

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

Cri Appeal No. 27/2009

Reserved on : 20.10.2022

Pronounced on : 30.01.2023

Roshan Lal Bhagat S/O Duni Chand R/O  
Thoba Tehsil Bhaderwah (the then Addl.  
Treasury Officer Thathri)

....Appellant(s)

Through :- Sh. Nirmal Kotwal, Advocate.

V/s

State Through Vigilance Organization Jammu.

....Respondent(s)

Through:- Sh. Raman Sharma, AAG.

**Coram: HON'BLE MR. JUSTICE MOHAN LAL, JUDGE**

**J U D G M E N T**

- 1.** Instant Criminal Appeal is directed by appellant against judgment and order dated 06-05-2009 rendered by Addl. Sessions Judge Anti-corruption Jammu in file No. 06/Challan where under appellant has been convicted and sentenced to rigorous imprisonment for 2 years with a fine of Rs. 10000/- for commission of offence punishable u/s 5(2) of P.C. Act in default of payment of fine appellant to further suffer simple imprisonment 3 months, for commission of offences u/s 409/471 RPC appellant has been sentenced to undergo imprisonment for 1 year for each offence besides fine of Rs. 5000/- for each offence and in default of payment of fine appellant has been directed to suffer further imprisonment for a period of three (3) months for each offence.
- 2.** Aggrieved of and dissatisfied with the impugned judgment and order dated 06-05-2009, appellant/convict has questioned its legality, propriety and correctness on the following grounds:-
  - (i) that the sanction for launching prosecution against appellant was not proper sanction, it was a photostat copy, the sanction does not disclose as to who is the competent authority granting sanction, as such the prosecution against appellant vitiates;
  - (ii) that the Ld. Trial Court has not appreciated the evidence in its real perspective, so far the offence of forgery u/s 468 RPC against appellant is concerned the trial court has observed that said offence of forgery is not proved, even no witness of prosecution has stated as to who forged the document, there is nothing on record to suggest as to whether the bills were actually forged and if forged who forged the same, the Trial Court has lost sight of the fact and taken his view on presumptions and not appreciated the evidence on record, moreso, PW-7 Mohd Shafi (Accountant in

Treasury Office Thathri from September 1993 to November 1996) who is alleged witness to identify the signatures of appellant and preparation of the bills has categorically stated that when the vouchers were produced before him, as a prudent man, he could not have any doubt about the genuineness of the bills;

(iii) that the trial court has also lost sight of the fact that neither the bills were received by the Accountant from appellant/convict directly or the appellant/convict received money from him directly, prosecution could not prove guilt of appellant/convict beyond reasonable doubt and therefore, appellant cannot be convicted on assumptions and suspicion.

**3. Sh. Nirmal Kotwal** Ld. Counsel for appellant/convict while seeking the setting aside of impugned judgment of conviction rendered against the appellant by the Trial Court has vehemently argued, that the sanction was granted against the appellant only for prosecution of offences u/s 5(2) of P.C. Act 2006 r/w Sec. 409/468 RPC whereas the Trial Court has tried the appellant/convict for one more offence u/s 471 RPC for which there was no sanction for prosecution, the alleged sanction order which is photocopy though not admissible in evidence was placed on record but no permission of the court was sought to prove the same by way of secondary evidence, the alleged sanction order does not depict that what material collected by Vigilance Organization was placed before the authority for grant of sanction, when all these aspects have not been proved by the prosecution in the trial court, the trial gets vitiated. It is argued, that the trial court has completely gone wrong in wrapping the appellant u/s 471 RPC, the invalid sanction has vitiated the trial, that as per the prosecution story appellant was working as Addl. Treasury Officer Thathri while one Mohd Shafi was the Accountant in the said office at relevant time who has deposed, that he had worked under the control and supervision of appellant from September 1993 to March 1994 accountant namely Man Singh prepared the medical reimbursement bills for the Month of April & May 1993 whose signatures and the signatures of appellant he identifies, said Man Singh (the then Accountant) is neither cited as witness in the challan nor examined by the prosecution in the case, the said Mohd Shafi has been shown signatures and preparing of the bills who has categorically stated the he has no doubt regarding genuineness of the said bills. It is argued, that no handwriting expert has been cited as witness nor the bills/voucher/cash memo/acquaintance rolls/cash book/drawl registers have been sent to FSL to find out whether there is a forgery in regard to the preparation of the bills, no cogent evidence has been adduced by the prosecution in regard to the inflation of bills, offence of using forged document for the purpose of cheating u/s 468 RPC has not been proved, therefore, unless and until ingredient u/s 463 RPC defining the offence of forgery in regard to preparation of a false document is proved, a

person cannot be convicted for commission of offence u/s 468 intending to use the forged document for the purpose of cheating and if no forgery is proved, then the other offences indicted against the accused cannot be said to have been proved and even section 471 RPC is not attracted. It is moreso argued, that the investigating officer (I/O) PW-11 Mohd Aslam Malik in his cross-examination has admitted that he had not seized the original bills lying in AG office but carbon copies of the bills were placed on record without providing the original, once the forgery u/s 463 RPC is not proved then offences u/ss 468/471 RPC & offences under section 409 RPC r/w 5(2) P.C. Act could not have been proved against appellant by the trial court. To support his arguments, Ld. Counsel for appellant has relied upon the judgments reported in, (i) **1998 Supreme(J&K) 41** [Jangi Ram—Appellant **Versus** State of J&K—Respondent & (ii) **(1992) CriLJ 750** [SANTOSH KUMAR PADHY AND ANOTHER—Appellant **Vs.** THE STATE—Respondent].

4. Sh. Raman Sharma Ld. AAG for respondent/state has supported the impugned judgment and order of conviction dated 06-05-2009 and has strenuously argued, that the original sanction for prosecution order/copy has been placed on record which has not been disputed by the other side therefore it does not lie in the mouth of counsel for petitioner that there is no valid sanction for prosecution of accused, even if the photocopy of the sanction is exhibited, it cannot be lateron said that photocopy of sanction is invalid in the eyes of law. It is argued, that appellant/convict while posted as Addl. Treasury Officer Thathri in the year 1993-94 on account of some ailment of his daughter, on the prescription and consultation of Dr. M.S. Sudan Physician Specialist who had prescribed Ciprobid Tablets for the treatment of appellant's daughter, in a fraudulent manner appellant had drawn an amount of **Rs. 63,614/-** in his favour by misuse of his official position on account of medical reimbursement claim by insertions in two cash memos whereby amount of Rs. 499/- was inflated to Rs. 10,499/-, appellant/convict as per the prosecution evidence had **actually incurred expenses of Rs. 6,214.32** but on account of forgery committed by him in the cash memo issued by PW-3 Vipin Kumar and attested by PWs Dr, Balbir Singh and Dr. Mandeep Singh the **amount has been inflated to Rs. 62,614.32/-** and in this way by abuse of his official position appellant/convict had **withdrawn excess amount of Rs. 56,400/-** from Addl. Treasury Thathri where he is posted as Addl. Treasury Officer during the period w.e.f. 10.04.1993 to 12.04.1994 causing pecuniary advantage to him and corresponding loss to the state exchequer. It is argued, that the trial court has found complicity of accused for commission of

offence u/s 409 RPC r/w 5(2) of P.C. Act on the basis of cogent evidence on record and therefore, offences u/ss 471/409 RPC r/w 5(2) are proved against the accused who has been rightly convicted and sentenced. To support his arguments, Ld. AAG for respondent has relied upon the decisions reported in, (i) **2010 (2) JKJ [HC] 573** (Nazir Ahmad Lone **Versus** State of J&K & Ors.), (ii) **2003 (4) [HC] 291** (Gh. Rasool Shah **Versus** State & Ors.), (iii) **2009 Legal Eagle 1140** (State of Madhya Pradesh **Versus** Jialal), (iv) **AIR 1979 SUPREME COURT 677** (Mohd Iqbal Ahmad—Appellant **Versus** State of Andhra Pradesh—Respondent), (v) **AIR 1915 Privy Council 111** (Padman and others—Appellants **V.** Hanwanta and others—Respondents), (vi) **AIR 2017 SUPREME COURT 3441** (Sonu @ Amar **V.** State of Haryana) & (vii) **AIR 2003 SUPREME COURT 4548** (R.V.E. Venkatachala Gounder—Appellant **V.** Arulmigu Viswesaraswami and V.P. Temple and another—Respondents).

- 5.** I have heard Sh. Nirmal Kotwal Ld. Counsel for appellant and Sh. Raman Sharma Ld. AAG for respondent. I have also perused the record of the trial court. The prosecution to prove it's case has examined as many as 11 witnesses out of listed 13. Before coming to the conclusion whether prosecution has successfully substantiated charges against appellant/convict beyond hilt, it is pertinent to give a brief resume of the evidence led by the prosecution. Relevant portions of the testimonies of the prosecution witnesses can be summarized as under:-

**6. BRIEF RESUME OF PROSECUTION EVIDENCE:-**

**PW-1 Ravinder Kumar SGC** examined on 15.12.1998 has stated, that in the month of December 1995 he had made a visit to Treasury Office Thathri as per the direction of SP Vigilance and brought two pay acquaintance registers from the said office and produced them before concerned I/O which were seized vide seizure memo ExPw-RK which bears his signature. Further on 28.01.1996 during his posting at Vigilance Organization Jammu four carbon copies of bill books were seized from the shop of M/S Kapoor Medicates Bakshi Nagar Jammu in presence of its proprietor Vipin Kumar, the seizure memo ExPw-RK/I was prepared which bears his signature. The individual bills are marked as RK/2, RK/3, RK/4 and RK/5. **In cross-examination** has stated that he does not know the name of the then Treasury Officer when he visited Treasury Office Thathri in the month of December 1995.

**PW-2 Ram Labaya IPS** examined on 16.12.1998 has deposed that on 14.10.1995 he was posted as SSP Vigilance Organization. According to him after perusal of complaint against the accused and relevant record and on the direction of the then Vigilance Commissioner he had registered FIR No.75 of year 1995 which on the file bears his signature, its contents are correct and it is marked as ExPw-RL.

**PW-3 Vipin Kumar** on 17.12.1998 has deposed, that he is chemist by profession and accused is known to him as a customer. That officials of Vigilance Organization have seized carbon copies of bill books pertaining to medicines sold by him. That he had also supplied detail of medicines mentioned in the carbon



copies of said bills to the Vigilance Officials after getting receipt from them. The seizure memo ExPw-RK/I pertaining to the bill books in the file bears his signature, its contents are correct. That the statement of bills from Serial No. 1 to 22 bearing No. 8885 dated 15.04.1993 valuing Rs. 208.40 np to bill No. 9017 vide item No. 22 dated 31.05.1993 valuing Rs. 418.20np in the file is in his hand writing and also bears his signature, it is marked as ExPw-VK. Similarly, detail of statement regarding bill Nos. 8885 to 10144 dated 10.04.1993 to 13.03.1994 in the file is also in his handwriting bearing his signatures which is marked as ExPw-VK/I. The bill books seized by memo Ex-PW-RK/I pertaining to his shop, were shown to the witness in the court which were admitted to be correct by him, they were already marked as RK-I to RK-5. That in bill No. 10131 dated 07.03.1994 valuing 249.77 np and bill NO. 10144 dated 12.03.1994 valuing 249.77np in seizure memo ExPw-VK, he had mentioned the bill No., amount of the bill besides name of the patient which as per then record are correct. **In cross-examination** deposes, that bill is usually issued in the name of person whose name stands entered in the bill as per the prescription of the doctor. Neither he can say as to who had collected the bill ExPw-VK from him nor he is in position to identify that person. That bill Nos. 8885 and 8895 stands in the name of one Vinod Bala whereas bill Nos. 8911, 8927, 8967, 9557, 9751, 9761 were issued in the name of Vineeta Kumari. That bill No. 9972 bears the prescription of Dr. M.S. Sudan, though it does not contain the name of person who had purchased the medicines. The aforesaid bills are the carbon copies of the original one and the signatures below the said bills can be read not in full but only by the alphabet "V". **The original bills issued by him were not shown today in the court to him.** That he had issued the aforesaid bills by preparing them in the running hand and mentioned only alphabet "V" over them due to the reason that customer used to be always hurry. That he had handed over the record pertaining to the aforesaid bills to Inspector Malik.

**PW-4 Sakhi Mohd Head Constable** on 26.02.1999 has deposed that two pay acquaintance roll were seized by the I/O of the case namely Inspector Mohd Aslam which were brought before him by SGC Ravinder Kumar, vide seizure memo ExPw-Rk which bears his signature. The letter No. TT/95-95/383 dated 16.12.1995 by virtue of which pay acquaintance rolls were brought from Treasury Office Thathri is marked as SM.

**PW-5 Dr. Balbir Singh** on 26.02.1999 has stated, that in the year 1993 he was posted as Medical Officer in the evening Clinic Janipur and he used to do private practice at Kapoor Medicates Bakshi Nagar Jammu after duty hours. The accused Roshan Lal Bhagat is not known to him. That he used to issue prescription to the patients including central Govt. employees. That the prescriptions issued by him and bearing his signature in the file dated 24-09-1993, 28-05-1993, 10-05-1993, 15-04-1993 are marked as ExPw-BS, ExPw-BS/I, ExPw-BS/II, ExPw-BS/III respectively. Similarly, "8" bills shown to him from the seized record were stated to be attested by him which bears his signatures, they are marked as ExPw-BS/4 to ExPw-BS/U. That figures written by him on aforesaid bills (BS/4 to BS/11) were tempered by somebody in order to inflate the amount of Rs. 1000/- each approximately in the bills. That in bill ExPw-BS/4, the inflated figure of Rs. 1280.15 np had been shown instead of Rs. 80.15 np, similarly in bill ExPw-BS/5 an inflated amount of Rs. 1147.50 np had been shown in place of actual amount of Rs. 47.50 np and further instead of one Amoti dry syrup prescribed, 11 bottles had been mentioned in the said bill. Similarly, in bill ExPw-BS/6 the inflated figure of Rs. 1518.20 np had been shown instead of actual amount of Rs. 418.20 np. That in bill ExPw-BS/I instead of prescribed 9 septum 250 gm tablets 28 bottles have been shown to be purchased. Similarly, there is inflated mention of Rs. 1518/- instead of Rs. 418 in bill ExPw-BS/7. According to him, he cannot say

as to the identity of the person who had made tampering in the aforesaid bills and prescriptions by inflating the actual amount. The witness has further identified his signature over four essential certificates shown to him in the court being issued by him bearing his signatures and seal, the contents whereof were admitted by him to be correct and marked as ExPw-BS/12 to ExPw-BS/15. That he had charged Rs. 10/- as consultation fee for the aforesaid certificates but later on someone after tampering it, changed the said amount to nil and further some one had erased his writing on the said certificate in order to show that patient was examined by him in the Government Hospital by a fictitious MRD No. That all the aforesaid bills prescriptions and certificates were issued by him in the name of Vinita Kumari, Vinod Kumari (sisters) Vinay Kumar (son) and Raj Kumari (wife) of Roshan Lal, against whom name his designation has been mentioned as T.O. Thathri which according to him is not in his hand writing. **In cross-examination** has deposed that he is not possessing any order by virtue of which he was appointed as A.M.A and besides performing his duties as A.M.A he used to do some private practice also. According to him he can identify the name of the patient only after going through the prescriptions ExPw-PBS to ExPw-PBS/3 but not his physical identity, similarly, in exhibits ExPw-BS/5 to BS/11 he cannot say about the physical identity of the patient. That after going through the bills and prescriptions and he can say that they were pertaining to the same patient because similar type of medicines were mentioned in them, he has not preserved any record regarding prescriptions issued to the patients as he used to handover the form back to the patient brought by him after his check-up. That the patient themselves fill up their names in the form whereas date as well as the amount of fee used to be filled by him besides diagnose of the patient. That when he filled up the form ExPw-BS/12 to BS/15, at that time the patients were not present before him, similarly he cannot say as to who had collected bill No. ExPw-BS/10 and BS/11 dated 24<sup>th</sup> and 27<sup>th</sup> April 1993 from him. Further he cannot say who had issued bills ExPw-BS/4 to BS/11 may be they were prepared by the chemist in whose clinic he used to sit. That he had not verified from the original record of the Dispensary about the MRD Nos. on bills ExPw-BS/12 to BS/15, though when the aforesaid forms were issued by him they were not bearing MRD Nos. which were added later on by somebody on them. That police had not summoned him during the course of investigation of the case nor his statement was recorded by the police in this regard.

**PW-6 Mohinder Singh SGC** on 27.02.1999 has deposed that 05.08.1996 and 29.11.1996 he was posted as constable, receipt clerk in the office of SSP Vigilance Organization Jammu. He has proved the seizure of record received from the office of Accountant General vide seizure memo ExPw-MS besides seizure of treasury voucher No.2 of March, 94 alongwith letters vide seizure memo ExPw-MS/I by the I/O of the case and both aforesaid seizure memos in the file bear his signatures.

**PW-7 Mohd Shafi** on 08-07-1999 has stated that he was posted as Accountant in the Treasury Office Thathri from September 1993 to November 1996 and during the said period accused was posted there as Treasury Officer. That he used to draw bills pertaining to salary as well as the allowances of the accused passed by the accused himself as Treasury Officer. He was shown the detail of medical reimbursement bills seized in the case pertaining to the accused for the month of December 1993 valuing Rs. 16570/-, for the month of October 1993 valuing Rs. 2529/-, for the month of January 1994 (two bills) valuing Rs. 8604/- and Rs. 9894/-, for the month of February 1994 Rs. 10526/-, for the month of April and May 1993 Rs. 10775.99 np, for the month of March 1994 valuing 10499/- and according to him except for the months of April and May 1993 all the aforesaid bills were in his handwriting and bears his signatures and said bills were passed

by the accused in his capacity as Treasury Officer and after drawing the amount involved in the said bills he had handed over the same to the accused. That accused had put his signatures over the Acquaintance Roll, Cash Book and Drawl Register of the treasury office after receiving the amount in question. He has identified signatures of the accused over the seized bills which were passed by the accused as he had worked with the accused from the month of September 1993 to March 1994 due to which he was acquainted with his signatures. That the seized bills in the file are marked as ExPw-MS to ExPw-MS/5, the bills for the month of April & May 1993 also bear the signatures of the accused which were identified by him and they were prepared by the Accountant Maan Singh and he is acquainted with the signatures of the said Maan Singh. Mark M/S has been put on the signatures of the accused on the bills. He has further stated that as per entry on page No.33 of seized Acquaintance Roll, the accused had drawn a bill of Rs. 10558/- for the month of December 1993 after putting his signatures and the aforesaid amount was handed over to the accused by him. The aforesaid entry in his handwriting and in the receipt column there are signatures of accused which were identified by him. That the disbursement certificate contain seal and signatures of the accused beside his initials. It is marked as Ex-Pw-MS/6. Similarly, on page 36 there is entry of Rs. 8604/- for the month of December 1993 pertaining to receipt of said amount by the accused which was attested by the accused himself and below the seal and signatures of the accused he had put his initials, it is marked as Ex-Pw-MS/7. Further on page No.39 there is entry of Rs. 9894/- for the month of January 1994 the said payment was received by the accused after bill was passed, the witness has identified the seal and signatures of the accused besides his initials it is marked as ExPw-MS/8. Further on page No.42 there is entry of receipt of payment amounting to Rs. 10526/- by the accused against his own signatures which also bears the initials of the witness. It is marked as ExPw-MS/9. That on page No. 44 there is an entry pertaining to the receipt of Rs. 10499.54 np by the accused the bill of the aforesaid amount for the month of March 1994 was himself passed by the accused and he had drawn the amount from the treasury. The witness has identified the signatures of the accused beside his initials over it and the same is marked as ExPw-MS/10. The statement showing the joining and relieving report of accused from the month of July 1992 to April 1994 and that of Maan Singh Accountant besides his own from the month of June 1990 to September 1993 in the file is in his handwriting and bears his signatures which was also countersigned by the then Treasury Officer and sent to the Office of SSP V.O. Jammu as per their requisition vide No. 382 dated 16.12.1995 it is marked as ExPw-MS/11 and the contents of the statement are correct. That on 16.12.1995 vide letter No. TT/95-95/383 he had sent pay acquaintance roll for the year 1992-93 and 1993-94 pertaining to the withdrawal of medical re-imbursement claims of the accused from the Treasury Officer Thathri to the V.O.J. The said letter in the file is in his handwriting and bears his signature which also bears the signatures of the then Treasury Officer Thathri it is marked as Ex-Pw-MS/12. **In cross-examination** the witness has deposed, that from the year 1994 to 1995 Doda District was in the grip of militancy and accused told him that he had received letter from the militants demanding money from him otherwise there was danger to his own life as well as his family members besides his property. That he had not verified the seized vouchers because they were already verified by the doctor alongwith his signatures and the bills were drawn on the basis of said vouchers by virtue of which medicines were purchased and annexed with the bills were also attested by the doctor. That he used to pay the amount involved in the bill to the accused through his peon namely Ghulam Qadir or some other official of the office due to the fact that vouchers stated above were brought before him by the said peon for drawl purposes and the amount was dispatched to the accused at his residence



where he work overtime and accused used to put his signatures over the bill/vouchers acquaintance register and drawl register and on some other papers at his residence itself. **That the vouchers of the medical re-imbursement sent to him by the accused were examined by him but they were found beyond any pale of doubt.**

**PW-8 Dr. Mandeep Singh** on 24-09-1999 has stated, that he was posted as Assistant Surgeon in Medical College Jammu from 1993 to 1996. On 07-03-1994 a patient namely Mrs. Vinita came to him and after examining her, he prescribed two tablets Ciprobid twice a day for five days regularly and on 12-03-1994 he had repeated the same doze of medicines for further five days. That two vouchers pertaining to purchasing of aforesaid medicines of Kapoor Medicates valuing 249.77 np each were verified by him when the same were brought before him for verification. He put his signatures on the back side of the aforesaid bills with his seal, these are marked as Ex-Pw-MS and Ex-Pw-MS/I. He had also verified cash memo No. 9533 dated 09-10-1993 for an amount of Rs. 263.15 np which was inflated by someone to Rs. 1263.12 np he had put his signatures on the back side of the vouchers after verifying the same with the seal, it is marked as Ex-Pw-MS/2. Similarly, cash memo 9557 dated 10-10-1993 was also verified by him the actual amount of Rs. 266.13 np was inflated to Rs. 1266.13 np. The verification of the said memo was signed by him with his seal, it is marked as ExPw-MS/3. Further cash memo No. 9807 dated 17-12-1993 amounting to Rs. 270.80 np was also verified by him which was inflated to Rs. 4270.80 np. The verification bears his signature and seal and is marked as Ex-Pw-MS/4. The cash memo no. 9846 dated 28-12-1993 amounting to Rs. 334.72 np was also verified which was inflated to Rs. 4334.72 it also bears his signature and seal it is marked as ExPw-MS/5. The cash memo No. 9971 dated 22-01-1994 amounting to Rs. 113.50 np was verified by him which was inflated to Rs. 5113.50 np, the verification bears his signature and seal it is marked as ExPw-MS/6. The cash memo No. 9980 dated 26-01-1994 amounting to Rs. 66.75 np was verified by him it was inflated to Rs. 466.75 np, it bears his signature and seal and it is marked as ExPw-MS/7. The cash memo No. 9972 dated 22-01-1994 amounting to Rs. 315.47 np was also verified by him it was inflated to Rs.4315.47 np, the verification over the said memo bears his signature and seal and is marked as ExPw-MS/8. The cash memo No. 10063 dated 14-02-94 amounting to Rs. 280.65 np was verified by him, the aforesaid amount was inflated to Rs. 5280.65 np and the verification over the same bears his signature and seal, it is marked as ExPw-MS/9. The cash memo No. 10019 dated 10-02-94 amounting to Rs. 246.30 was verified by him which was inflated to Rs. 5246.30np, the verification over he same bears his signature and seal and is marked as ExPw-MS//10. The cash memo No. 9769 dated 07-12-1993 amounting to Rs. 142.80 np was verified by him which was inflated to Rs, 114280 np the verification bears his signature and seal and it is marked as ExPwMS/11. The cash memo No. 9763 dated 04-12-93 amounting to Rs. 135.55 np was verified by him which was inflated to 4135.55np the verification bears his signature and seal it is marked as ExPw-MS/12. The cash memo No. 9715 dated 01.12.93 amounting to Rs. 150.05 was verified by him, it was inflated to Rs. 4150.05. The verification bears his signature and seal and marked as ExPw-MS/13. The cash memo no. 9761 dated 04-12-1993 amounting to Rs. 131.70 np was inflated to Rs. 1131.70, the verification over the said memo bears his signature and seal it is marked as ExPw-Ms/14. **In cross-examination** the witness has stated, that he used to do private practice at Kapoor Medicates Bakashi Nagar Jammu where he examine the patients. He cannot say about the identity as well as the address of the person whose name was mentioned over the bills and prescriptions. The bills ExPw-Ms to ExPw-MS/14 were in the same handwriting and in the same ink and he cannot say about the exact date when the same were verified by him because they did not bear any date over them. The



cash memos were prepared by the concerned shopkeeper. That he does not know the identity of the person who had brought the aforesaid bills before him for verification. There is some difference in the cutting and verification pertaining to words “3” and “5” whereas the words “2” and “6” which were written on two places shows no difference. That cash memos were verified by him after personally examining them from the counterfoils. That the space between the words and figures over cash memos ExPw-MS to ExPw-MS/14 is natural and the same was not kept by him deliberately. That he had mentioned the price of medicines over the prescriptions and only the quantity of the medicines has been stated over them.

**PW-9 Ram Parkash Bakshi** on 13.03.2000 has deposed that letter ExPw-RPB in the file bears his initials and the same were put by him after verification of the cash book (Madwar) of the Treasury. The witness has identified by the signature of the then Treasury officer Sh. Nagar Mal over the letter which was in the hand writing of Khirati Lal Superintendent. This letter was written in response to a letter issued by Vigilance office on 28.01.97 when he was posted as Additional Treasury Officer Jammu. The Exhibit over the aforesaid letter was put subject to the objection by the learned counsel for the accused about its admissibility.

**PW-10 A.S. Sharma** Sr. Deputy Accountant General, Ag Office Allahabad has deposed, that in the year 1994 he was posted as Dy. Accountant General in the A.G. Office Jammu. That during his posting in the aforesaid office the vouchers received from the Treasury Office Thathri were audited and some irregularities were found over them which were conveyed and pointed out to the Director Accounts and Treasury alongwith photocopies of the vouchers vide letter No. CAP ©/94-95/Try/19 dated 07-10-1994. The said letter on the file bears his signature, its contents are correct and the said letter was addressed to Sh. P.N. Tickoo, Director A and Treasury J&K Srinagar. The letter on the file is marked as ExPw-AS. **In cross-examination** the witness deposed that he had examined all the papers and cash memos annexed with the medical bills before writing the aforesaid letter. That a customer is required to pay as per cash memos and so far as this case is concerned, **he can say that amount mentioned in the cash memos was inflated but he cannot say who had done the same.**

**PW-11 Mohd Aslam Malik** (I/O) investigating officer of the case has proved the preliminary enquiry in the matter which is marked as ExPw-MA and on the basis of the said preliminary enquiry report the case FIR No. 75/95 was registered against the accused. The allegations against the accused made in the preliminary enquiry report conducted by Dy. Director Accounts and Treasuries were found to be correct. During the course of investigation, statement of the complainant in the case was recorded besides concerned record was seized vide seizure memos ExPW-RK and ExPW-RK/1. He had also recorded the statement of witnesses in the case and the documents ExPW-VK and ExPW-VK/1 in the file were obtained by him from Kapoor Medicates. The counterfoils of cash memo and bills book were also seized by him vide seizure memo which is marked as ExPw-RK/4 and before handing over investigation to Inspector Mitla, **it was established from his preliminary enquiry and investigation that accused had drawn Rs. 44995.96 np excess amount from Treasury.** The witness had identified the signatures of Inspector Mitla over seizure memos ExPw-MS and ExPW-MS/1 in the file. The statement by virtue of which accused had deposited some amount in the file is in the handwriting of Inspector Mitla it is marked as ExPW-MA. Similarly the statement pertaining to the difference of amount has been mentioned in the challan. **In cross-examination** the witness has stated, that during the course of investigation he had seized acquaintance roll of Thathri Treasury office, four bill books of Kapoor Medicate Store besides a statement of Kapoor Medicate Bakshi Nagar. He had not seized the original bills lying in the AG Office but the same

were seized by investigating officer who had taken over the investigation from him and the investigation was yet to be completed at the point of time. In the course of his investigation it was established that accused had committed embezzlement but the extent of exact embezzlement could not be ascertained by him. From the letter of Dy. Accountant General and his statement, in the course of investigation it was found that accused had committed offence of embezzlement. He had tried his utmost to collect the original bills which were lying in the AG office through Letter No. SSP/96-1574/VOJ written by SSP Jammu. That besides carbon copies of bills he had placed on record a letter from Kapoor Medicates and the said letter contained the detail mentioned in the bill books. The seizure memo ExPw-MS was prepared by him during the course of investigation. That Mr. Mitla can explain about the amount shown to be deposited vide memo Mark "A" and he cannot say anything in this regard.

- 7. The 1<sup>st</sup> argument** canvassed by Ld. Counsel for appellant/convict is, "that the alleged sanction order which is photocopy though not admissible in evidence was placed on record, but no permission of the court was sought to prove the same by way of secondary evidence, the alleged sanction order does not depict that what material collected by Vigilance Organization was placed before the authority for grant of sanction, the sanction is therefore invalid and the trial gets vitiated".

Per-contra Ld. AAG for state has vehemently urged, that the evidence on record shows that sanction for prosecution of the accused has been issued by competent authority u/s 6 of P.C. Act 2006 after recording its satisfaction on the basis of material placed before the sanctioning authority and the sanction order placed on record is copy of original sanction which was forwarded to Commissioner Vigilance for J&K Jammu by General Administration Department (Vigilance) vide order no. mentioned in the said sanction dated 19-01-1998, as such, no prejudice has been caused to the accused, impugned sanction order has been made part of the record vide order dated 20-12-2006 rendered by the court of Sessions Judge Anticorruption Jammu in pursuance of application filed by the prosecution u/s 540 Cr.pc.

In Mohd Iqbal Ahmed Vs. State of Andhra Pradesh [AIR 1979 SC 677] Hon'ble Apex Court has held that an order of valid sanction can be proved by the sanctioning authority in two ways: either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show that the facts placed before the Sanctioning Authority and the satisfaction arrived at by it. It is reiterated, that the file containing original order of sanction dated 19-01-1998 placed on record reveals that sanction for prosecution of the accused was granted by the Government of Jammu & Kashmir after consideration of the relevant material placed before the competent authority and approval for launching prosecution against the accused was given by the then Chief Minister when the

file reached him after clearance by nine different officials in the Government hierarchy, and out of some cyclostyle copies prepared from the original sanction order, one cyclostyle copy of sanction order has been annexed with the file. So in these circumstances, the argument of learned counsel for the appellant/convict in regard to validity of sanction order and causing prejudice to appellant/convict pales into insignificance. It is apt to mention here, that whether sanction had been given or not is to be seen before taking cognizance of the offence and not after that. If there was no sanction no cognizance against appellant/convict could have been taken by the trial court. Sanction is required only for the purpose of taking of cognizance of the offence and thereafter the prosecution is required to prove the commission of offence/offences by the accused on the basis of evidence available on record. From the perusal of impugned judgment, it is established/proved beyond reasonable doubt that the prosecution has proved valid sanction for prosecution of appellant/convict. The case law relied by Ld. Counsel for appellant/convict reported in **1998 Supreme (J&K) 41** [Jangi Ram—Appellant **Versus** State of J&K—Respondent] coupled with the case laws relied by Ld. AAG for respondent reported in (i) 2010 (2) JKJ [HC] 573 (Nazir Ahmad Lone **Versus** State of J&K & Ors.), (ii) 2003 (4) [HC] 291 (Gh. Rasool Shah **Versus** State & Ors.), (iii) 2009 Legal Eagle 1140 (State of Madhya Pradesh **Versus** Jialal), (iv) AIR 1979 SUPREME COURT 677 (Mohd Iqbal Ahmad—Appellant **Versus** State of Andhra Pradesh—Respondent), (v) AIR 1915 Privy Council 111 (Padman and others—Appellants **V.** Hanwanta and others—Respondents), (vi) AIR 2017 SUPREME COURT 3441 (Sonu @ Amar **V.** State of Haryana) & (vii) AIR 2003 SUPREME COURT 4548 (R.V.E. Venkatachala Gounder—Appellant **V.** Arulmigu Viswesaraswami and V.P. Temple and another—Respondents) support the case projected by the prosecution that valid sanction has been granted for prosecution of appellant/convict in the case in hand. Arguments urged by Ld. Counsel for appellant/convict that there is no valid sanction for prosecution of appellant/convict are legally misplaced, repelled, discarded and rejected.

- 8. The next argument** urged by Ld. Counsel for appellant/convict is, “that no cogent evidence has been adduced by the prosecution in regard to inflation of bills, no handwriting expert has been cited as witness nor the bills/vouchers/cash memo/acquaintance roll/cash book/drawl register have been sent to FSL to find out whether forgery has been committed in preparation of the bills, the trial court has even not proved the offence of forgery u/s 468 RPC, if no forgery is proved then all the other offences including offence u/s 471 RPC cannot be said to have

been proved/established against appellant/convict, therefore, the impugned judgment requires to be out rightly set aside/quashed”.

Dealing with the aforesaid arguments urged by Ld. Counsel for appellant/convict, it is apt to reiterate here, that the trial court in para 24 of the impugned judgment in concluding lines of the para has rendered opinion as under:-

“No expert evidence with regard to the hand writing is also forthcoming in as much as the bills/vouchers in question were not send to the expert alongwith specimen writing of the accused. so in view of the evidence on record it cannot be pin pointed whether it was accused who had forged the bills in question as such charge under section 468 RPC cannot be sustained against him.”

Hon’ble Supreme Court of India in a case law titled **SHEILA SEBASTIAN—Appellant(s) Versus R. JAWAHARAJ & ANR. ETC.—Respondent(s)** (in CRIMINAL APPEAL NOS. 359-360 of 2010, decided on 11 May 2018) while acquitting the accused and observing that unless and until ingredients u/s 463 IPC are satisfied a person cannot be convicted u/s 465 and offence of forgery cannot lie against a person who has not created or signed the fictitious document, in paragraphs 17,18,19,20,21,22,25 & 26 held as under:-

(17) At this juncture, it is pertinent to have a look at the definition of ‘forgery’ and the precedents on this aspect.

**463. Forgery—Whoever makes any false documents** [for false electronic record] or part of a document support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or **with intent to commit fraud of that fraud may be committed, commits forgery.**

(18) It would also be necessary to understand the scope of Section 464, IPC in this context—

464. Making a false document.—A person is said to make a false document or false electronic record First.—Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature, with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed executed or affixed; or Secondly—Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or any electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or



dead at the time of such alteration, or Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record of the nature of alteration.

Explanation 1.—A man's signature of his own name may amount to forgery.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Explanation 3.—For the purposes of this section, the expression "affixing electronic signature" shall have the meaning assigned to it in clause (d) of Sub-Section (1) of section 2 of the Information Technology Act, 2000.

(19) A close scrutiny of the aforesaid provisions makes it clear that, section 463 defines the offence of forgery, while section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under section 463, IPC. Therefore, we can safely deduce that section 464 defines one of the ingredients of forgery i.e., making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. **In order to sustain a conviction under section 465, first it has to be proved that forgery was committed under section 463, implying that ingredients under section 464 should also be satisfied. Therefore, unless and until ingredients under section 463 are satisfied a person cannot be convicted under section 465 by solely relying on the ingredients of section 464, as the offence of forgery would remain incomplete.**

(20) The key to unfold the present dispute lies in understanding Explanation 2 as given in section 464 of IPC. As Collin J., puts it precisely in *Dickins V. Gill*, (1896) 2 QB 310, a case dealing with the possession and making of fictitious stamp wherein he stated that "to make", in itself involves conscious act on the part of the maker. **Therefore, an offence of forgery cannot lie against a person who has not created it or signed it.**

(21) It is observed in the case *Md. Ibrahim and Ors. Vs. State of Bihar and Anr.*, (2009) 8 SCC 751 that— "a person is said to have made a 'false document', if

- (i) he made or executed a document claiming to be someone else or authorised by someone else; or
- (ii) he altered or tampered a document; or
- (iii) he obtained a document by practicing deception, or from a person not in control of his senses."

(22) In *Md. Ibrahim (Supra)*, this court had the occasion to examine forgery of a document purporting to be a valuable security (Section 467, IPC) and using of forged document as genuine (Section 471, IPC). While considering the basic ingredients of both the offences, this court observed that to attract the offence of forgery as defined under Section 463, IPC depends upon creation of a

document as defined under Section 464, IPC. It is further observed that mere execution of a sale deed by claiming that property being sold was executant's property, did not amount to commission of offences punishable under Sections 467 and 471, IPC even if title of property did not vest in the executant.

**(25)** Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, **for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.**

**(26)** The definition of "false document" is a part of the definition of "forgery". Both must be read together. 'Forgery' and 'Fraud' are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that 'false document'. Hence, neither respondent No.1 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as appellate court misguided themselves by convicting the accused, therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same.

Facts of the case law (Supra) are, that Ld. Judicial Magistrate framed charges against accused 1&2 for commission of offences punishable u/ss 420, 423, 465, 424 r/w 109 IPC. Both the accused were tried by Ld. Judicial Magistrate at Madras, found guilty and convicted accordingly. Aggrieved by the same, respondents/accused appeared before Ld. Sessions Judge Tirunelveli which ended up in dismissal by upholding the order of conviction. Respondents appeared before High Court which acquitted the accused in revision petition by setting aside concurrent findings of the courts below by observing that if offence of forgery in regard to making false document is not proved, then other offences u/s 464/420 IPC being consequential equally cannot be sustained. Hon'ble Supreme Court concurring with the opinion of the High Court set aside the conviction of the accused and maintained the order of acquittal by the High Court and dismissed the appeals by observing, that unless ingredient of forgery under Section 363 IPC i.e. a person making a false document is not proved, the consequential offences cannot lie against said person/accused who neither created the forged document nor signed it. In the case in hand, as the trial court vide impugned judgment has already held/opined that the prosecution has failed to

prove that appellant/convict has forged the bills, therefore, charges against appellant/convict u/s 468 r/w 471 RPC cannot be sustained. This being the position of law, the prosecution has miserably failed to prove that appellant/convict has committed any forgery or prepared forged documents in regard to the allegations of inflated bills to draw the reimbursement claim in his favour. Moreso, no handwriting expert has been cited as witness, nor the bills/vouchers/cash memo/acquaintance rolls/cash book/drawl registers have been sent to FSL to find out whether there is a forgery in regard to preparation of bills, therefore, no cogent and reliable evidence has been tendered by the prosecution to prove the inflation of bills. Offences u/s 409 RPC r/w section 5(2) of P.C. Act being consequential offences, therefore, also cannot be said to have been proved, by the prosecution as none of the prosecution witnesses have tendered cogent and trustworthy evidence that appellant/convict has forged and inflated bills and withdrawn excess amount by using his official position as public servant causing pecuniary advantage to him and correspondence loss to state exchequer. Even PW-7 Mohd Shafi on the relevant date of alleged embezzlement during the year September 1993 to November 1996 while posted as Accountant in Treasury Office Thathri under the supervision of accused, has categorically deposed in his cross-examination that the alleged vouchers of the medical reimbursement sent to him by the accused were examined by him and they were found beyond any pale of doubt.

- 9.** I, on the basis of the aforesaid evidence, hold that there is no legal evidence on record to prove that appellant/convict has committed the forgery. The direct evidence/the circumstances as relied upon by the prosecution are not strong enough indicating the involvement of appellant/convict in the commission of crime and all the circumstances are not compatible with the possibility of guilt of the accused. The witnesses examined by the prosecution, have not been able to putforth in their evidence a ring of truth, so as to inspire confidence in this court. Evidence of prosecution witnesses, is therefore, qualitatively and quantitatively, insufficient to bring nexus between appellant/convict and commission of the offences indicted against him. This renders the entire story of prosecution as incredible and unbelievable in the manner projected by the prosecution. On proper assessment, evaluation and estimation of the evidence adduced by the prosecution, the evidence appears to be weak, fragile, lacking in credibility, does not prove connecting link between the accused and commission of offences. It would be highly dangerous and hazardous to hold the appellant/convict guilty of offences alleged against him on the basis of weak, shaky and unacceptable

evidence. The whole case of the prosecution, therefore, becomes doubtful. For the foregoing reasons and discussion, I am of the considered view, that prosecution has miserably failed to prove the guilt of the appellant/convict beyond reasonable doubt for commission of offences u/ss 468/471/409 RPC r/w 5(2) P.C. Act. Criminal conviction appeal, therefore, deserves to be allowed and the same is allowed. Resultantly, the impugned judgment and order of conviction dated 06-05-2009 rendered by the court of Ld. Addl. Sessions Judge Anti Corruption Jammu in file No. 06/challan titled **State Versus Roshan Lal Bhagat** based on surmises, assumptions and presumptions is unsustainable in the eyes of law and the same is set aside/quashed. Appellant/convict Roshan Lal Bhagat S/O Duni Chand R/O Thoba Tehsil Bhaderwah (the then Addl. Treasury Officer Thathri), therefore, is, cleanly acquitted of the charges leveled against him for commission of offences u/ss 468/471/409 RPC r/w 5(2) Prevention of Corruption Act 2006. He shall stand discharged from his bail and personal bonds. Criminal conviction appeal is disposed off and after due compilation under rules, shall be consigned to record. Record of the trial court be sent back forthwith alongwith copy of the judgment for information of the trial court.

**Jammu**  
30.01.2023  
Vijay

**(Mohan Lal)**  
**Judge**

Whether the order is speaking?  
Whether the order is reportable?

Yes/No  
Yes/No