR used to deal in wholesale trade in grains and spices, SI was a plastic manufacturing concern. Accused No. 2 - Gopaldas Dharak was a partner of M/s Gayatri Traders

("GT"). He used to operate current account in the same Branch. Accused No. 3 - Radheshyam Dharak, partner of GT, an Accountant working in the firms of Accused No.1. Accused No. 5 - P. Jayakumar was the Accountant in the Begam Bazar Branch of the State Bank of India. Accused No. 6 - Y. Narahari Murthy was the Charge Branch Manager.

4. SS was established in the year 1860. It opened current account with Begum Bazar Branch of the State Bank of India on or about 5.12.1979. Accused No. 1 opened Current Account with SBI on behalf of SI in his capacity as a Managing Partner on or about 10.5.1988. He was granted cheque discounting facility. For the said purpose, he deposited his title deeds on or about 6.9.1988

5. Srinivasa Rao (P.W. 22), the then Branch Manager of the SBI by a letter dated 10.1.1989 addressed to the Regional Manager sought for his advice as to whether levy of 5 paise per thousand per day instead of 10 paise as commission should be relaxed. Indisputably, collateral securities were furnished by the appellants for availing cheque discounting facility.

6. Accused No. 4 – S.V.L. Murthy, however, stopped this discounting facility with SS. inter alia on the premise that three bills purchased by the Bank and sent to Salem Branch for collection had been returned unpaid. So far as the bill limit due in account of SS was concerned, the same stood at

Rs.20,18,240/- out of which Accused No. 1 is said to have made payment of Rs.5,00,314/- for returned bills with interest within 2 hrs. It is stated that on or about 7.4.1989, a meeting was held at the residence of the Regional Manager (P.W. 20 – V. Ramamurthy). Accused No. 1 is alleged to have complained that Accused No. 4 had stopped discounting of cheques to him whereupon Regional Manager (P.W. 20) allegedly instructed Accused No. 4 to continue the practice of discounting cheques to Accused No. 1 on the premise that he was a reputed customer of the Bank. Pursuant thereto, the discounting facility was made available with Accused No.1 upon obtaining sufficient collateral security, i.e., title deeds of moveable and immoveable properties of Accused No.1 worth Rs.1.09 lacs.

7. The Bank allegedly sanctioned discounting facility to the extent of Rs.30 lacs on the basis of collateral securities furnished on or about 15.4.1989. However, ten cheques aggregating to Rs.29,86,219/- were discounted and sent for clearing by Bank, which were returned unpaid from clearing house. Appellants contended that they were sent for clearing without proper stamping/endorsement; they did not reach drawer bank at all. Indisputably, however, the Regional Office issued instructions for stopping cheque discounting facility without notice. It is stated that the appellants paid a sum of Rs.29,90,941/-, which covered the discounting amount together with interest on or about 25.4.1989. The Bank seized office-cum-

godown and stocks of SS at about 11.45 a.m. on the same day. On or about 26.4.1989, 26 account payee cheques were presented in various banks across the counter which should have been presented through clearing. However, Rs.1,28,63,441/- was said to have remained outstanding.

8. Accused No. 1 is stated to have made payment of Rs.38,84,000/- through pay order on or about 27.4.1989. On the said date, liability is said to have stood at Rs.89,79,441/-.

Indisputably, Accused No. 4 proceeded on leave from 19.4.1989 and handed over the charge of his office to Mr. Y. Narahari Murthy (Accused No. 6). Accused No. 1 furthermore applied for grant of overdraft facility to the limit of Rs.90 lacs against collateral security. It was granted. Sufficient securities were also furnished. The Regional Manager was informed by the Branch that Accused No. 1 has promised to pay a sum of Rs.15 lacs within a week. However, a suit was filed in the court of 4th Additional Judge, City Civil Court at Hyderabad being CSOS No. 827 of 1989 for recovery of a sum of Rs.90,19,789.11 with interest on or about 10.5.1989. On or about 10.5.1989, City Civil Court passed interim direction ordering attachment before judgment.

9. On 21.6.1989, a criminal complaint was lodged by the Bank before the III Metropolitan Magistrate at Hyderabad under Sections 120B, 420, 467, 471 of Indian Penal Code (IPC) and under Section 138 of the Negotiable Instrument Act inter alia alleging that cheques issued to SI were fraudulently discounted and amounts were drawn between 14.2.1989 and 1.5.1989.

It is not in dispute that in the said complaint no allegation was made against the officers of the Bank. On or about 17.7.1989, the Metropolitan Magistrate directed the Central Bureau of Investigation (CBI) to investigate into the case pursuant where to a First Information Report was lodged under Sections 120B, 420 of IPC read with Section 13(1)(d) of the Prevention of Corruption Act on or about 5.9.1989.

10. We may, however, place on record that P.W. 22 – Srinivasa Rao took over charge as Branch Manager on the oral instructions of P.W. 20 – V. Ramamurthy, on or about 28.4.1989.

Indisputably, disciplinary proceedings were initiated against the Accused No. 4, Accused No. 5 as also P.W. 20.

In the said disciplinary proceedings, they were placed under suspension. They were, however, reinstated in service. Whereas P.W. 20

was censured, Accused No. 4 was inflicted with a punishment of stoppage of five increments. Some minor punishments was also imposed on the Accused No. 5.

Indisputably, a vigilance enquiry was conducted on or about 26.4.1989 at Begum Bazaar Branch of the SBI wherein a report dated 18.1.1990 was submitted indicating that there has been a technical violation on the part of the Bank Officer, inter alia, arriving at the following conclusions:

- “iv. S.V.L. Murthy, who had succeeded Shri Vijaya Kumar has apparently also passed on pecuniary advantage to Shri Loya and his group of concerns,
- a. By continuing the irregular practice of purchasing local cheques and that too for large amounts. It was his period the liability on account of local cheque purchased touched one crore mark in March 1989.
- b. By not collecting the applicable interest as laid down, he had caused considerable loss of income to the Bank.
- c. He also did not report the LOIT facility being extended to the firms to the Controlling Authority directly. He had, however, made a reference to the Controlling Authority in January 1989.
- d. Although, it came to his knowledge that the firms are indulging in irregular and objectionable transactions, he did not adequately safeguard the Bank's interests nor initiated location as is necessary to avoid loss to the Bank.
- e. He did not ensure that the local cheques purchased were promptly presented in clearing and payment obtained.

Similarly, he did not ensure prompt recovery on return of cheques in clearing.”

Both his predecessor as also successor in office were found guilty of some negligence on their part. Some laxity on the part of office of the Controlling Authority was also pointed out.

12. A charge sheet was filed on or about 8.9.1993 under Sections 120B, 420 IPC read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 alleging inter alia that there was criminal conspiracy between the accused persons during 1988-89 to cheat SBI.

13. On or about 7.2.1994, learned Special Judge for CBI Cases, Hyderabad framed charges against the accused persons under Sections 120B, 420 IPC read with Section 138 of the Negotiable Instruments Act. However, Accused Nos. 4 to 6 were additionally charged with Section 13(1)(2) of the Prevention of Corruption Act.

14. Before the learned Special Judge, a large number of witnesses were examined. They included P.W. 1 – Sh. R. Vijay Kumar, Branch Manager, State Bank of India, Karimnagar Branch, who was holding the post of Manager, in the Begum Bazaar of the State Bank of India, Hyderabad from 31.8.1987 to 9.8.1988, i.e., prior to Accused No.4. P.W. 19 – S.V. Panchapakesan, Dy. General Manager, SBI Capital Market Bombay, who

worked as Administrative Officer Advances in the Regional Office and P.W.

20 – V. Ramamurthy, the Additional Manager-cum-Deputy General Manager of the Regional Offices.

15. Learned Special Judge for CBI Cases, Hyderabad by reason of judgment and order 28.8.1998, held:

“84. The prosecution has failed to establish the Charge U/s 138 of N.I. Act against A1 to A3. Hence I found them not guilty for the offence U/s 138 of N.I. Act against A1 to A3.

85. Admittedly A4 to A6 are the employees working in Begumbazar branch at Hyderabad and they are public servants. They abused their positions as public servants. They purchased local cheques which are totally irregular and against the establishment norms of the bank and therefore they have committed an offence of criminal misconduct. A4 to A6 purchased local cheques upto Rs.90 lakhs. There cannot be any evidence that A4 to A6 had pecuniary advantage due to their misconduct but due to their misconduct they obtained benefit to A1 to A3. Hence I found A4 to A6 guilty for the offence U/s 13(2) r/w 13(1)(d) of P.C. Act, 1988.

86. In the result, A1 to A6 are found guilty for the offence U/s 120-B, A1 to A6 are found guilty for the offence U/s 420 I.P.C. A4 to A6 are found guilty for the offence U/s 13(2) r/w 13(1)(d) of P.C. Act, 1988.”

He convicted and sentenced the accused persons as under:

“ A1 is convicted and sentenced to suffer R.I. for THREE YEARS and to pay a fine of Rs.10,000/-. In default S.I. for ONE YEAR for offence U/S 420 IPC.

A1 is sentenced to suffer R.I. for THREE YEARS and to pay a fine of Rs.10,000/-. In default S.I. for ONE YEAR for offence U/s 120-B IPC.

A2 is sentenced to suffer R.I. for THREE YEARS and to pay a fine of Rs.5000/- for offence U/S. 120-B IPC. In default S.I. for ONE YEAR.

A2 is sentenced to suffer R.I. for THREE YEARS and to pay a fine of Rs.5000/-. In default S.I. for ONE YEAR for offence U/S. 420 IPC.

A3 is convicted and sentenced to suffer R.I. for THREE YEARS and to pay a fine of Rs.5000/- In default S.I. for ONE YEAR for offence U/s. 120-B I.P.C.

A3 is convicted and sentenced to suffer R.I. for THREE YEARS and to pay a fine of Rs. 5000/-. In default S.I. for ONE YEAR for offence U/s. 420 I.P.C.

A4 to A6 are convicted and sentenced to suffer R.I. for THREE YEARS each and to pay a fine of Rs.5000/- each. In default S.I. for ONE YEAR for offence U/s. 120-B I.P.C.

A4 to A6 are convicted and sentenced to suffer R.I. for THREE YEARS each and to pay a fine of Rs.5000/- each. In default S.I. for ONE YEAR for offence U/s 420 I.P.C.

A4 to A6 are convicted and sentenced to suffer R.I. for TWO YEARS for offence U/s. 13(2) r/w 13(1)(d) of P.C. Act, 1988 and to pay a fine of Rs.5000/- each. In default, S.I. for SIX MONTHS each.

A1 to A3 are not found guilty for offence U/s. 138 of Negotiable Instruments Act and they are acquitted for the same offence.

All the sentences of imprisonment shall run concurrently. Accused are entitled to set off for the remand period if any.”

16. Feeling aggrieved and dissatisfied with the aforesaid judgment, appellants preferred appeals.

The High Court by reason of the impugned judgment in dismissing the appeals of the appellant, held:

“57. Learned counsel appearing for the accused contended in chorus that the practice of discounting cheques was in existence even prior to A4 taking charge as the Branch Manager of Begum Bazar Branch, State Bank of India, Hyderabad and the said practice was a part of accepted norms. I do not find any substance in their contention. A practice even if it was prevailing, if wrong, is not to be approved. The subsequent clarifications do not in any way put seal of approval on the practices adopted in the past, on the other hand it condemns it.

58. When the factual background highlighted is considered in the light of the various provisions, it is clear that the alleged offences under Sections 120-B and 420 IPC against A1 to A5 and under Section 13(1)(c) r/w. 13(2) of the Prevention of Corruption Act, 198 against A4 and A5 are clearly established.”

However, accused No. 6 was acquitted.

17. Mr. K.T.S. Tulsi, learned Senior Counsel appearing on behalf of Accused Nos. 1 to 3 would contend:

- i. Accused Nos. 1 to 3 having not been charged for conspiracy with the Bank officials under the Prevention of Corruption Act, the impugned judgment is wholly unsustainable.
- ii. One of the principal ingredients of cheating as envisaged under Sections 415 of the IPC being dishonest intention at the inception of contract being wholly absent, appellants could not have been convicted under Section 420 of the IPC.
- iii. Admittedly, the Bank had not suffered any financial loss and in fact having received interest to the extent of Rs.44 lakhs from the appellants, the impugned judgment holding that they had entered into a criminal conspiracy for cheating the Bank must be held to be wholly untenable.

18. Mr. Ravindra Shrivastava, learned Senior Counsel appearing on behalf of Accused No.4 would urge:

- i. Bill discounting facility which is accepted as a normal banking practice wherefor even Reserve Bank of India had issued guidelines, the High Court committed a serious error in passing the impugned judgment.
- ii. Accused No. 4 having merely followed the practice for the purpose of said banking practice and acted for the promotion of the business of the Bank by granting discounting facility to Accused Nos. 1 to 3 which had been initiated by his predecessor, namely, P.W. 1, it will be incorrect to contend that the appellant had any wrongful intention or had any mens rea to commit the offence.
- iii. Accused No. 4 having himself stopped discounting of cheque facility to Accused No.1 in April 1989, the courts below acted illegally in opining that he was a party to the alleged conspiracy.
- iv. No evidence having been brought on record whether oral or documentary to establish that Accused No. 4 had acted for the purpose of obtaining any wrongful gain for himself, the provisions of the Prevention of Corruption Act have no application.

- v. Accused No.4 being the Branch Manager of the Bank for a short time, i.e., from April 1988 to 18.4.1989 and the similar facility having been granted to the other accused persons even by Accused No. 6 who have since been acquitted, the prosecution must be held to have failed in proving his case.
19. Mr. K.V. Mohan, learned counsel appearing on behalf of the Accused No. 5 would urge:
- i. As an Accountant, the job of the accused was merely to make necessary entries in the books of accounts and in view of the practice prevailing that the entry into the customers' account should be made only after return of the cheque, IBIT (Inter Branch Items in Transit A/c) and LIT (Local Items in Transit) Registers were being maintained, in view of the evidence of P.W. 2 that whatever was in practice having been followed, it is incorrect to contend that the Accused No.5 was a party to the conspiracy.
 - ii. The learned special judge as also the High Court having relied upon the letter purported to have been issued by the Accused No. 4 to Accused Nos. 5 and 6 that the practice should not be

discontinued, the appellant cannot be treated differently vis-à-vis the Accused No. 6 as he had been acquitted.

20. Mr. B. Datta, learned Additional Solicitor General appearing on behalf of CBI, on the other hand, would submit:

- i. The offences against the appellants having been found to have been proved by two courts, this Court in exercise of its jurisdiction under Article 136 of the Constitution of India should not interfere therewith.
- ii. As from a perusal of the judgment and order passed by the learned Special Judge as also the High Court, it would be evident that the appellants had entered into a conspiracy to cause wrongful loss to the Bank and to cause wrongful gain for themselves by using the public fund for their own benefit, there is absolutely no reason why the impugned judgment should be interfered with.
- iii. Accused No. 4 and Accused No.5 being the Officers of the Bank, they had domain over the public fund and in that view of the matter, the courts below have rightly found them guilty for commission of offences.

21. We have noticed hereinbefore the charges leveled against the appellants. So far as the principal accused, namely, Accused Nos. 1 to 3 are concerned, they having not been charged for entering into a criminal conspiracy with the Bank officials for commission of offences under the Prevention of Corruption Act, it was necessary only to see as to whether a case of cheating has been made out.

The fact that Accused No. 1 had a long standing business relationship with the Bank is not in dispute. The Officers of the Bank particularly P.W. 2, P.W.19 and P.W.20 in their deposition clearly stated that the banking practice allows grant of such discounting facility. In fact, the Reserve Bank of India Circular whereupon reliance has been placed by the courts below clearly points out existence of such a practice. The Reserve Bank of India, however, laid down certain guidelines with a view to safeguarding the interest of the Bank.

It is also not in dispute that for the said purpose, a Circular has also been issued.

The proposal of the Branch to grant such discounting facility to Accused Nos. 1 to 3 had not been accepted in its entirety. An ad hoc limit of Rs.35 lakhs has been fixed.

P.W. 1 – R. Vijaykumar, in his evidence categorically admitted that the bill discounting facility had started during his tenure as Branch Manager. It is, furthermore, accepted that said facility was extended to Accused Nos. 1 to 3 having regard to the business potentiality they had. He furthermore accepted that the weekly statements used to be prepared and placed before the higher authorities who had also not objected to grant thereof. The said witness, in fact, in his deposition stated that the Regional Manager wanted Accused No.1 to carry on all his business only through this branch. In his cross- examination on behalf of A1 to A3, he stated:

“I know A1 since 1988. I know Harinarayana Kakani, who is the father of A1. It is to my knowledge that they were operating firms which are reputed. Before forwarding any proposal for sanctioning limits, the branch will make appraisal of the creditworthiness of the party. I have sent the proposals in favour of the firms of A1. The credit limit for the firms of A1 were duly sanctioned by the Regional Office. The credit limits were sanctioned by the Regional office in favour of M/s Sobhachand Shivaji Ram. A1 was representing Shobhachand Shivaji Ram.

He furthermore stated:

“Whatever limits were utilized by the firm Shobhachand Shivaji Ram have permanent sanction. All the cheques that were presented during my tenure, were duly honoured. To my knowledge the firms Shri Jee Industries and Shobhachand Shivaji Ram Industries were having substantial deposit potentials and were also resources.”

He in his cross-examination on behalf of A4 to A6 stated:

“The practice in our Begum Bazar Branch SBI was to debit LOIT account, the amount of local cheques purchased. Auditing was done during my tenure and no objection was taken for debiting to LOIT account by the auditor. It is true that when a local cheque was returned unpaid for want of sufficient fund, then only such cheques will be debited the account of the party. If the cheques is returned with an endorsement ‘effects not cleared, present again’, it will not be debited to the account of the party.

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I know that our Regional Manager and A.O. (Advances) was impressing A1 to confine all the business dealings of all the firms to SBI Begum Bazar. A1 agreed with a stipulation that all his credit requirements must be met by the branch. I was in receipt of a letter from A1 requesting for sanction of ad hoc limits to Shri Jee Industries. Regional office never objected to negotiations of local cheques in favour of Shri Jee Industries. I do not remember whether I presented cheques with a delay of three or four days in clearance. From February 1986 to August 1987 there was no permanent Branch Manager to Begum Bazar Branch.”

P.W. 19 – R.V. Panchapakesan – who worked as an Administrative Officer (Advances) in the Regional Office, in his deposition, stated as under:

“It is true the transaction is of civil nature and we can approach the civil courts for recovery of the

liability from A1. It is not true to suggest that we intentionally taken up the criminal forum also in prosecuting A1 in order to harass him because the cheques were bounced there is criminal liability of A1 hence we have complaint. The bank also filed civil suit against A1.

I do not admit the suggestion that A1 V.G.Loya had not committed any fraud in the bank. It is not true to suggest that I gave false statement before CBI in order to save my skin.”

He, in his cross-examination by A4 to A6, stated:

“ At the instructions of D.G.M. I was looking after deposit mobilization and market promotion.

No written instruction were given to me.

It is true even before A4 S.V.L. Murthy took charge as Bank Manager, Begumbazar branch, I am acquainted with A1 V.G. Loya.

I do not remember whether myself or our R.M. have approached Sri V.G. Loya seeking deposits to him.

It is true after ascertaining the worthiness of parties Sri VG Loya (A1) we have sanctioned the limits.

I do not know A4 S.V.L. Murthy addressing a letter dt. 24.3.89 hearing No: F/20-75 to the Regnl. Office expressing some suspicion about the bills discounted on behalf of Sobachand Sivajiram, as I was not working as A.O. at that time.

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I learnt that the then Branch Manager i.e. A4 SVL Murthy has stopped discounting any bills on the a/c Sobachand Sivajiram before the receipt of my confidential dt. 10.4.89.

As A.O. Advances I agree that A4 SVL Murthy has taken a correct stand of not discounting the bills pertaining to Sobachand Sivajiram Indus.

I do agree that the bank has not suffered any loss on bills returned as the amount has been recovered from the party.

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The R.M. has to visit the branch periodically and it is his duty to scrutinize the ledgers of the Bank branch A.O. advances I do not go for such inspection.

It is not true to suggest that the discounting of local cheques is a part of lending activity of the bank.

Discounting bills falls under lending activity.

It is true during the customers relations meeting A1 and other customers have complained to R.M. about delay in relations of cheques by the Begumbazar branch and our R.M. advised replying customers that the delays can be avoided if the clearing cheques are presented by the branch to the services branch on the same day.

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I remember the original limit proposed for Rs.85 lakhs and the ad hoc limit (in principal limit) was Rs.35 lakhs. The party requires ad hoc limits in urgency pending sanction of regular limit.

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The weekly abstracts of branches cannot be scrutinized by A.O. branch they go to A.O. General Manager. The weekly abstracts contain expenses of bills discounted and balance of bills discounted.

The Electronic Data processing (BDP) of local head office generates weekly outputs from the weekly abstracts from the banks giving figures of deposits and advances. These are received by A.O. advances for enabling scrutiny of branch figures of advances and their variations.”

From the aforementioned statements, it is evident that all transactions were being carried on in a transparent manner having regard to the prevalent practice. In fact, as noticed hereinbefore, Shri Vijay Kumar not only started granting the said facility to the principal accused, some amount of laxity on his part was also found.

P.W. 20 – V. Ramamurthy in his deposition, stated:

“I took charge as Dvnl. Manager Region 1 during the August 1987 when I visited Begumbazar branch the then branch manager PW1 Vijaykumar took me to A1 Loya’s house and introduced him as bank customer. We have sanctioned loan limits to A1 Sri V.G. Loya in the name of the company M/s Shobachand Shivajirao and A1 was the Managing Partner of the company, the connection of that loan A1 visited my office.

Part of the limits was sanctioned by me for Shobchand Shivajiram and part of limits was sanctioned by Dy. General Manager. The D.D.

purchased documentary bills is for Rs.20 lakhs and D.D. purchased for bill discounting facility is for Rs.5 lakhs. Cash Credit hundi typed limit of Rs.20 lakhs was sanctioned by the D.G.M., Sri Seshasahi. The sanctioned was communicated to the branch.

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After processing the proposals we found out quite a few gaps in their proposal so we wrote to the branch for clarifications on certain points vide our letter dated 28.8.1988 bearing No. 009104-1-80. The same letter is marked as Ex. P. 674. We have not received any clarifications and we did not attend to this proposal. There are specific guidelines by R.B.I., to all the banks in regard to purchase of local cheques. These guidelines are contained in this circular no. ADV No. 2, dated 24.1.1984, the bank communicated these guidelines to all the branches. The said circular is marked as Ex. P.675, with enclosures (6 folio). I now identify the circular dated 24.6.1983 (Ex. P.11) regarding local offices clearing account and local offices clearing items in transit accounts. I visited the branch (Begumbazar) once in September, 1988 and another time in November, 1988. My first visit for development of business where I talked to Branch Manager about the advances and deposits and second visits if for the inauguration of lockers. A small customers meet was conducted on the occasion of inauguration of lockers. A1 Venugopal Loya was present at the customers meet. At that time A4 C.S. Murthy was the branch manager. The discussion of purchase of cheques by the branch on behalf of A1 Venugopal Loya did not arise in this customers meet. However, the customers including A1 wanted the branch to purchase the local cheques as there was some delay in clearing these cheques. I told them that R.B.I. prohibits us from allowing such purchase of local cheques and we will instruct the branch to present these instruments received

from the customers quickly on the same day in the clearing so that the delay can be avoided.

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On 7.4.80, while at my house on sick leave, A1 Venugopal Loya, and A4 S.V.L. Murthy met me at my house. I requested Mr. Panchapakesan to come and join me in the meeting. In this meeting, A1 Loya complained that the branch has discontinued purchase of bills and he wanted this ban to be lifted. Sri Panchapakesan questioned Loya about the genuineness of the bills he could not give satisfactory answers. We told Shri Loya, A1, that unless the full-scale investigation into this matter is over we cannot resume purchase of bills in this account. This disturbed Shri Loya, A1. We requested A4 to visit Sailam or Madurai, if necessary, and enquire into the matter to find out whether any movement of any goods in regard to these bills and submit a report to us. I resumed duty on 17.4.1989.

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The branch of the bank used to send periodical abstract to Regional Office Ex. P. 623 to 666 are the weekly abstract sent by Begumbazar Branch to Regional Office. The purpose of weekly abstract is to furnish information to Regional Office for communicating RBI about time liabilities of the bank branch as the bank is to maintain certain reserves as per RBI Rules. The weekly abstract reflects total of various transaction such as advances, deposits etc. They won't reflect the details. The abstract will not come to Regional Manager the Desk Officer shall sent statement in routine course.

He in his cross examination on behalf of A4 to A6, stated:

“It is a fact as a Regional Manager, it is my duty to control advances, deposits and other miscellaneous transaction including house keeping of the branch.

Discounting of cheques fall under advances of portfolio of the branch.

It is a fact our Bank Manager initiated departmental enquiry against me pertaining to the Begumbazar transaction in respect of Sriji Industries.

It is a fact in this transaction I was issued a charge sheet, I submitted my explanation and on that basis the bank management given me punishment of ‘Censure’.

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It is a fact that A1 V.G. Loya is a resourceful and potential customer in attracting deposits and introducing new cliental to the branch.

A1 Loya might have given some deposits to Begumbazar Branch.

I might have asked for deposits A1 Loya and he might have promised me to secure NRI deposits upto 25 Lakhs. I cannot exactly recall at this length of time.

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Before sanctioning limits to A1 Loya under the A/c. Shobchand Shivajiram, I took into consideration of the Branch Manager’s Report about credit worthiness, integrity of A1.

When the such credit facilities provided for A1 Loya the Branch Manager was Sri R. Vijayakumar (PW1).

It is a fact that the precautions taken by A4 as Branch Manager while discounting the bills (purchasing bills) as narrated under Ex. P.670 are proper and sufficient.

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It is a fact Ex.D.11 letter A4 SVL Murthy mentioned that Sri V.G. Loya has been presenting demand /usance bills for purchase/discounting supported by Lorry Receipts which are originating from a place called Jaora (M.P.). The consignments are booked from Jaora and sent to different destinations etc. The relevant portion is marked as Ex. D.11 (a). It was also mentioned by A4 that "I am of the view that this practice is fraught with risks and not in the interest of the Bank, this is also against the terms of sanction of bill limits". The relevant portion is marked as Ex. D. 11(b) in (EX. D.11)

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It is a fact the bank has earned appropriate interest on this transaction.

Such income arrived by way of interest by the bank will be reflected in the banks monthly performance report.

I had no occasion to ask the Branch Manager how it happened to get such huge income by way of interest.

At no point of time I have gone through the weekly statements of Begumbazar branch sent during the period of A4 SVL Murthy. The witness adds that "I cannot say I have not seen the weekly statement, there may be occasions for me to go through the weekly statements, if they are placed before me by my staff.

It is a fact the weekly abstract is statutory return and very important return and it is submitted as per the guidelines of RBI.

It is true the weekly statement abstract will give the entire picture about performance of the branch.

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I learnt subsequently that there was purchase of local cheques Begumbazar branch even prior to assumption of office as Branch Manager A4 SVL Murthy. The predecessor of A4 is one R. Vijaykumar (P.W.1)

To my knowledge even the said R. Vijaykumar when he discounted cheques for A1 to the tune of Rs.15 to 20 lakhs he has not obtained any sanction or permission from Regional Office.

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Whenever there were customer relations programmes conducted by the branch, the minutes of the programme will be sent to Regional Office.

Ex. D. 39 is such Xerox copy of such minutes for the quarter ending March 89 dt. 17.3.89.

It is true in Ex. D.39 it was reported by A4 that LOIC facility was extended to 21.3.89 on local cheques purchases. The witness volunteers "The customer relationship will be held with a purpose of bringing customer together and also cultivating, so the minutes will be sent to inform Regional Office that branches doing in Customer Relations Meetings. The comment with regard to LOIT facility customer etc. is not warranted to incorporate in Minutes. This is done intentionally by A4 involving Regional Office.

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I am not aware whether other branches in Twincities situate in my region like Osmangunj, Charminar, Gowliguda, Old MLA Quarters branches were also discounting local cheques. I am not acquainted with the initials of Mr. Srinivas (LW.1). It is not true to suggest that the circular in Ex. P.675 were sent to the Begumbazar in May 1989 after completion of disputed transaction. It is a fact that the R.B.I. did not prohibit totally the discounting of local cheques.

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I do not know whether A4 Branch Manager stopped purchasing local cheques from A1 from 31.3.89 onwards and restored the facility only from 7.4.89. It is not true to suggest that the above said restoration of facility and its continuation was done by A4, only after I accorded permission to him.

Generally I do not entertain my bank customers at my house. On 7.4.89, I was on sick leave. By 7.4.89 the purchase of bills under the A/c of M/s Sobchand Shivji Ram was already stopped. I entertained A1 at my residence on repeated requests made by him on Telephone on condition of his bringing the Branch Manager along with him. I did not inform the branch manager to come along with A1. It is not true to suggest that A1 complained on 7.4.89 at my residence against Branch Manager (A4) that he is rigid in his approach of stopping discounting of local cheques particularly after receiving telex message from Sailam Branch. It is not true to suggest that the meeting on 7.4.89 was held at the instance of A1 only for the purpose of seeking my permission to resume purchase of local cheques and I instructed A4 to restore the facility to discounting of local cheques at the rate of Rs.30 lakhs per day and asked A1 to reduce the limits

gradually. It is not true to suggest that A4 asked me whether he could report the matter in writing to me before restoration of facility and in instructed him not to do so.

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But the facility to A1 was continued till myself and D.G.M. visited Begumbazar branch on 25.7.89. It is not true to suggest that my office instructing Begumbazar branch on 18.4.89 to discontinue the facility is false. It is a fact that I orally instructed A6 Narahari Murthy on 25.4.89 to stop the facility. I did not give those instructions in writing. It must be a fact that all the cheques that were purchased till 18.4.89 by A4 were cleared.”

The said witness accepted that he used to receive oral instructions from the A.O.

P.W.22 – S. Srinivas Rao in his cross examination stated as under:

“The practice of purchase of local cheques was in vogue at Begumbazar branch prior to August 1988 also. I did not happen to go through the spot audit report Ex. P. 683 submitted by Sri G.L. Joseph Branch Inspector, as it was directly submitted to Regional Office. No copy was send to our branch. Since April, 1987 the practice of local purchase of cheques was in vogue at the branch, so also debiting of the cheques thus purchased to L.O.I.T. A/c.

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It might be that interest earned by the bank on the local cheques purchase extended to Sree Industries was to the tune of about Rs. 44 lakhs. I

didn't come across any letter written either by Administrative Officer or Regional Manager seeking clarification from Branch manager as to how there is substantial increase in the earnings of the branch beyond the targets prescribed.

Thus, he quantified the interest earned. He was the successor of Accused No. 4.

Having noticed the evidence adduced on behalf of the prosecution, we are of the opinion that no evidence was brought on record to show that Accused No. 4 or for that matter Accused No. 5 entered into any conspiracy with others. Accused No. 4, in fact, had stopped grant of the said facility and only at the instance of P.W. 20, the said facility was restored. It is true that said witness had denied a suggestion made by the Accused No. 4 but the fact that the oral instructions used to be given to the Officers concerned have not only been accepted by P.W. 19 but also by P.W. 20.

Criminal breach of trust is defined in Section 405 of IPC. The ingredients of an offence of the criminal breach of trust are:

- “1. Entrusting any person with property or with any dominion over property.
2. That person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation—

- (i) of any direction of law prescribing the mode in which such trust is to be discharged, or
- (ii) of any legal contract made touching the discharge of such trust.”

Ingredients of Section 409 of IPC read as under :

- “(i) The accused must be a public servant;
- (ii) He must have been entrusted, in such capacity, with property.
- (iii) He must have committed breach of trust in respect of such property.”

Section 415 of the Indian Penal Code defines cheating as under :

“Section 415.—Cheating—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to ‘cheat’.”

An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied :

- “(i) deception of a person either by making a false or misleading representation or by other action or omission;

- (ii) fraudulently or dishonestly inducing any person to deliver any property; or
- (iii) to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.”

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

We may reiterate that one of the ingredients of cheating as defined in Section 415 of the Indian Penal Code is existence of an intention of making initial promise or existence thereof from the very beginning of formation of contract.

In Hira Lal Hari Lal Bhagwati v. CBI [(2003) 5 SCC 257], this Court held :

“40. It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be

presumed. It is seen from the records that the exemption certificate contained necessary conditions which were required to be complied with after importation of the machine. Since the GCS could not comply with it, therefore, it rightly paid the necessary duties without taking advantage of the exemption certificate. The conduct of the GCS clearly indicates that there was no fraudulent or dishonest intention of either the GCS or the appellants in their capacities as office-bearers *right at the time of making application for exemption.*”

[See also Indian Oil Corporation v. NEPC India Ltd. & Ors. [(2006) 6 SCC 736]

In Vir Prakash Sharma v. Anil Kumar Agarwal [(2007) 7 SCC 373], noticing, inter alia, the aforementioned decisions, this Court held:

“13. The ingredients of Section 420 of the Penal Code are as follows:

- (i) Deception of any persons;
- (ii) Fraudulently or dishonestly inducing any person to deliver any property; or
- (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

No act of inducement on the part of the appellant has been alleged by the respondent. No allegation has been made that he had an intention to cheat the respondent from the very inception.

14. What has been alleged in the complaint petition as also the statement of the complainant and his witnesses relate to his subsequent conduct. The date when such statements were allegedly made by the appellant had not been disclosed by

the witnesses of the complainant. It is really absurd to opine that any such statement would be made by the appellant before all of them at the same time and that too in his own district. They, thus, appear to be wholly unnatural.

15. In law, only because he had issued cheques which were dishonoured, the same by itself would not mean that he had cheated the complainant. Assuming that such a statement had been made, the same, in our opinion, does not exhibit that there had been any intention on the part of the appellant herein to commit an offence under Section 417 of the Penal Code.”

The said principle has been reiterated in All Carogo Movers (I) Pvt. Ltd. v. Dhanesh Badarmal Jain & Anr. [2007 (12) SCALE 391], stating:

“For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie cannot notice the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the Court. Superior Courts while exercising this power should also strive to serve the ends of justice.”

In R. Kalyani v. Janak C. Mehta & Ors. [2008 (14) SCALE 85], this

Court held:

“24. As there had never been any interaction between the appellant and them, the question of any representation which is one of the main ingredients for constituting an offence of cheating, as contained in Section 415 of the Indian Penal Code, did not and could not arise.

25. Similarly, it has not been alleged that they were entrusted with or otherwise had dominion over the property of the appellant or they have committed any criminal breach of trust.”

(See also Sharon Michael & ors. vs. State of Tamil Nadu & Anr.

[2009 (1) SCALE 627]

22. It may be that there had been certain procedural irregularities in the transaction.

However, sufficient evidence is available on record to show that the Officers had done so for the purpose of promoting the business of the Bank. In relation whereto or in respect whereof, initiatives had been taken by P.Ws. 19 and 20. It is furthermore not denied or disputed that after the cheque discounting facility was stopped in April, 1989 by Accused No. 4, there has been a meeting at the residence of P.W. 20. In his deposition, the said witness categorically admitted that the said meeting was arranged at the instance of Accused No. 1. It is incomprehensible that a meeting has been

arranged at his residence on the day he was on leave at the instance of Accused No.1. He must have developed grievance against the Accused No. 4 as regards the stoppage of the said facility. If immediately thereafter the said facility had been restored by the Accused No. 4, a stand taken by him that it was done under the oral instructions of the higher authorities appears to be plausible.

23. The prosecution apart from the fact that it had utterly failed to bring on record any evidence of conspiracy must also be held to have failed to bring on record any evidence of wrongful gain so as to attract the provisions of the Prevention of Corruption Act, 1988 or otherwise.

24. The entire argument of Mr. B. Datta, learned Additional Solicitor General as also the findings arrived at by the learned Special Judge as also the High Court proved the ingredients of offence under Section 409 of the IPC. The accused persons, however, have not been charged for commission of the said offence. Conspiracy by and between the Bank officials and the Accused Nos. 1 to 3 has been stated to be for commission of the offence of cheating for the purpose of arriving at a finding that there has been a conspiracy so as to cheat the Bank. It was necessary for the prosecution to establish that there had been a meeting of mind at the time when the facility had been granted. Such meeting of mind on the part of the accused persons has not been proved. Furthermore, the prosecution case even if given face

value and taken to be correct in its entirety does not lead to a finding that even Accused Nos. 1 to 3 had any wrongful intention at the time when the contract was initiated.

25. We do not mean to suggest that in the matter of operating the account, no offence might have been committed by them. The offence, if any, it will be bear repetition to state, was committed under Section 409 of the IPC.

26. The learned Special Judge as also the High court unfortunately proceeded on the basis that the cheque discounting facility could under no circumstances be made available to them.

27. We do not think that, that was a correct approach. The RBI guidelines categorically show that it was not a wrong practice. It is one thing to say that there has been an abuse of a prevalent banking practice for the purpose of causing wrongful loss to the Bank and causing wrongful gain to others but it is another thing to say that by reason thereof, the ingredients of cheating are attracted.

28. We have noticed hereinbefore that learned Additional Solicitor General merely took us through the judgment of the learned Special Judge as also the High court. His entire contention revolved around the commission of criminal breach of trust. Unfortunately, they have not been charged therewith. It would bear repetition to state that accused persons have not

been charged under Section 409 of the IPC; even the Accused Nos. 1 to 3 have not been charged for entering into a conspiracy with Accused Nos. 4, 5 and 6 in respect of commission of offences under the Prevention of Corruption Act.

29. It is in the aforementioned situation, we are of the opinion that the judgment of conviction and sentence cannot be upheld. So far as the submission of learned Additional Solicitor General that this Court, having regard to the concurrent findings of fact as regards the commission of offence arrived at by the learned Special Judge as also the High Court, should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India is concerned, we do not find any substance therein. Appellants have been charged under wrong provisions. Proper charges have not been framed against them.

30. In Lala Ram & Ors. vs. State of U.P. (1990) 2 SCC 113, whereupon strong reliance has been placed by the learned Additional Solicitor General, this Court noticing various decisions opined that when there are various infirmities, the Supreme Court can interfere.

It is, therefore, a case which comes within the purview of the dicta laid down therein. It is significant to notice that in that case itself this Court

keeping in view the findings arrived at therein allowed the appeal preferred by the accused persons and set aside the judgment of conviction.

It is one thing to say that ordinarily a concurrent finding of fact shall not be interfered with by this Court in exercise of its jurisdiction under Article 136 of the Constitution of India but it is another thing to say that despite opining that accused are entitled to acquittal, a judgment of conviction passed against them should be upheld. In fact, the jurisdiction of this Court must be exercised wherever it is required to do so for securing the ends of justice and to avoid injustice.

31. The upshot of our discussions is:-

- (a) The prosecution did not lay down any foundational facts to arrive at a finding of dishonest intention on the part of the appellants, nor any such finding has been arrived at by the trial court or the High Court.
- (b) The circumstances which were considered sufficient to bring home the charges against the appellant were: the cheques of accused Nos. 1, 2 and 3 were discounted after purchasing cheques; cheques were deposited after a gap of 1 to 4 days; only later the amounts were deposited in the account which circumstances, in our opinion, are not sufficient to hold the appellants guilty for commission of offence

under Section 420 of the IPC as all the actions on the part of the bank officers were in consonance with the long standing banking practice.

- (c) Accused No. 4 had taken care of having adequate security to ensure that the bank does not suffer any loss, the gain if any was caused to the Bank.
- (d) Appellants acted on instructions by the higher authority.
- (e) The prosecution evidence does not establish any conspiracy on their part vis-à-vis Accused Nos. 1, 2 and 3.

32. For the aforementioned reasons, the impugned judgment and order of the High Court, being unsustainable, is set aside. The appeals are allowed. Appellants are on bail. Their bail bonds shall stand discharged.

.....J.
[S.B. Sinha]

.....J.
[Dr. Mukundakam Sharma]

New Delhi;
May 06, 2009