

Central Bureau Of Investigation (Cbi) vs . on 22 April, 2014

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IN THE COURT OF SH.R.P.PANDEY, SPECIAL JUDGE-01
(PC ACT) CBI : ROHINI COURTS : DELHI

CBI CASE NO.25/2010 & CBI Case No.15/2011

CENTRAL BUREAU OF INVESTIGATION (CBI)

VS.

1.Sri Kant Chawla (A.1)
s/o Sh.Keemat Rai Chawla
Ex-Chief Manager, State Bank
of Bikaner & Jaipur, Nangal Raya branch,
Jail Road, New Delhi
R/0 Plot No.4, Road No.1,
Bhopal Pura,Udai Pur-313001 (Rajasthan)

2.Virender Kumar Syal (A.2)
s/o Sh.K.B.Rai, Director
M/s Davis Corenet Fashions Pvt. Ltd.
M-355, Guru Har Kishan Nagar, Paschim Vihar
New Delhi-63
r/o M-355, Guru Har Kishan Nagar
Paschim Vihar, New Delhi-63

3.Raj Bal Tyagi (A.3)
s/o Sh.Jagan Nath Prasad
r/o H.No.114, Govind Puri, Kankarkhera,
Meerut, UP

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4.Dhiraj Prasad (A.4)
s/o Sh.Subodh Prasad
r/o H.No.9/5, East Patel Nagar,
New Delhi.

5.Rakesh Kumar Vij (A.5)
s/o Sh.Om Prakash Vij
Prop. M/s Ess Vee Exports, 9-A,
Kaliamal Street, K.K.Puddur, Coimbatore-38 (TN)
R/o 26, Balaji Park, Ist Cross Road,
K.K.Puddur, Coimbatore-38 (TN)

6.Bhupinder Pal Singh Bakshi, (A.6)

s/o Sh.Jagmahar Bakshi
Director M/s Pavi Overseas Pvt. Ltd.
J-12/22, Rajouri Garden, opposite IDBI Bank
New Delhi
R/o A-1/268, Janak Puri, New Delhi

FIR NO.RC 4E/2006/CBI/EOW-I, NEW DELHI
U/S 120B/420/467/468/471IPC & 13 (2)/13 (1)(d)PC
ACT, 1988

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Date of filing charge sheet	:	21.05.2008
Arguments concluded on	:	27.03.2014
Date of Judgment	:	16.04.2014
CASE ID No.		02404R000622008

Appearances: Ms.Shashi Vishwakarma, Public Prosecutor
for CBI.
Mr. B. S. Rana, Advocate for A-1.
Mr.Vijay Singh Sansanwal, Advocate for A-2.
Mr.Islam Khan, Advocate for A-3.
Mr.Tarun Gehlot, Advocate for A-4.
Mr.Murari Kumar, Advocate for A-6.

JUDGMENT:

□1.1 The instant case was registered by CBI on a complaint dtd. 30.11.2006 received from Chief Vigilance Officer of State Bank of Bikaner & Jaipur (for short 'SBBJ' or 'the bank') addressed to SP, CBI EOW, Delhi. The allegations against accused persons are that they acted together in criminal conspiracy and have cheated the State CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Bank of Bikaner & Jaipur, Nangal Raya Branch, New Delhi, in getting the credit facilities for different firms/companies. The matter was investigated and the charge sheet was filed by CBI. During trial of CC No.25/10, accused/Dhiraj Prasad (A□4) had stopped appearing and hence process u/s 82/83 Cr.PC was started against him by separating his trial, vide order dated 21.12.11 assigning a new CC No.15/2011 in respect of him. Subsequently, trial of CC No.15/2011 was merged

with CC No.25/10 vide order dated 03.02.12. Now both these cases are being disposed of by this common judgment.

1.2.1 It came to light during investigation that Shri Kant Chawla (A.1) (in short S.K.Chawla) was posted as Chief Manager, State Bank of Bikaner & Jaipur, Nangal Raya Branch, New Delhi, during 03.03.2004 to 24.02.2006. During that period, he sanctioned Cash Credit Limit/Bills Purchase Limit and allowed frequent overdrawings beyond sanctioned CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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limits to M/s Davis Cornet International, M/s Davis Cornet Fashions Pvt. Ltd and M/s Ess Vee Exports by abusing his official position as public servant and thus caused pecuniary advantage to the aforesaid concerns/borrowers and corresponding wrongful loss to the bank. 1.2.2 M/s Davis Cornet International, a proprietorship concern of Virender Kumar Syal (A.2), was dealing in export of garments and jewellery. Virender Kumar Syal submitted an application dated 08.01.2005 for sanction of Cash Credit (Hypothecation) Limit of Rs.35 lacs and Bills Purchase Limit under letter of Credit (Foreign) for Rs.10 lacs. A residential property situated at 9□E/5, East Patel Nagar, New Delhi, registered in the name of Gurdayal Prasad, valuing Rs.1,02,96,000/□ was offered as collateral security for obtaining aforesaid limits.

1.2.3

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S.K. Chawla processed the loan application

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and sanctioned an amount of Rs.25 lacs as CC (H) Stocks & Book Debts Limit and Rs.10 lac as Bill negotiable under Foreign Letter of Credit limit on 12.01.2005, under "SBBJ Sulabh Vyapar Rin Yojana." S.K. Chawla, vide his letter dated 12.01.2005, issued sanction in this regard, which was acknowledged by Virender Kumar Syal in token of acceptance of terms and conditions and Gurdayal Prasad has also signed it as a guarantor, after having accepted the terms and conditions of sanction order.

1.2.4 Sh. Prem Raj Mawar, Dy. Manager, opened Cash Credit Account of Virender Kumar Syal (A.2), bearing No.51025483637, wherein photograph of A.2 was affixed, besides his signatures on it. During investigation, it revealed that Raj Bal Tyagi (A.3) impersonated himself as Gurdayal Prasad and stood guarantor to the said credit facilities in the year 2005, whereas Gurdayal Prasad had expired on CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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11.09.1990 and had never mortgaged any property with the bank. However, as per Bank's

operational guidelines of SBBJ Sulabh Vyapar Rin Yojana, issued vide Annexure□ of Circular No.C&I/14/2003□04 dated 24.09.2003, Para□o□Head□Security□Collateral, it has been stipulated, "The Valuation Certificate to be obtained on the landed property offered as collateral security from the Approved Valuer." The branch Manager also makes his/her own assessment about the present market value of the property based on the inspection of the property to be mortgaged coupled with local enquiries and he is also required to ensure that the offered security/ property is marketable. But S.K. Chawla (A□) dishonestly and fraudulently failed to carry out the inspection and assess the value of the property in violations of the guidelines/ instructions laid down by the Bank.

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1.2.5

Virender Kumar Syal (A-2) submitted false

audit report of M/s Davis Cornet International for the financial years ending on 31.03.2003 and 31.03.2004, purportedly issued by M/s Mittal & Goyal Associates, Chartered Accountants, which firm was never in existence as confirmed by the Institute of Chartered Accountants of India. Loan documents executed by Virender Kumar Syal were signed by S.K. Chawla (A□) on behalf of the Bank. Raj Bal Tyagi (A□3) had executed the deed of guarantee and revival letter on 12.01.2005 and impersonated himself as Gurdayal Prasad. Subsequently, S.K. Chawla (A□) in connivance with Virender Singh Syal (A□2) had allowed overdrawings in the said account during the period March, 2005 to September, 2005 beyond his discretionary powers. Virender Kumar Syal (A□2) submitted two bills dated 07.03.2005 for US \$ 44500 each, which were ordered to be purchased by S.K. Chawla and proceeds credited to the account of M/s Davis Cornet International, amounting to Rs.38,63,406/□which was in CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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excess to limit of Rs.10 lac. However, on 17.09.2005, the account of M/s Davis Cornet International was closed and outstanding to the tune of Rs.37,13,396/□was transferred to the account of a new company floated by accused/V K Syal (A□2) i.e. M/s Davis Cornet Fashions Pvt. Ltd. 1.2.6 During investigation, it was further revealed that Raj Bal Tyagi (A.3) impersonated himself as Gurdayal Prasad and submitted an application on 17.08.2005 (Sic. 17.06.05) for sanction of Rs.15 lac as personal loan against equitable mortgage of immovable property which was already offered as collateral security i.e.9□E/5, East Patel Nagar, New Delhi, registered in the name of Gurdayal Prasad. Sh. Yog Raj Bhatia, then Manager sanctioned aforesaid personal loan. Saving Bank Account No.14343 was opened in the name of Gurdayal Prasad, which was allowed by Sh. Bhatia and introduced by Virender Kumar Syal (A□2). Bhupinder Pal Singh Bakshi (A□6), Director of CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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M/s Pavi Overseas, stood guarantor to the said loan for a non□existent person. Sh.Yog Raj Bhatia had carried out visit at the property offered as collateral security at the time of sanction of loan to

Gurdayal Prasad and stated that son of Gurdayal Prasad i.e. Dhiraj Prasad (A.4) had informed him that Gurdayal Prasad was present at his shop. 1.2.7 Virender Kumar Syal (A□) and his wife Smt.Rashmi Syal (since discharged), Directors of M/s Davis Cornet Fashions Pvt Ltd., submitted an application on 03.09.2005, for sanction of Cash Credit (CC) Limit of Rs.40 lac and letter of Credit/ Bank Guarantee Limit of Rs.20 lac. A property measuring 2 Bighas of land, situated at Village Nizampur, Delhi, registered in the name of Sh. Ram Phal Rathi, was given as collateral security to the said account. S.K. Chawla (A□) processed the said application on 16.09.2005 and sanctioned CC Limit of Rs.40 las and B.G. Limit of Rs.10 lacs, under, "SBBJ Sulabh Vyapar Rin CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Yojana". S.K. Chawla in connivance with Virender Kumar Syal had sanctioned the aforesaid facilities to M/s Davis Cornet Fashions Pvt. Ltd. with a view to adjust the outstanding loan amount of M/s Davis Cornet Fashions Pvt. Ltd., to the tune of Rs.37,11,858/□ Cash Credit account bearing No.61001067095 was opened by S.K. Chawla (A□) himself in the name of Virender Kumar Syal (A□ 2). 1.2.8 On 19.08.2005, Virender Kumar Syal and Smt. Rashmi Syal submitted two applications for sanction of loan of Rs.20 lacs each, against equitable mortgage of the agricultural property situated at Khasra No.23/23 and 23/22/1, Village Tirki Kalan, Delhi, ad□measuring 1008 Sq. Yards registered in their names. Bhupinder Pal Singh Bakshi stood guarantor to these loans. S.K. Chawla himself had sanctioned both loans to Virender Kumar Syal and Rashmi Syal. A sum of Rs.39,56,000/□from both accounts were transferred in the account of M/s Davis Cornet Fashions CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Pvt. Ltd. on 19.08.2005 to bring down the outstanding. Thus, these loans were sanctioned with a view to adjust and cover up the outstanding in account of M/s Davis Cornet Fashions Pvt. Ltd.

1.2.9 Investigation further reveals that a cheque for Rs.9,98,500/□was presented in the account of M/s Davis Cornet Fashions Pvt. Ltd, which was purchased by S.K. Chawla without any sanction of credit facility to said company and he did not report to his controlling authority in this regard. During the period 21.09.1995 to 24.02.2006, S.K. Chawla allowed overdrawing to said company, without reporting to his controlling authority. However, bank circular No.REORG/6/96□97 dated 09.09.1996 clearly says, "No functionaries under any circumstances will exceed the powers delegated to them except with prior permission of the respective Controlling Authority. In case of very CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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emergent and genuine situations (where prior permission is practicably impossible) exceeding the powers may be acceptable as an exception, provided the same is reported to respective Controlling Authority on the same day and a telephonic permission has been obtained."

1.2.10 S.K. Chawla (A□) abused his official position and exceeded his powers with a view to cause pecuniary advantage to firms/ companies owned by Virender Kumar Syal. Aforesaid three accounts of M/s Davis Cornet Fashions Pvt. Ltd., opened by Virender Kumar Syal and Smt. Rashmi Syal turned NPA on 31.05.2006, 29.06.06 and 29.06.06 respectively and had a total outstanding of Rs. 1,50,53,815/□

1.2.11

Investigation further reveals that M/s Ess Vee

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Exports is a proprietorship concern of Rakesh Kumar Vij (A.

5), brother□n□aw (sala) of Virender Kumar Syal (A□), having its office at 704, Visal Tower, District Centre, Janakpuri, New Delhi. On 20.04.2005, Rakesh Kumar Vij submitted an application for sanction of credit facilities for the purpose of using it as Working Capital Finance. A residential property situated at N□54, Greater Kailash, Part□, New Delhi, was offered as collateral security for obtaining loan. The property was in the name of one Sh.Surender Nath. S.K. Chawla (A□) managed to put up a lady to impersonate as Shanti Devi, wife of Surender Nath, who submitted forged sale deed as security to the bank. Investigation revealed that Surender Nath had expired in 1972 and his wife Smt.Shanti Devi expired on 06.03.2006. The lady, who impersonated as Smt.Shanti Devi, whose photograph is affixed on deed of guarantee is not traceable despite efforts made in this regard. However, successors of the property have outrightly denied that said property was ever mortgaged with bank, CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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who could not identify photograph of the lady, who impersonated as Shanti Devi.

1.2.12 The said loan proposal was processed by S.K. Chawla (A□) and a Cash Credit (H) Limit/ Book Debt Limit of Rs.25 lacs and Bill Discounting Facility of Rs.10 lac was sanctioned by him, under, "SBBJ Sulabh Vyapar Rin Yojana." Sanction letter dated 23.04.2005 in this regard was issued by S.K. Chawla, which was acknowledged by Rakesh Kumar Vij (A□). It also came to light that Rakesh Kumar Vij submitted a rent agreement dated 25.06.2005, which was purportedly executed by one Rajesh Kumar Khandelwal, who denied to have made any such agreement. However, Sh. Khandelwal states that Virender Kumar Syal was his tenant in a property owned by him in Paschim Vihar, and as such agreement of that property might have been manipulated in favour of M/s Ess Vee Exports.

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1.2.13

Investigation further reveals that Cash Credit

Account no.01600052201 of Rakesh Kumar Vij (A.5) was opened in the branch on 23.04.2005 by S.K. Chawla, which account was introduced by Virender Kumar Syal. An amount of Rs.25 lac was released in the account of M/s Ess Vee Exports, whereas an amount of Rs.29,10,000/- was withdrawn in cash during the period from 23.04.2005 to 07.05.2005. That amount was withdrawn by Virender Kumar Syal through self cheques and signed on reverse side of cheques in token of having received the cash. 1.2.14 On 05.05.2005, a foreign bill for US\$ 26,880 was submitted by Rakesh Kumar Vij (A.5) on behalf of M/s Ess Vee Exports, drawn on M/s Financ, the said bill was purchased by S.K. Chawla, who sent it for collection. The bill returned unpaid on 22.09.2005 as the drawee refused to accept the documents. Consequently, an amount of Rs. 11,72,506/- was debited to account of M/s Ess Vee Exports.

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However, S.K. Chawla (A.1) further allowed overdrawing to M/s Ess Vee Exports, without intimating about it to the controlling authority against mandate of circular dated 09.09.2006. Thus, the outstanding account of M/s Ess Vee Exports as on 31.01.2008 was of Rs.51,53,272.22/- 1.3.1 After hearing the parties, the ld.predecessor of the court framed charge against all accused persons for offences punishable u/s 120B r/w Section 419/420/465/468/471 IPC r/w Section 13 (2) r/w 13 (1)(d) of Prevention of Corruption Act, 1988. Besides, substantive charge u/s 420 IPC and 13 (2) r/w 13 (1)(d) P.C.Act against S.K.Chawla (A.1); u/s 420/471 r/w section 465 IPC against V.K.Syal (A.2); u/s 419/420/468/471 r/w 465 against Raj Bal Tyagi (A.3); u/s 420 IPC against Dheeraj Prasad (A.4); u/s 420/471 r/w 465 IPC against Rakesh Kumar Vij (A.5) and u/s 420 IPC against Bhupinder Pal Singh Bakshi (A.6) were also framed to which they pleaded not guilty and claimed trial.

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2.1 The prosecution examined 24 witnesses to prove the charges. It would be beneficial to summarize

testimony of witnesses considering the magnitude of oral and documentary evidence.

2.1.1 PW.1 Smt.Kamla Kumari is daughter of Late Gurdayal Prasad. She has deposed that the house total admeasuring 200 sq.yards, in which she is residing, i.e. 9/5, East Patel Nagar, Delhi, was allotted to her father as he was refugee from Pakistan migrated at the time of partition. She deposed that her father expired in 1990 and subsequently half of the house is in her name and half is in the

name of her late brother Subodh Kumar who expired in year 2000 and the property is accordingly mutated in the name of owners. She stated that her father had never stood guarantor for any one. She deposed that in 2005-2006 she received thanks giving CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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letter from SBBJ for opening an account in the name of Gurdayal Prasad whereupon she visited the bank and informed the bank officials about death of Gurdayal Prasad in 1990 itself and given them an application alongwith copy of death certificate of her father. Thereupon the bank officials told her that they would look into the matter. 2.1.2 She was shown guarantee deed (D.20) Ex.PW.1/A whereupon she said that the photograph and signatures on this document are not of her father. The seizure memo vide which some documents were seized from her by IO has been proved by her as Ex.PW.1/B (D.85). She proved photograph of her father as Ex.PW.1/C (D.85), allotment letter of aforesaid property as Ex.PW.1/D (D.87) and photocopy of death certificate of her father as Ex.PW.1/E (D.88). By producing originals of the documents she proved a copy of conveyance deed as Ex.PW.1/G (D.91), transfer letter in the name of Gurdayal Prasad as Ex.PW.1/H (D.92) and CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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another letter issued to him as Ex.PW.1/J (D.93). 2.1.3 She was cross examined only on behalf of accused Raj Bal Tyagi (A.3) and during her cross examination she deposed that no official of bank ever visited her house and as such she had no occasion to show the documents to bank official. She stated that she is keeping original documents in the bank locker; that she had not given the copies of these documents to bank officials and that no valuer or panel Advocate had ever visited the property for verification.

2.1.4 Thus, the testimony of PW.1 is unchallenged and hence the documents exhibited and other facts deposed by her stand proved.

2.2.1

PW.2 Smt.Meenu Prasad is daughter-in-law

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of Gurdayal Prasad (wife of late Subodh Kumar s/o Gurdayal Prasad) who has also deposed on the same lines as PW.1. Besides, she deposed that after death of Gurdayal Prasad, this property was divided into two equal shares between Smt.Kamla Kumari (PW.1) and her husband Sh.Subodh Kumar, who expired in year 2000 and after his death half of the house is mutated in the name of

Smt.Kamla Kumari and the remaining half in her name and name her sons Dheeraj (A.4) and Gaurav.

2.2.2 During her cross examination by Ld. Counsel for accused No.2 she stated that when they had received a thank giving letter from the bank, she alongwith Smt.Kamla Kumari had gone to the bank where she met the bank officials and told them that since Gurdoyal Prasad had already expired, hence he could not open any account. She clarified that name of the said bank official to whom she had met, was Sh.Yograj Bhatia who had also given his visiting CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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card to her. She stated that two months thereafter she rang to Sh.Yograj Bhatia, who told her that since it was an internal matter of the bank so she need not bother herself. Thus, her testimony remained unscathed, rather stood more clarified during her cross examination.

2.3.1 PW.3 Sh.M.M.Lal is the Chief Vigilance Officer (C.V.O.) of the Bank who made complaint to CBI on the basis of which the instant FIR was registered by CBI. He deposed that while scrutinizing the different accounts in routine on computer, his staff came to notice that one account of Nangal Raya branch, where overdraft limit to the tune of Rs.11 lacs was sanctioned, the account was overdrawn to the extent of Rs.1 crore. He immediately contacted accused S.K.Chawla over phone and enquired from him if the computer was showing the correct statement, which he confirmed. Then he contacted Mr.K.L.Kalra, CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Deputy General Manager (Dy.G.M.) of Delhi Zone and requested him to send audit team to the said branch immediately on Sunday. He was informed by Mr.K.C.Kalra that the information was true and that some fraud has been committed in the said branch. He directed Sh.P.S.Yadav, Chief Manager (Vigilance) to visit the said branch, investigate the account and report to the bank. Sh.P.S.Yadav gave investigation report dated 10.05.06 which has been proved as Ex.PW.3/A (D.14). After examining the report he decided to refer the matter of CBI for further investigation vide complaint dtd. 30.11.06 which is Ex.PW.3/B (D.1). 2.3.2 During his cross examination he clarified that from November, 2005 the reports about review of major accounts and the accounts positions were made available on line but prior to November, 2005 the reports and accounts positions were sent to controller manually daily/monthly/quarterly/half yearly and yearly. He clarified CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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that the Assistant General Manager (AGM) posted at regional office of the bank is called controller. During his cross examination by Ld. Counsel for accused Raj Bal Tyagi (A.3) he said that he had not personally checked the original documents of property mortgaged or reports given by empaneled advocate & valuer in this case. Thus, it has been seen that accused persons did not dispute the

factum and the contents of investigation report and complaint Ex.PW.1/A and Ex.PW.1/B, respectively.

2.4.1 PW.4 Sh.Sushil Kumar Goel was the Assistant General Manager of the Regional office at the relevant time and hence the controller of the branches including Nangal Raya branch. He deposed that when he joined as AGM on 05.12.05 accused S.K.Chawla (A.1) was Chief Manager of Nangal Raya branch and that on 13.01.06 he alongwith Sh.Vijay Bhargav, Chief Manager, had CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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inspected Nangal Raya branch. He has deposed that since it was first inspection of branch by him so he carried out inspection of the internal books of the bank and recorded his observation in a prescribed register kept in branch for this purpose. He had found that Transit Voucher Book and Regularity Permitted and Reported Register were not being maintained in the branch. He asked for Limit Excess Report which is a computer generated report but it was not readily available. He talked to accused S.K.Chawla about the lapses. As the report was not readily available so he made entry in the observation register. He deposed that accused S.K.Chawla assured him that he will fulfill the above requirement and will submit a detailed report. 2.4.2 He has then deposed that Limit Excess Report was received by him from accused S.K.Chawla in February, 2006 and after going through the same he found that in many accounts the outstanding amounts were more CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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than the limits and further the drawings were also in excess of the prescribed limit. He deposed that in the meantime he received a telephone call from vigilance cell of of head office about some accounts in Nangal Raya branch and hence he deputed Sh.J.L.Jain, Chief Manager (Advances) to look into the account of the said branch, who submitted a report which was then submitted by him to the head office. He deposed that Sh.P.S.Yadav was another investigator from vigilance cell who also submitted his report to the head office. 2.4.3 He proved the application cum appraisal form in respect of account of M/s Devis Cornet Fashions Pvt. Ltd. whereby accused S.K.Chawla had sanctioned a cash credit limit (hypothecation) of book debts stocks of Rs.40 lacs and bank guarantee (inland) Rs.10 lacs on 16.09.05 as Ex.PW.4/A (D.56) and the letter issued by accused S.K.Chawla on 16.09.05 vide which sanction was conveyed to M/s Devis Cornet Fashions Pvt. Ltd. as Ex.PW.4/A.1. In CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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the sanction letter itself it was reported that the limit has been sanctioned against the equitable mortgage. The sanction letter was acknowledged by the borrowers which is Ex.PW. 4/A.1.

2.4.4 He deposed that Chief Manager has discretion to provide clean limit (i.e. without security) for an amount upto Rs.3 lacs and has also the discretion to purchase the clean cheques upto the amount

of Rs. 6 Lacs. He proved the statement of account as Ex.PW.4/A.2 and stated that as per the same the limit sanction for aforesaid company was for Rs.40 lacs but on 26.02.03 there was a debit balance of Rs.76 lacs approximately. 2.4.5 During cross examination by Ld. Counsel for accused No.2 V.K.Syal, he stated that on 31.03.06 the borrower has deposited an amount of Rs.40,000/□ and there was an entry on the said date of Rs.35,78,400/□but in fact CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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this entry was in respect of purchase of a bill as per the instructions of the borrower but when later on it was found that the said transaction was not genuine, the amount of Rs. 35,78,400/□was debited in the account of the borrower on 29.04.06. He also proved the letter of State Bank of Patiala, Coimbatore addressed to branch Manager, Nangal Raya Branch dated 24.04.06 and stated that on the basis of bill number given in the said letter he is able to say that the letter is connected with the entry pertaining to purchase of bill of Rs.35,78,400/□ The letter was proved by him as Ex.PW. 4/DA.

2.4.6 When a further query was made from him by Ld. Defence counsel that how this letter Ex.PW.4/DA pertains to the transaction of Rs.35,78,400/□debited in the account of the borrower on 29.04.06, he replied that he had brought the letter of BO Nangal Raya which is bills purchase letter, vide which the party's bank was requested to collect the money CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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and remit the same to the bank. A copy of the same has been proved as Ex.PW.4/DB. (Both Ex.PW.4/DA & 4/DB are available in file of additional documents containing D.45 & D.

46).

2.5.1 PW.5 Sh.Guljari Lal Kanwar was Deputy Manager of SBBJ, Nangal Raya branch who has handed over some documents to IO of case and seizure memo in respect of those documents is Ex.PW.5/A. He has stated that the documents which were handed over by him are the account opening form of A/c No.14343 in the name of Gurdayal Prasad, the photo copies of voter ID card and PAN card of Gurdayal Prasad, original deed of guarantee and four vouchers of Rs. 5 lacs, Rs. 4 lacs, Rs.2,96,305/□and Rs.2 lacs. The account opening form has been proved as Ex.PW. 5/B (D.35) vide which account No.14343 has been opened in the name of Gurdayal Prasad (it appears that the Exhibit CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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number has not been mentioned in the statement due to inadvertence while recording the examination in chief of PW. 5 but in cross examination the same is mentioned). The witness has stated that the guarantee was given by Sh.Bhupinder Pal Singh Bakshi as Director of Pavi Overseas

Pvt. Ltd. and the account opening of Gurdayal Prasad has been introduced by accused Virender Kumar Syal. 2.5.2 During his cross examination by Ld. Counsel for accused Virender Kumar Syal, he has deposed that "I have seen the account opening form dated 21.06.05 and the same is Ex.PW.5/B. At that time KYC norms were applicable. At the time of opening the account we used to see the original documents concerning the address, identity etc. and thereafter we used to accept its certified photocopies." He also volunteered that the said norms were essentially to be followed. He also stated that account of Gurdayal Prasad was opened by Mr.Yograj Bhatia, Manager CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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(Personnel).

2.5.3 During his cross examination by ld.counsel for accused Bhupinder Pal Singh Bakshi he deposed that he does not know whether the amount of loan sanctioned to Gurdayal Prasad was repaid in the present account prior to registration of FIR. Thus, it may be seen that the introduction of account opening in the name of Gurdayal Prasad has not been denied by accused V.K.Syal and standing guarantee by accused Bhupinder Pal Singh Bakshi to the personal loan sanctioned to Gurdayal Prasad has also not been disputed. The deed of guarantee has been marked as Ex.PW.14/A.4. The copy of election ID card in the name of Gurdayal Prasad has been proved as Ex.PW.14/DA(D.35) and PAN Card as Ex.PW.14/DB (D.35). It is also clarified by PW. G.L.Kanwar that for opening of the account the bank is required to verify the original documents concerning the address and identity and thereafter used to accept the CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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certified photocopies but in this case the documents of identity of the person in whose name the account was opened has not been certified and not even got self attested from the person opening the account.

2.6 PW.6 Sh.Rajesh Kumar Khandelwal has been examined to the effect that he had not let out any property at Vishal Towers, District Centre, Janak Puri as he was not owner of any property at Vishal Towers. He has, however, deposed that he owned the residential floor at A-3/314, IIInd floor, Paschim Vihar, New Delhi which was let out for residential use to accused V.K.Syal from year 2004 to February, 2006. He also identified accused V.K.Syal to whom he had let out his Paschim Vihar property for residential use. After seeing the photocopy of Rent Agreement mark PW.6/1 (D.68) which is in respect of letting out of property bearing No.A.3/314, Vishal Towers, District CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Centre Janak Puri, New Delhi to Rakesh Kumar Vij showing that he is the owner of the said property, although his name, father's name and address is correctly mentioned therein but he did not sign it. He has also deposed that he do not know any person in the name of Rakesh Kumar Vij

(A-5). His testimony remained unscathed during his cross examination. 2.7.1 PW.7 Sh.Sanjay Jain is the Chartered Accountant since 1993 and running a firm in the name of Sanjay Ramesh Jain & Co. at 103, Friends Complex, E-7/A, Jawahar Park, Laxmi Nagar, Delhi. He deposed that he purchased the office premises in May, 2003 and besides him his wife is also working as Chartered Accountant in the name and style of M/s Remmy Jain & Co. He clarified that besides these two firms there is no other firm of Chartered Accountants which worked in the said premises. He was shown the photo copy of audit report (D.40) running into 32 CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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sheets dated 21.09.03 and after seeing the same he testified that same has not been prepared by him and it neither bears his signatures nor his mobile number or firm's name is given. He deposed that the audit report bears the name of M/s Mittal and Goyal Associates and the said firm never existed at the aforesaid address. He also deposed that he never had any partner in the name of S.K.Goyal. The said audit report has been marked as Mark PW.7/1.

2.7.2 During his cross examination by accused V.K.Syal he denied suggestion that the office was earlier sub let by M/s Weltroc to some other firm of Chartered Accountant. He also denied the suggestion that the office was sub let to some other firms of Chartered Accountant prior to his occupying the office premises. Testimony of this witness has also remained unscathed during cross examination.

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2.8.1

PW.8 Sh.P.S.Yadav was posted as Manager

(Vigilance) SBBJ. He deposed that he received information about Nangal Raya branch through computer system as the working of the bank is made available on the internet. On looking at the work of Nangal Raya branch he found abnormally high drawings over and above the sanctioned limit which was an indication that something was wrong in the said branch while submitting confirmation. The Nangal Raya branch is controlled by Zonal Office, Delhi and they contacted the zonal office besides branch office. Zonal office was directed to obtain the required information. Thereupon zonal office had deputed some other officials to report the factual position of various accounts and the small report was received.

2.8.2 He deposed that since the report was not so clear, therefore, vigilance department took up the CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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investigation. He visited the Nangal Raya branch alongwith Chief Vigilance Officer and G.M. (Vigilance) and during investigation it transpired that heavy overdrawings over and above the sanctioned limit and beyond the discretionary powers of the branch manager were being given and

while submitting the advance proposals to the higher authorities they found that wrong confirmation was also given by the branch. He has also deposed that during investigation it transpired that some local and outstation cheques were purchased without any sanctioned limit and without discretionary powers and the transactions were not reported to the higher authorities. He also proved his report dated 0.05.06 as Ex.PW.3/A. 2.8.3 During his cross examination Sh.Yadav clarified difference between illegality and irregularity stating that irregularity is simple violation of system and procedure without having any malafide but if action is malafide or done CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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with concealment of facts it becomes illegal. He also stated that his report Ex.PW.3/A shows malafide action on the part on the bank officials. He identified the remarks "a clear case of malafide" at page no.10 of the report made in the handwriting of Sh.GM (Vigilance). He said that his report Ex.PW.3/A refers to the facts and not to any opinion regarding malafide. He also confirmed that whatever he had written in the report Ex.PW.3/A was on the basis of documents available in the branch. During cross examination by Ld. Counsel for accused S.K.Chawla (A.1) he admitted "it is correct that any discrepancy or irregularity , if noted in any of the account, the Branch Manager is supposed to report controller and if serious lapse is noticed by the controller he then would report to the DGM of the zone."

2.9.1

PW.9 Sh.Hari Shankar Nial was working at

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SBBJ, Connaught Circus branch as Assistant Manager and used to do duty of Desk Officer handling export department. In export department he used to deal with export documents. He used to deal with three types of transactions i.e. the LC, the purchasing facility and collection. He deposed that whenever any foreign bill was received from a customer he used to send the same to the buyers' bank in the foreign country for realization of the said bill and after receipt of the amount from foreign bank of buyer he used to convert the foreign currency into Indian rupee and used to credit in the customer's account. When money was not received from the foreign bank he used to give reminder to the foreign bank and used to inform the customers by telephone. He proved his letter Ex.PW.9/A (D.39 page 116) which was signed by him on behalf of AGM. Since the foreign bill No.C□ 9931/05 was not realized so he sent this letter to the concerned branch i.e. SBBJ, Nangal Raya branch and the customer of this bill was M/s Davis Cornet International Ltd. He also CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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proved another letter as Ex.PW.9/B as having been signed by him (D.39, page 115) which is a reminder to the concerned branch.

2.9.2 He deposed that on 23.11.05 he again wrote a letter to SBBJ, Nangal Raya branch, New Delhi returning the documents submitted by them in original . The letter has been proved as Ex.PW.9/C. He proved that on 03.11.05 he wrote a letter (D.39 page 104) which bears his signatures at point A reminding "drawee has not paid bills despite repeated reminders". The said letter is proved as Ex.PW.9/D. He deposed that when bill was sent for collection, the funds of the bank are not involved and thus funds are involved only when the bill is sent for negotiation or purchase. He said that these two bills were sent for collection. He also clarified that complete discharge mentioned in his letters means that his branch is not retaining any document but is sending the entire documents to the concerned branch. He also clarified CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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that his branch was acting as an agent. His statement was not challenged during cross examination and the documents were also not denied, thus the same stand proved. 2.10 PW.10 Sh.Devendra Kumar from Income Tax Department has proved the letter dated 25/27.09.07 as Ex.PW.10/A vide which the information in respect of verification of PAN No.AGTPK 9514G and AFCPS 8084F had been forwarded to CBI. This evidence does not appear to be relevant for this case.

2.11.1 PW.11 Sh.Suraj Mal Jain working in Archives Deptt., Delhi Government has been examined to prove the sale deed of property No.N□54 , Greater Kailash Part□, New Delhi. He has deposed that all transfer records of the properties which are more than 25 years old are transferred to the Archives Department by all the Govt.

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departments. He has proved the office copy of the Sale

Deed of property No. E□84, Greater Kailash Part I, New Delhi as Ex.PW.11/C. He was shown the Sale Deed dated 22.04.64 in connection with property No.154, Block N measuring 300 sq.yards in the residential colony known as Greater Kailash situated at Village Zannanandpur executed by DLF Housing and Construction Pvt. Ltd. in favour of Sh.Surender Nath, marked as Ex.PW.11/D. 2.11.2 After comparison of the original sale deed of the same property executed between DLF Housing & Construction Pvt. Ltd. and Surender Nath marked as Ex.PW. 11/A he pointed out various differences between both the sale deeds to elucidate that the Sale Deed i.e. Ex.PW.11/D, which was deposited with the bank while creating equitable mortgage of the property, was not the genuine sale deed. It is worthwhile to note that this witness has not been cross examined by any of the accused persons. Thus it is not CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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disputed that the Sale Deed Ex.PW.11/D {which was submitted to the bank for grant of mortgage to secure loan granted to Rakesh Kumar Vij (A□5)} is not genuine. 2.12.1 PW.12 Sh.Ravi Shanker Mishra was working as Manager (International Banking) in Connaught Circus branch of the bank. He deposed that the work of Foreign Exchange was used to be sent to his branch by the branches which were not authorized to deal with the Foreign Exchange. He deposed that the respective branches used to send the work to his branch with covering letter for opening of LCs/Collection of Export Bills and purchase/discounting of export bills.

2.12.2 He proved a letter dated 18.03.05 issued by Nangal Raya branch addressed to AGM, SBBJ, New Delhi for negotiation of documents pertaining to LC No.804438 and CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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804437 in account of M/s Davis Cornet International as Ex.PW.12/A. He deposed that after receiving the letter (wrongly typed as Ex.PW.3/A instead of Ex.PW.12/A) he noticed certain discrepancies which were advised to the branch. He proved LC advising letter dated 11.03.05 for LC No.804438 and LC advising letter dated 11.03.05 for LC No. 804437 issued by Bank of Baroda, Hongkong Ltd. in favour of M/s Davis Cornet International Ltd. as Ex.PW.12/B & 12/C respectively.

2.12.3 He also proved the letter dated 13.05.05 (D.

43) as Ex.PW.12/D which was issued to the Chief Manager, SBBJ, Nangal Raya branch for the reason that inspite of representing export bills for payment as desired by the said branch, the payment of the bills was not forthcoming and the branch was advised to contact the customer for early payment of the bill. He said that it was also informed to the branch that if the payment of the bill is not received by CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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17.05.05, the bills will be crystallized as per the Foreign Exchange Dealers Association of India Rules. 2.12.4 He deposed that on 29.06.05 he again wrote a letter to Nangal Raya branch that as per RBI guidelines, bills were crystallized and a sum of Rs.19,42,698/□and Rs. 19,42,698/□were debited in IBIT (Inter Bank Item in Transit) account on 20.02.05 which letter was signed by him and proved as Ex.PW.12/E. He further deposed that when the above said bills remained unpaid then Nangal Raya branch was informed for fresh instructions for realization of export proceeds as prescribed under the RBI Master Circular on export of Goods and Services dated 01.07.04 through letter dated 05.07.05 which has been proved as Ex.PW.12/F. 2.12.5 During his cross examination by Ld. Counsel for accused he deposed that he could not recollect as to what was the discrepancy in the documents presented under CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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the LC. He deposed that he did not sent any letter for discrepancy to the customer of the bank as his branch used to deal with branches only. He deposed that as the payment was not received from the LC opening bank at Hongkong , so the documents were sent to Standard Chartered Bank, Dubai, yet the payment was not received and so the documents/LC was sent to Nangal Raya branch for taking action at their end.

2.12.6 He clarified that in this case the applicant was M/s D & K (Asia) Ltd., Hongkong and the beneficiary was Davis Cornet International Ltd. He clarified that since the discrepancy was noticed by him and on his intimation to the Nangal Raya branch, the said branch took the responsibilities and hence he sent the documents as it is to Bank of Baroda, Hongkong but as the discrepancy was not accepted by the Bank of Baroda, so the documents were returned to him by Bank of Baroda, Hongkong.

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2.12.7

During his cross examination by Ld. Counsel

for accused No.1 he stated that the documents accompanying LC i.e. draft, invoice, Bill of lading were not as per the LC and that is why he had reported the discrepancy to the Nangal Raya branch. He admitted to the suggestion that discrepancies were minor as per the banking norms and as per Ex.PW.12/DB there were four discrepancies in the LC. He denied the suggestion that there was only typographical error and not discrepancy. He also deposed that description of goods was incomplete as per Ex.PW.12/DA (wrongly typed as 22/DA) and that he had received instructions from Nangal Raya branch to represent documents to issuing bank. He said that after representation, the documents were not made by LC issuing bank and the documents were returned and hence the Nangal Raya branch was informed for further instructions. He deposed that Nangal Raya branch had instructed to them to present the documents at Standard CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Chartered Bank at Dubai. He admitted that in case of first class bank the Manager can negotiate the letter of credit over and above the sanctioned limit considering the reputation of the party.

2.13 PW.13 Sh.Pramod Kumar has proved Electoral Roll for the year 2002 for Patel Nagar Assembly Constituency No.66 vide letter dated 05.05.08 as Ex.PW.13/A which do not show name of Sh.Gurdayal Prasad son of Makhan Lal, 9□E/5, East Patel Nagar, New Delhi. During his cross examination by Ld. Counsel for Dheeraj Prasad he deposed that names of Meenu Prasad, Kamla Kumari, Dheeraj Prasad and Gaurav Prasad are shown in the electoral roll as residents of 9/5, East Patel Nagar, New Delhi. He stated that initially the physical verification is done by staff prior to the making of electoral roll and electoral roll Ex.PW.13/A is based on the verification done in the year

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2002.

2.14.1 PW.14 Sh.Yograj Bhatia was posted as Manager (Personnel) in Nangal Raya branch of the bank. He proved application for loan against equitable mortgage cum sanction order dated 21.06.05 as Ex.PW.14/A showing that he had sanctioned loan of Rs.15 lacs to Sh.Gurdayal Prasad against the equitable mortgage of property No.9/5, East Patel Nagar, New Delhi, the value of which was Rs.102 lacs. 2.14.2 He specifically deposed that accused S.K.Chawla was Chief Manager of the branch who had called him in his chamber and directed to sanction personal loan to Sh.Gurdayal Prasad. He also deposed that Gurdayal Prasad had mortgaged immovable property in respect of hypothecation limit of Rs.35 lacs which was sanctioned to M/s Davis Cornet International and proved the reporting CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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sheet for personal segment advances as Ex.PW.14/A.1, vide which he had reported the sanction of mortgage loan of Gurdayal Prasad to Chief Manager which was noted by Chief Manager accused S.K.Chawla.

2.14.3 He deposed that he had visited the residence of Gurdayal Prasad at 9□E/5, East Patel Nagar, New Delhi and prepared a visit report in his own handwriting which is Ex.PW.14/A.2. He proved account opening form in respect of account No.14343 (D.35) which was opened by Gurdayal Prasad and introduced by accused Virender Kumar Syal, who was having his account No.52186 in the name of M/s Davis Cornet International, which is Ex.PW.5/B. He deposed that he had allowed opening of the account by putting his signatures thereon at points A and he also identified signatures of accused Virender Kumar Syal who had signed before him. He identified signatures of Gurdayal Prasad at point C and his photograph at point D. CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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2.14.4 He also proved photo copies of Election I card and PAN Card as mark A and B (Ex.PW.14/DA & DB) (D□35). He proved Deed of Guarantee dated 21.06.05 (D.36) signed by accused Bhupinder Singh Bakshi as Ex.PW.14/A.4 and stamp paper annexed with the same as Ex.PW.14/A.5. 2.14.5 During his cross examination by Ld. Counsel for accused Rajbal Tyagi he admitted that there is no signature of issuing authority on the copy of election I card Mark A=Ex.PW.14/DA. He deposed that he had not verified the PAN Card, the copy of which was provided to him as Ex.PW.14/DB. He testified that he had gone to the house of accused Gurdayal Prasad with accused Virender Syal on the instructions of accused S.K.Chawla as he was new to Delhi and accused Virender Kumar Syal had taken him to the house of Gurdayal Prasad where accused Dheeraj Prasad had met and told him that his father Gurdayal Prasad, had CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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gone to market. He deposed that he had gone inside one of the rooms and was served with a glass of water and he stayed in the house for 57 minutes and come out from the house. He deposed that he had not asked for any identity proof from accused Dheeraj Prasad as accused V.K.Syal was present with him who had introduced him with accused Dheeraj as son of Gurdayal Prasad. He deposed that property No.9E/5, East Patel Nagar, New Delhi was already mortgaged and its papers were already with the bank so he did not enter into further queries and he had primarily gone there to check the premises.

2.14.6 He further testified in his cross examination that he had sent a letter of thanks to Gurdayal Prasad at the aforesaid premises and about 710 days thereafter two ladies, who were Bua and mother of accused Dheeraj, came there and told him that Gurdayal Prasad had already expired, he asked them to write the same and give it to him alongwith CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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death certificate of Gurdayal Prasad, which was given to him on 27.06.05. He deposed that on coming to know about the fraud he immediately rang to his Divisional Officer who he told him to contact Chief manager accused S.K.Chawla and since accused S.K.Chawla was on leave on the said date, he told the aforesaid facts to accused S.K.Chawla on his return. He deposed that accused S.K.Chawla even scolded him as to why he had informed the matter to the Divisional office and that within 15 days the said account was liquidated and payment received in the said account. He also made a report to the Chief Manager advising him that the property appears to be fake and some other security may be taken. 2.14.7 He deposed that money was deposited in the said account i.e. Rs.5 lacs on 30.06.05, Rs.4 lacs on 01.07.05, Rs.2,96,305/ on 08.07.05 and Rs. 2 lacs on 08.07.05, he did not know who had deposited the cash. The deposit slips were proved as Ex.PW.14/DC, DD, DE & DF.

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He denied the suggestion that V.K.Syal had not accompanied him to house No.9E/5, East Patel Nagar, New Delhi and that accused Dheeraj had not met him there.

2.14.8 He has shown his ignorance as to the fact that who had filled up the account opening form in the name of Gurdayal Prasad Ex.PW.5/B. However, he recognized his own writing at point X to X on Ex.PW.5/B (D.35). It is worthwhile to note that from point X to X name of introducer Sh.Virender Kumar Syal, proprietor of M/s Davis Cornet International Ltd. is written. He also stated that he had filled up the column of nominee at the instance of customer where the name of nominee is mentioned as Dheeraj Kumar 9E/5, East Patel Nagar, New Delhi and his relationship with account holder as 'son' and age as 35 years. He denied suggestion that Rajbal Tyagi had not appeared before him as Gurdayal Prasad and that he filled up the form in collusion with bank officials.

2.14.9

He stated that the photograph of accused

Rajbal Tyagi on account opening form, do not bear his signature and also do not bear stamp of the bank. He also admitted that the photocopies of election I Cad and PAN Card Ex.PW.14/DA & DB are not even self attested. He stated that as the bank had already granted loan on the said property so he assumed that the property must have been got verified by the bank authorities while granting the earlier loan and hence he did not get it verified from L&DO. 2.14.10 When he was cross examined by Ld. Counsel for accused S.K.Chawla, he identified accused Rajbal Tyagi as Gurdayal Prasad who had appeared before him as Gurdayal Prasad. He admitted that the department had not promoted him for one year as a penalty for not observing the rules on his lapses in the grant of personal loan. During cross examination by Ld. Counsel for accused CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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V.K.Syal he stated that Chief Manager had also introduced accused V.K.Syal to him. He admitted that he had not mentioned in his report Ex.PW.14/A.2 that accused V.K.Syal had accompanied him to the house of Gurdayal Prasad. He denied the suggestion that accused V.K.Syal had never accompanied him to the spot or that he had prepared the report while sitting in the bank.

2.14.11 During his cross examination by Ld. Counsel for B.P.S.Bakshi he admitted that account of M/s Davis Cornet Fashion Pvt. Ltd. was regularized on 31.03.06. He deposed that he was enquired by his superiors about the loan transactions and formalities but no enquiry as such was conducted against him but his promotion was stalled for one year. He admitted that aforesaid property was mortgaged in an earlier transaction but he had neither checked the said papers nor he had any personal knowledge about the same. He testified that he was informed by the Chief Manager that CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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the property is mortgaged in some other loan and that as per his report, Ex.PW.14/A.1, the property of Gurdayal Prasad was mortgaged in an earlier loan granted to M/s Davis Cornet International. He also admitted that the column of the value of the property mentioned in document Ex.PW.14/A.1 is left blank but it is mentioned about the search and valuation reports made on 28.12.04 and 31.12.04.

2.14.12 After seeing the document Ex.PW.14/A.1 (D.

46) which is a report made by him, he said that he has mentioned in the report that Gurdayal Prasad was in possession of the aforesaid property but volunteered that he had so stated as the property was already mortgaged. He deposed that he was satisfied personally that the loan be given to

Gurdayal Prasad on seeing the documents. He admitted that account of Gurdayal Prasad has been liquidated but denied the suggestion that accused B.P.S.Bakshi was shown as guarantor at the asking of bank CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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officials since he had taken a loan from the bank. 2.15.1 PW.15 Sh.Govind Krishan Nirman was posted as Deputy Manager (Accounts) at SBBJ, Nangal Raya branch of the bank from 2004 to 2006. He deposed that accused S.K.Chawla was Chief Manager, Yograj Bhatia was Manager (P), Prem Raj Mawar was Deputy Manager and A.K.Aggarwal as Manager (P) prior to Sh.Yograj Bhatia. He proved application cum appraisal form in respect of M/s Davis Cornet International as Ex.PW.15/A (D.17) identifying thereon the signature of accused S.K.Chawla and Prem Raj Mawar, accused V.K.Syal. He also proved application cum appraisal form (D.56) already Ex.PW.4/A which is filled up in the handwriting of accused S.K.Chawla.

2.15.2 He identified handwriting and signatures of S.K.Chawla (A□) therein. He proved a letter dated 16.09.05 CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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in the handwriting and under signatures of accused S.K.Chawla as Ex.PW.4/A.1; Deed of guarantee for overall limit (D.20) already Ex.PW.1/A which is filled in the handwriting of Sh.Mawar, Deputy Manager; that the stamp paper of Rs.50/□each enclosed with the said deed of guarantee for overall limit filled up in the handwriting of accused S.K.Chawla and identified his handwriting at point X.2 on Ex.PW.1/A. He proved the Bills Agreement dated 12.01.05 by identifying signatures of accused V.K.Syal and also deposed that same has been filled up in the handwriting of accused S.K.Chawla which bill agreement is Ex.PW.15/A.1. 2.15.3 During his cross examination by Ld. Counsel for accused S.K.Chawla he admitted that Nangal Raya branch was core banking branch connected to the regional office and zonal office, New Delhi who are controlling authorities and can check all the lapses on the part of the branch.

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2.15.4

He deposed that when bank initiated action

against him (PW□5), he requested for giving a copy of the visit register which was supplied to him. He admitted that he could not find any overdrawing in the visit register dated 13.01.06 (D.12) which was filled up by S.K.Goel,AGM. He said that the endorsement at page no.33 was made by Sh.S.K.Goel which was Ex.PW.15/DA. He was shown original register (D.12), Ex.PW.15/DA at page 33 and after seeing the same he said that the last line from X to X was added at a later stage in different ink. He then said however, the copy which was supplied to me during my enquiry wherein

this line from X to X was included in it. He admitted that when he called for the copy of visit register during his (PW□15) disciplinary proceedings, the line from X to X was there in the register, Ex.PW.15/DA when it was shown to him during his disciplinary proceedings. In this respect, it is worthwhile to mention that Sh.S. K. Goel was himself CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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examined as PW□4 who deposed that the Limit Excess Report was not available so he made an entry in observation register and accused/S K Chawla (A□) had assured him to fulfill the requirement and will submit a detailed report, which was received in February, 2006. Despite opportunity, accused/S K Chawla did not cross□examine PW□4 to agitate that the entry in the register at point X to X was not made on date of visit i.e. 13.01.06. Thus, he could not agitate about the same from another witness who is neither writer nor signatory to such an entry.

2.16.1 PW.16 Ms.Anuradha has deposed that originally house No.N□154, Greater Kailash Part□, New Delhi belonged to her father□in□law namely Sh.Surinder Nath Jolly who expired in 1972 and thereafter the property was transferred in the name of her mother□in□law Smt.Shanta Jolly who has expired in the year 2006. She has deposed CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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that Smt.Shanta Jolly had executed a Will in respect of said property in favour her (Ms.Anuradha's) two children on the basis of which the property was mutated in the names of Ms.Anchal & Master Ronak Jolly and the property has been transferred in their names.

2.16.2 When the deed of Guarantee Ex.PW.16/1 was shown to her she deposed that the photograph of the lady pasted on the deed of guarantee is not of her mother□in□law namely Smt.Shanta Jolly. She stated that the photo copy of the Sale Deed of the said property in the name of Surinder Nath mark PW.16/2 is not the actual photo copy of the original Sale Deed and in fact a forged document. She had stated that the original Sale Deed was with her. She was, therefore, directed by the court to bring the same in the court on next date.

2.16.3 On next date she could not produce the
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original Sale Deed in respect of plot No.154, Block No.N, measuring 300 sq.yards, G.K. Situated at village Zamroodpur, New Delhi and stated that now she is not in possession of the Sale Deed in question as the property had already been sold to one Raj Kumar Bhutani, r/o D□70/A, East of Kailash, New Delhi in December, 2008 and the original sale deed was delivered to the purchaser when property was sold to him. She also deposed that her mother in law Shanta Jolly had never

delivered original title deed to any one except to her. She has stated that she was carrying a photo copy of the title deed which was marked as Mark PW.16/3 (file additional documents containing D.45 & D.46). 2.16.4 During her cross examination by Ld. Counsel for accused No.5 Rakesh Kumar Vij, she deposed that name of her mother in law was Smt.Shanta Jolly and she volunteered that earlier her mother-in-law was known as Shanti Devi and title Jolly was suffixed when she married to CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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her (Ms.Anuradha's) father in law whose title was Jolly. She deposed that her father in law i.e. husband of Shanta Devi Jolly expired in 1972. She admitted the suggestion that both the documents mark PW.16/2 & 16/3 are different. She denied a suggestion that both the documents apparently show the different property or that her mother-in-law had mortgaged the property bearing No.N□ 154, G.K.Part□, New Delhi with the bank for securing some loan. She denied a suggestion that for securing the rights of her children she was falsely deposing regarding ownership of property No.N□ 154, G.K.I, New Delhi. She was not cross examined on behalf of other accused persons.

2.17 PW.17 Sh.Prem Raj Mawar has deposed that he was posted as Deputy Manager with Nangal Raya branch of SBBJ from July, 2004 to May, 2005. He proved account opening form in respect of Current A/c No. CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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0160052186 dated 12.01.05 opened with Bank by accused V.K.Sayal as Ex.PW.17/A (D.22). He also proved loan documents executed by accused V.K.Sayal s Ex.PW.17/A.1 (D.21). He was cross examined by Ld. Counsel for accused No.2 V.K.Sayal and during his cross examination he admitted that the entire paper work of cash credit limit of M/s Davis Cornet International was done and processed by him and in preparing of such papers he had not found any illegality. He was not cross examined on behalf of other accused persons. 2.18.1 PW.18 Sh.Raman Chaudhary has deposed that he remained posted as Chief Manager in SBBJ , Nangal Raya branch w.e.f.04.05.06 to April, 2008 and prior to him accused S.K.Chawla was working as Chief Manager in the branch till February, 2006 and Sh.Yograj Bhatia also remained posted as Manager in between February, 2006 to May 2006. He deposed that as per Bank's book of CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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instructions and circular instructions issued from time to time it was mandatory that pre sanction inspection of the unit as well as the collateral security to be mortgaged be done. 2.18.2 He proved the seizure memo dated 07.01.08 Ex.PW.18/A (D.23) vide which certain documents were seized from him by IO. The loan application dated 10.12.04 made by accused V.K.Sayal on behalf of M/s Davis Cornet International for grant of CC Limit of Rs.35 lacs and LC limit of Rs.20 lacs addressed to Chief Manager, SBBJ, Nangal Raya branch, New Delhi has been proved by him as Ex.PW. 18/A.1 (D.18). Application□um□appraisal form has been proved as Ex.PW.15/A (D.17) vide which Virender Sayal □Proprietor of M/s Davis Cornet International had applied for Cash Credit

Hypothecation Limit of Rs.35 lacs and bills under Letter of Credit for Rs.10 lacs against the collateral security of property No.9E/5, East Patel Nagar, New Delhi belonging to Sh.Gurdayal Prasad for value of Rs.1,02,96,000/□evaluated CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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on 31.12.04.

2.18.3 He deposed that Cash Limit (Hypothecation) & Book Debts of Rs.25 lacs and bills negotiated under LC for Rs.10 lacs was sanctioned on 12.01.05 by accused Sri Kant Chawla as Chief Manager at the relevant time. He also identified signatures of Sh.Sri Kant Chawla and Sh.Prem Raj Mawar on Ex.PW.15/A. He stated that limit was sanctioned as per recommendation of Sh.Prem Raj Mawar, Deputy Manager and limit was sanctioned for 12 months w.e.f. 12.01.05.

2.18.4 He deposed that the sanction letter dated 12.01.05, which was issued under the signatures of accused Sri Kant Chawla to M/s Davis Cornet International, was duly acknowledged by the borrower as well as guarantor Gurdayal Prasad for sanction of aforesaid limits. The sanction letter has been proved as Ex.PW.18/A.2 (D.19). The Deed of CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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guarantee executed by the guarantor Gurdayal Prasad is already Ex.PW.1/A (D.20).

2.18.5 The Bill agreement dated 12.01.05 executed by accused V.K.Sayal on behalf of M/s Davis Cornet International is proved as Ex.PW.15/A.1, letter of indemnity furnished by accused V.K.Sayal on behalf of M/s Davis Cornet International, consent clause executed by accused Gurdayal Prasad, affidavit executed by accused V.K.Sayal have been proved as Ex.PW.15/A.1 (D.21). The letter regarding grant of individual limits has been proved as Ex.PW.17/A.1 (D.21). The agreement of Hypothecation of goods and assets executed by accused V.K.Sayal on behalf of M/s Davis Cornet International has been proved as Ex.PW. 18/A.3 (D.21). The agreement of loan for overall limit executed by accused/V.K.Sayal on behalf of M/s Davis Cornet International has been proved as Ex.PW.18/A.4.

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2.18.6

The statement of account of account No.

01600052186 of M/s Davis Cornet International for the period 12.01.05 to 11.08.05 has been proved as Ex.PW.18/A.5 alongwith certificate issued under Banker's Books of Evidence Act as Ex.PW.18/A.6. He has proved another statement of account pertaining to account No.51025483637 of M/s Davis Cornet International for the period 11.08.05 to 31.12.05 as Ex.PW.18/A.7 (D.24) alongwith certificate issued under Banker's Books of Evidence Act as Ex.PW.18/A.8. Reporting sheet for limits over Rs.2 lacs which was reported on 16.09.05 by accused S.K.Chawla pertaining to

account of M/s Davis Cornet Fashions Pvt. Ltd., has been proved as Ex.PW.18/A.9. Another reporting sheet (D.42) has been proved as Ex.PW.18/A.10.

2.18.7 He proved the Inspection register of SBBJ, Nangal Raya branch for the period 01.04.04 to 16.09.07 as Ex.PW.18/A.11 (D.9) He deposed that in the said register CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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there are entries made in respect of M/s Davis Cornet International regarding inspection made by the bank from time to time which are reflected at page 38 of the inspection register. The entry appearing at page No.38 dated 10.01.05 which was made by accused S.K.Chawla has been separately proved as Ex.PW.18/A.11. He also proved entries dated 22.02.05, 14.03.05, 16.04.05, 06.07.05, 08.08.05, 14.09.05, 18.10.05, 17.12.05, 23.01.06 and 04.02.06 as made by accused S.K.Chawla as Ex.PW.18/A.12. 2.18.8 He deposed that he alongwith Sh.A.K.Garg, Deputy Manager had visited at Rajouri Garden, WZ□06/127, New Delhi and had made an entry in this respect from point Y to Y reflected on Ex.PW.18/A.11 with his signature at point B. He further deposed that he again visited and inspected the same place on 20.07.06 and made entry to his effect at point Z to Z with his signature at point C on Ex.PW.18/A.12. After seeing the application cum appraisal form pertaining to CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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account of M/s Davis Cornet International Ex.PW.15/A (D.17) he stated that at page no.6 of the said application, a certification regarding visit and verification by the Chief Manager and Deputy Manager has been reflected in column

3. 2.18.9 He deposed that M/s Ess Vee Exports, M/s Davis Cornet International and M/s Davis Cornet Fashions Pvt. Ltd. were sanctioned cash credit limit/loan facilities/ bank guarantee and mortgage loan against property under Bank scheme of SBBJ Sulabh Rin Vayapar Yojna already Ex.PW. 12/A.2 and the personal loan granted to the parties is governed by circular dated 05.09.02 and 29.03.04 collectively Ex.PW.18/A.13 (D.7). He also proved the extracts of Bank's Book of Instructions, Chapter□1 relating to the advances as Ex.PW.18/A.14 (D.3). The certified copy of bank circular relating to scheme of delegation of financial powers has been proved as Ex.PW.18/A.15 (D.4). The extracts of Bank's Book CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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of Instructions, Chapter□2 relating to the advances against bank's FDR has been proved as Ex.PW.18/A.16 (D.6). 2.18.10 He proved list of officers posted at the branch level as well as zonal office level alongwith details of panel advocates and valuers forwarded to CBI as Ex.PW. 18/A.17. He deposed that as per bank policy, pre sanction visit/prior inspection of the business premises and property to be mortgaged is mandatory and the report of the same by the inspecting/visiting official must be recorded and brought on record prior to the sanctioning of loan of any king. 2.18.11 He

deposed that he alongwith Sh.Ashok Garg, Deputy Manager of the branch had visited the premises of M/s Davis Cornet Fashion Pvt. Ltd. at WZ□06/127, Rajouri Garden on 26.05.06 and 20.07.06 after declaring the account of said firm as NPA and he noticed that on the said dates no stock were available and they had met CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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accused Virender Sayal□Director of the said company. He also deposed that likewise he has mentioned on page no.41 of inspection register Ex.PW.18/A.1 pertaining to the account of M/s Ess Vee Exports, that account is NPA and borrower is not available on the given address as per the reports of Sh.S.K.Gupta and the borrower is not responding despite several calls made on mobile phone as well as letters sent to him which were returned undelivered. It was mentioned that the address of the borrower is not available. 2.18.12 He proved the noting made by Sh.Y.R.Bhatia dated 10.03.06 from point X to X and his own noting at portion Y to Y on Ex.PW.18/A.18. He deposed that certificate with regard to searching of landed property by bank's empanelled lawyer and certification to the effect that the property offered as collateral security has been visited/verified by the Field Officer as well as Chief Manager has to be given alongwith their recommendation/sanction CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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order. The certification performa as per bank circular dated 24.09.03 has been proved as Ex.PW.12/A.2. The loan application cum appraisal form in respect of M/s Davis Cornet International has been proved as Ex.PW.15/A to clarify that with regard to the collateral security given on 12.01.05 by Deputy Manager Mr.Mawar and Chief Manager Sh.S.K.Chawla. He stated that in column no.4, Cash Credit Limit (Hypothecation and Book debts) for Rs.25 lacs and Bills negotiated under L/C (foreign) for Rs.10 lacs were sanctioned for a period of 12 months w.e.f. 12.01.05. 2.18.13 He deposed that as per bank's policy cheque of any borrower can be purchased if the amount of the cheque falls within the discretionary power of Chief Manager within the overall indebtedness of the firm/company as per bank's instructions Ex.PW.18/A.15. He also deposed that discretionary power of Chief Manager under Advances against Bills (clean) was Rs. 6 lacs at that point of time and it CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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was subject to the reporting as contained in the said circular. As regards purchasing of documentary bill, he deposed that as per these guidelines the discretionary power of Chief Manager was Rs.40 lacs and the Chief Manager has to confine his discretionary power within the limit already sanctioned to the party. He deposed that it has been prescribed in the aforesaid circular that whenever any loan/limit is granted by the competent authority, the same has to be conveyed to the controlling authority on the same date when such power is exercised and it has been prescribed that in no circumstances the competent authority shall exceed its discretionary power in grant of limit/loan without prior permission of the respective controlling authority. He also deposed that as per aforesaid circular the overdrawing power of Chief Manager was Rs.3 lacs in case of unsecured

loan.

2.18.14 He deposed that the statement of account of
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M/s Davis Cornet International for the period from 12.01.05 to 09.08.05 and for the period from 11.08.05 to 17.09.05 already Ex.PW.18/A.5 and 18/A.7 respectively reflected that there are frequent overdrawings which were allowed to the party. He testified that cheque refer register (D.11) reflected that two cheques of Rs.5 lacs each were allowed to be debited to the cash credit account of M/s Davis Cornet International bearing account No.51025483637 by Sh.S.K.Chawla, Chief Manager on 20.08.05 despite the fact that account was showing an outstanding of Rs.25,85,680.30p, against the limit of Rs.25 lacs i.e. it was already overdrawn by Rs.85,680.30 on that day and with this debit of two cheques of Rs.5 lacs each, the outstanding amount had arisen to Rs.35,85,680.30 against sanctioned limit of Rs.25 lacs. He proved that 'pay' order in this respect is contained at point A of page no.6 of cheque refer CD register (D.11) and the said page is separately Ex.PW.18/B and likewise at page No.9, page no.10 at points A, the debits were raised in the account despite the CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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outstanding which was beyond the sanctioned limit and no available balance was there in the said account of M/s Davis Cornet International. He identified those entries at points A on page Nos. 9 & 10 on Ex.PW.18/B.1 and B.2 respectively in register marked as Ex.PW.18/C. 2.18.15 He also deposed that as per the record and as per his knowledge the overdrawings so allowed by Sh.S.K.Chawla was not reported to controlling authority. After seeing the statement of account of M/s Davis Cornet International Ex.PW.18/A.5 & A.7 he stated that same was irregular. He proved the certified copy of statement of account in respect of Davis Cornet Fashion Pvt. Ltd. having account No.61001067095 for the prior from 16.09.05 to 30.04.06 as Ex.PW.18/D (D.62). He deposed that the said account of company was a cash credit account in which limit of Rs.40 lacs was granted and an amount of Rs.37,13,396/□ was debited in the account on 17.09.05 for the credit with the CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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remarks "account closed funds transferred to 005125483637 against the limit of Rs.40 lacs". He pointed out the said entry at page no.1 at point A on Ex.PW.18/D. He also deposed that Ex.PW.18/A.7 reflects that A/c No. 005125483637 pertains to Davis Cornet International and thus the said amount was transferred from account of company to account of Davis Cornet International. He stated that account was opened on 16.09.05 and director of the company namely Virender Sayal and Smt.Rashmi Sayal were permitted to operate the account of the company. He proved account

opening form as Ex.PW.20/D.5. He proved the seizure memo dated 14.12.06, vide which Sh.Ashok Kumar Garg, Deputy Manager of Nangal Raya branch has submitted certain documents to CBI as Ex.PW.18/E. One of these documents has been proved by him as Ex.PW.18/E.1. 2.18.16 The application cum appraisal form for grant of loan to M/s Ess Vee Exports whereby cash credit CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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(hypothecation of stocks and book debts) of Rs.25 lacs and bill discounted (DA/DP) of Rs.10 lacs were sanctioned by Sh.S.K.Chawla has been proved as Ex.PW.18/F. He deposed that as per the appraisal cum application form, the proprietor of M/s Ess Vee Exports was Sh.Rakesh Vij and he had offered collateral security by way of equitable mortgage which was H.No.154, Block No.N, G.K.□ I, New Delhi in the name of Smt.Shanti Devi w/o late Surender Nath. The valuation report in respect of the same property dated 20.04.05 (D.70) bearing the stamp of Sh.Jagpal Singh Chaney, Valuer has been proved as Ex.PW.18/G. The title search report in respect of same property including non encumbrance report of Sh.Sanjay Kumar Rathi, Advocate has been proved as Ex.PW.18/H. 2.18.17 The reporting sheet dated 19.08.05 in respect of personal segment advance under the mortgage loan scheme to accused Virender Sayal sanctioning loan of CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Rs.20 lacs by accused S.K.Chawla to AGM has been proved as Ex.PW.18/H.1 and another similar reporting sheet in respect of personal segment advance to Smt.Rashmi Sayal (accused since discharged and who is wife of accused Virender Sayal) has been proved as Ex.PW.18/H.4. 2.18.18 The guarantee deed executed by Sh.B.S.Bakshi, guarantor in favour of bank for securing personal loan of accused Virender Sayal and his wife Smt.Rashmi Sayal, has been proved as Ex.PW.18/H.2 & PW. 18/H.3. He proved a letter dated 12.12.07 addressed to CBI Ex.PW.18/H.5 intimating details of equitable mortgage created and credit facilities sanctioned to the account of M/s Davis Cornet International and M/s Davis Cornet Fashion Pvt. Ltd. and to guarantor Sh.Gurdayal Prasad as Ex.PW. 18/H.5. He proved another such letter dated 22.01.08 in respect of details of bills purchased by accused S.K.Chawla during his tenure for the borrowers M/s Davis Cornet CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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International and M/s Ess Vee Exports as Ex.PW.18/H.6. 2.18.19 He also proved seizure memo Ex.PW.18/E in respect of supplying documents to CBI pertaining to M/s Davis Cornet Fashion Pvt. Ltd. vide memo Ex.PW.18/E and list as Ex.PW.18/H.7. The letter dated 28.01.08 which is list of cheques purchased by accused S.K.Chawla from 01.04.05 to 28.06.05 as Chief Manager, was sent to CBI by him which letter and list has been proved as Ex.PW.18/H.8 (D.59 & D.

60). He proved another letter dated 26.02.07 with the statement of account of M/s Ess Vee Exports, Davis Cornet Fashion Pvt. Ltd., B.R.Food Products Ltd. besides the statement of other accounts as Ex.PW.18/H.9. He proved seizure memo dated 08.01.07 for handing over documents by Sh.Ashok

Kumar Garg, Deputy Manager as Ex.PW.18/H.10. 2.18.20 He deposed that assets and liabilities of M/s Davis Cornet International were taken over by the company CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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and therefore, the outstanding of M/s Davis Cornet International was Nil but outstanding in the account of M/s Davis Cornet Fashion Pvt. Ltd. as on 30.04.06 was Rs. 76,27,149/- as per Ex.PW.18/D and the account was classified as NPA. He proved the application for loan against equitable mortgage of immovable property by which loan of Rs.20 lacs was applied by accused V.K.Sayal on the basis of agricultural land in Tikri kalan village in his name having Khasra No. 23/23 with area admeasuring 1 bigha with appraisal and sanction order of accused S.K.Chawla as Ex.PW.18/H.11. Similar application/arrangement letter in respect of loan advanced to Smt.Rashmi Sayal in sum of Rs.20 lacs has been proved as Ex.PW.18/H.12. The statement of account in joint names of Sh.V.K.Sayal and his wife Smt.Rashmi Sayal bearing No.51025483398 for the period 04.08.05 to 08.01.07 has been proved as Ex.PW.18/H.13. The statement of account of accused V.K.Sayal bearing a/c No.61000796584 for the period 19.08.05 to 25.04.07 has been proved as CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Ex.PW.18/H.14. The statement of account of Smt.Rashmi Sayal having account No.61000796335 for the period 19.08.05 to 06.06.07 has been proved as Ex.PW.18/H.15. 2.18.21 The seizure memo of documents which were handed over by Sh.V.K.Gupta who is Deputy Manager of the branch has been proved as Ex.PW.18/H.16. He deposed that the entry dated 24.03.05 in the account of M/s Davis Cornet International Ex.PW.18/A.5 reflected that two bills of US \$ 44,500/- (equivalent to Rs.38,63,406 @ Rs.43.72p. per dollar) were credited in the account being the proceeds of these two bills. He deposed that negotiated bills are usually purchased/negotiated by the bank with approval of an officer of the bank when the same is within the sanctioned limit and if it is beyond the sanctioned limit the same has to be allowed by the branch head provided the same is within his discretionary powers. He said that in this case since the bills negotiated limit sanctioned to M/s Davis Cornet International CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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was Rs.10 lacs only, therefore, the approval for bill purchased to the extent of Rs.38,63,406/- was much beyond the sanctioned limit.

2.18.22 He deposed that Nangal Raya branch was not authorized for purchasing of bills pertaining to foreign exchange, therefore, Connaught Circus branch of SBBJ, which was authorized for transactions in foreign exchange, was requested by accused S.K.Chawla vide his letter dated 18.03.05 as Ex.PW.12/A for negotiation of documents pertaining to aforesaid LCs on behalf of Nangal Raya branch. Alongwith the request letter, Sh.S.K.Chawla had sent the bill of exchange packing list, invoice and bill of lading which are collectively put as Ex.PW.18/J and PW.18/J.1

respectively. He stated that it was the duty of New Delhi branch only to look into the documents submitted by the branch and see that the same were as per the terms of LC. He deposed that Chief Manager, Nangal Raya branch vide his letter dated CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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18.03.05 Ex.PW.12/A sent necessary amendments. Since no payment was forthcoming from the foreign buyer to New Delhi branch, therefore, New Delhi branch raised a demand from Nangal Raya branch vide debit advice dated 20.05.05 Ex.PW.18/J.2, on which accused S.K.Chawla vide his endorsement noted "IBIT reversed on 12.07.05". The debit advice was also shown to authorized signatory of M/s Davis Cornet International in whose account aforesaid amount was credited. The reverse entry dated 12.07.05 has reflected at point B of statement of account of M/s Davis Cornet International already Ex.PW.18/A.5 (D.24). 2.18.23 He deposed that discretionary power of Chief Manager to sanction the cash credit limit during the year 2004-05 was Rs.25 lacs for partnership firm or sole proprietorship firm and Rs.40 lacs for limited liability companies.

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2.18.24 He proved the carbon copy of letter dated

25.05.05 addressed to M/s Davis Cornet International under the signatures of accused S.K.Chawla as Ex.PW.18/K.1 and another letter dated 22.05.05 Ex.PW.18/K.2 (D.43 page 151 &

152). He proved application cum appraisal form Ex.PW.4/A bearing signatures of accused S.K.Chawla, attested copy of application cum appraisal form as Ex.PW.18/K.3 (D.43). 2.18.25 During his cross examination by accused No. 5 he has deposed that he has filed a recovery case in DRT in May, 2005 in which interim order for attachment before Judgment was prayed before DRT in respect of property No. 154, G.K.Part II, New Delhi. He deposed that since property was mortgaged with the bank, therefore, attachment of the same property was prayed before DRT irrespective of the fact that the title deed was purported to be forged one, which was deposited with the bank while mortgaging the property. A photo copy of the certified copy of DRT application titled as CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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SBBJ Vs. Rakesh Kumar Vij was shown to him which was marked as Ex.PW.18/DA. He deposed that as per the procedure the bank Manager meets the guarantor personally and the property offered in mortgage is physically visited. 2.18.26 To an specific question he replied that he had not visited the mortgaged property. He said that he had met one of the guarantor namely Virender Sayal and not the other guarantor namely Smt.Shanti Devi, who is reported to has expired. He has further deposed that since the bank has sent notice to Smt.Shanti Devi, which was received back with the remarks that she had expired that is how he came to know that she has expired. He denied a suggestion that since panel Advocate has given opinion about the mortgage of the property of Smt.Shanti Devi,

therefore, it is presumed that the property offered by her to the bank for mortgage was genuine property.

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2.18.27 During his cross cross examination by Ld.

Counsel for accused No.1 S.K.Chawla he has shown ignorance that as per visit report of Sh.Yograj Batia, the then Manager of Nangal Raya branch he had visited the property offered as collateral security in the name of M/s Davis Cornet International as mortgaged by Sh.Gurdayal Prasad and had given report in this respect.

2.18.28 He admitted that loan proposal of M/s Davis Cornet International was processed and recommended by Sh.Prem Raj Mahawat, Deputy Manager and the sanction was within the financial power of Chief Manager. He also admitted that Davis Cornet International was taken over by Davis Cornet Fashion Pvt. Ltd. and clarified that taken over means that all the assets and liabilities of the firm was taken over by the company.

2.18.29 When it was suggested to him that the

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account of M/s Davis Cornet Fashion Pvt. Ltd. was regularized on 31.03.06 he clarified that debit balance on 31.03.06 was Rs.39,83,101 against the sanction limit of Rs.40 lacs which includes a credit of Rs.35,78,400/□being the proceeds of the bill purchased which was credited on 31.03.06 which was uncleared as is shown on Ex.PW.18/D (D.62). The said bill was dishonored on a later date. He admitted a suggestion that LC issued by Class□ bank such as Bank of Baroda can be negotiated over and above the sanctioned limit in the account of borrower as per the bank scheme and guidelines.

2.19.1 PW.19 Sh.Ashok Kumar Garg was posted as Deputy Manager in Nangal Raya branch of SBBJ from July, 2005 to April, 2007 i.e. the period during which S.K.Chawla (A□) was the Chief Manager of the branch till February, 2006 and after that Sh.Yograj Bhatia Manager had CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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officiated as Chief Manager from February, 2006 to May, 2006 and then Sh.Raman Chaudhary had worked as Chief Manager since May, 2006. Besides proving the documents which have been proved by the other witnesses, he also proved a seizure memo dated 14.02.07 vide which certain documents

were handed over to CBI as Ex.PW.19/A, stock statement for 06.01.05 submitted by accused Virender Sayal proprietor of the firm as Ex.PW.19/B, opinion report given by accused S.K.Chawla as Ex.PW.19/C vide which he had certified the value of property No.9E/5, East Patel Nagar, New Delhi and other movable properties as mentioned in Ex.PW.19/C at Rs.1,06,96,000/- the deed of guarantee as Ex.PW.19/A with stamp papers accompanying the same as Ex.PW.19/D & E, the hypothecation agreement of M/s Davis Cornet International as Ex.PW.18/A.3 with stamp papers as Ex.PW.19/F, G, H & J, agreement of loan for overall limit (D.

21) as Ex.PW.18/A.4 with accompanying non judicial stamp papers as Ex.PW.19/K, L & M, bill agreement dated 12.01.05 CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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(D.21) as Ex.PW.15/A.1 with accompanying stamp papers as Ex.PW.19/E, letter of Indemnity executed by accused Virender Sayal as Ex.PW.19/Q with accompanying stamp papers as Ex.PW.19/R and consent clause as Ex.PW.19/S, vide which accused Virender Sayal had undertaken that the data furnished by him to the bank is true and correct. 2.19.2 He also proved the consent clause of guarantor Gurdayal Prasad as Ex.PW.19/T, the affidavit of accused Virender Sayal as Ex.PW.19/U (D.21) vide which declaration has been given about the valuation of movable and immovable property amounting to Rs.37.40 lacs alongwith non judicial stamp papers Ex.PW.19/V, certificate regarding inspection of securities by accused S.K.Chawla as Ex.PW.19/W.1 which is annexed to Ex.PW.19/B, deed of guarantee (D.20) as Ex.PW.19/A and 19/D & E being part of the same, letter submitted to General Manager by accused Virender Sayal dated 30.03.06, 14.03.06 & 08.03.06 as CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Ex.PW.19/N.2, N.3 & N.4, which have been written as Director of M/s Davis Cornet Fashions Pvt. Ltd. 2.19.3 It is also stated by him that accused Virender Kumar Syal (A.2), who as proprietor of M/s Davis Cornet submitted deed alongwith audited balance sheet as audited by S.Khurana and Associates Chartered Accountant in respect of his firm as on 31.03.05. The same have been proved as Ex.PW.19/N.5. The seizure memo dated 14.12.06 has been proved by him as Ex.PW.19/W.1 with which list of credit vouchers and cheques of Davis Cornet and M/s Ess Vee Exports have been proved as Ex.PW.19/W.2 & W.3 (D.

110). He proved cheques Ex.PW.19/W.4 to W.44 (D.110 to D.

150).

2.19.4 The production memo Ex.PW.19/X has been proved by Sh.A.K.Garg stating that vide this production memo, account opening form of M/s Ess Vee Exports was CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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produced by Sh.Yograj Bhatia, then officiating Chief Manager to CBI. He also identified signatures of accused Rakesh Kumar Vij who had signed as proprietor of M/s Ess Vee Exports on account opening form of M/s Ess Vee Exports at point A and signature of introducer accused Virender Kumar Sayal, proprietor of M/s Davis Cornet International at point B and accused S.K.Chawla (A.1) as verifying officer at point C and the account opening form has been marked as Ex.PW. 19/X.1. (D.75). He also deposed that alongwith account opening form, a self attested copy of voter ID card of accused Rakesh Kumar Vij Ex.PW.19/X.2 was also sent to CBI. The sanction letter dated 23.04.05 in respect of CC limit in favour of M/s Ess Vee Exports bearing signatures of accused S.K.Chawla, Rakesh Kumar Vij and Virender Sayal (as guarantor) has been proved as Ex.PW.24/D.17 (D.77). The consent clause as signed by accused Rakesh Kumar Vij has been proved as Ex.PW.24/D.18(D.78). The consent clause of guarantor Virender Kumar Sayal (A.2) has been CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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proved as Ex.PW.24/D.19.

2.19.5 He further testified that sanction letter Ex.PW.24/D.17 (D.77) reflected that Smt.Shanti Devi also stood guarantor to the loan on her property bearing No.154 (wrongly typed as 114), Block No.N, G.K.□, New Delhi. He also proved production memo dated 26.02.07 vide which Sh.Raman Chaudhary, Chief Manager had handed over certain documents to CBI as Ex.PW.19/X.3 (D.82). The certificate under Bankers' Books of Evidence Act (D.83) in respect of CC A/C No.016000052201 of M/s Ess Vee Exports with SBBJ, Nangal Raya branch has been proved as Ex.PW. 19/X.4 & X.5 (D.83). The other two such certificates in respect of CC No.51025483659 of M/s Ess Vee Exports has been proved as Ex.PW.19/X.6 & X.7 (D.84). 2.19.6 He proved seizure memo dated 10.12.07 for handing over documents by Sh.G.L.Kanwar, Assistant CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Manager to CBI as Ex.PW.19/X.8 (D.99). The certified copy of extracts of Title Deed (D.100) in the handwriting of accused S.K.Chawla, then Chief Manager and Sh.Yograj Bhatia as witnessed by Sh.Prem Raj Mahawar has been proved as Ex.PW.19/X.9. He also proved production memo dated 22.02.07 as Ex.PW.19/X.10 vide which certain documents were sent by Sh.Raman Chaudhary to CBI vide which certified copy of legal search report in respect of property No.N□154, G.K., New Delhi in the name of Sh.Surender Nath and certified copy of Sale Deed in respect of plot No.154, Block N, G.K. situated at village Zamrudpur alongwith other documents were sent to CBI. Certified copy of legal search report dated 07.07.06 has been proved as Ex.PW.19/X.11(D.103). The certified copy of Sale deed has been proved as Ex.PW.19/X.12. Another production memo for producing documents by Raman Chaudhary, Chief Manager to CBI has been proved as Ex.PW.19/X.13 (D.104).

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2.19.7

He also proved signature of accused

Virender Kumar Sayal and his wife Rashmi Sayal on Ex.PW. 4/A, statement of account of M/s Davis Cornet Fashions Pvt. Ltd. as Ex.PW.18/D, seizure memo as Ex.PW.18/H.10, signature of accused Virender Kumar Sayal, Rashmi Sayal and S.K.Chawla on account opening form Ex.PW.24/D.5, deed of guarantee of Shanti Devi and Virender Kumar Sayal (D.67) as Ex.PW.19/X.15 = Ex.PW.16/A, certified copy of Rent agreement attested by Rakesh Kumar Vij as Ex.PW.24/D.7, letter dated 31.03.06 addressed to AGM of Zonal office by officiating Chief Manager Yograj Bhatia as Ex.PW.19/X.16, certified copy of reporting sheet for personal segment advances (D.27) sanctioned by accused S.K.Chawla (A.1) to accused Virender Kumar Sayal as Ex.PW.19/Y.1, copy of note of AGM dated 20.02.06 (D.15) regarding surprise inspection of Nangal Raya branch as Ex.PW.19/Y.2 an attested copy of Demand Purchase Register (D.10) as Ex.PW.19/Y.3 and a circular dated 24.09.03 relating to CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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scheme for financing retail and wholesale traders under SBBJ Sulabh Vyapar Rin Yojna for SIB & C&I Customers as Ex.PW.19/Y.5.

2.19.8 During his cross examination by accused Rakesh Kumar Vij (A.5) he deposed that he did not see accused Rakesh Kumar Vij during his tenure and he also did not see him signing any document. During his cross examination by accused No.1 Sri Kant Chawla he admitted that accused S.K.Chawla was suspended from services of bank in February, 2006. He admitted that their account of Davis Cornet Fashion Ltd. was regularized on 31.03.06 but the reason for such regularization was that one bill was purchased in this account by the then officiating Chief Manager of the branch Sh.Yograj Bhatia.

2.20

PW.20 Sh.Shivam Kumar, Deputy Secretary

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of Insitute of Chartered Accountant (ICAI) has proved letter of his office to CBI as Ex.PW.20/A vide which it was informed to CBI that as per records of the institute M/s Goel Gupta and Associates, Delhi is not registered with ICAI. He proved another letter dated 04.04.08 (D.45) as Ex.PW.20/B vide which CBI was informed that as per records of ICAI M/s Mittal and Goel is not registered with ICAI. 2.21 The testimony of PW.21 was dropped.

2.22.1 IO of the case Sh.B.M.pandit has been examined as PW.22 who has proved the entire investigation of the case. He has proved the copy of FIR as Ex.PW.22/A and complaint as Ex.PW.22/B (D.1). He also proved the other documents collected by him during investigation alongwith the seizure memos. During his cross examination by Ld. counsel for accused No.1 he

denied the suggestion that processing of loan proposal in respect of M/s Davis CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Cornet International was done by Deputy Manager Sh.P.R.Mawar and then volunteered that only some column were filled by him under the instructions of accused S.K.Chawla. He also denied suggestion that visit report to the work place of M/s Davis Cornet International was prepared by Sh.P.R.Mawar. He also stated that he had investigated the aspect as to whether report of panel advocate had been received in respect of property offered as mortgage by way of collateral security and said Sh.Sanjay Kumar Rathi was the panel Advocate who investigated the title of the property as per the records only and his legal opinion was not seen by him. He stated that Mr.Rathi had given report that as per the Sale Deed the title of mortgagor was clear. He also deposed that RDA for major penalty was recommended against Sh.Yograj Bhatia by CBI. 2.22.2 During cross examination by accused Dheeraj Prasad he had admitted that he had called Yograj CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Bhatia to come to his office when Dheeraj Prasad was also called in his office. However, he denied a suggestion that he told to Yograj Bhatia about the identify of the Dheeraj on the basis of which he subsequently identified him in the court. During cross examination by accused Bhupinder Pal Bakshi he admitted that before the FIR was registered in this case the loan in the name of Gurdayal Prasad, for which accused No.6 stood guarantor, was already repaid. 2.22.3 During cross examination by accused No.3 Raj Bal Tyagi he stated that none of the photographs of accused Raj Bal Tyagi available in the bank record were found attested or signed by him. He also stated that he had not enquired from Sh.Yog Raj Bhatia that if he had visited the bank why he (Yog Raj Bhatia) did not take him to property No.9/5, East Patel Nagar for showing the property to him which was allegedly offered in mortgage posing himself as Gurdayal Prasad. He also stated that when he had CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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investigated the fact about the person who had liquidated the personal loan account of Sh.Gurdayal Prasad by making the deposits in the same he found that accused Virender Sayal had deposited the said amounts vide vouchers Ex.PW.14/DC, DD, DE & DF, which fact has not been disputed by accused/V K Syal (A□2) or any other accused. 2.23 PW.23 Sh.Kapil Kumar has proved the copy of letter addressed by Assistant Commissioner of MCD Delhi as Ex.PW.23/A (D.95) and 23/B (D.72).

2.24.1 PW.24 Sh.T.Joshi is Assistant Government Examiner of Questioned Documents (GEQD), Chandigarh who had examined questioned writings and specimen writings. He proved the letter dated 13.05.08 addressed by GEQD to DIG, CBI Ex.PW.24/H and another such letter Ex.PW.24/J with which the opinion, reason for opinion and all CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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the concerned documents were sent to CBI. The opinion report dated 30.04.08 have been proved as Ex.PW.24/K and reasons for opinion dated 30.04.08 have been proved as Ex.PW.24/L. The covering letter of Deputy GEQD dated 05.09.08 has been proved as Ex.PW.24/M with which the opinion and observations as well as the documents were sent back to CBI with covering letter. As per report of GEQD, Ex.PW.24/K (D.105) the relevant Q.nos.127 to 145 found matching with S.20 to 27 i.e of Bhupinder Pal Singh Bakshi (A.6), Q.nos.228 to Q.244, 352 to 360 with S.48 to S.62 i.e of Rakesh Vij (A.5), Q.nos.270 to 280, 282 to 317, 322 to 327, 341 to 344, 345A, 346A with S.38 to 47 i.e of V K Syal (A.2) and Q.nos.345 to 348, 350 and 351 with S.66 to S.88 i.e of S K Chawla (A.1). GEQD also observed in his report that it has not been possible to express any opinion on rest of the items on the basis of material supplied to him by CBI. The supplementary opinion/report dated 21.08.08 has been proved as Ex.PW.24/N which in is respect of comparison of CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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the sale deed deposited by Smt.Shanti Devi with the bank to create the equitable mortgage to secure the loan sanctioned to Rakesh Kumar Vij (A.5) with the sale deed of the same property preserved with Archives Department of the Government of NCT of Delhi as office copy of the deed. 2.24.2 He was not cross examined by any other accused except by accused Raj Bal Tyagi and during his cross examination by accused Raj Bal Tyagi he stated that there is no opinion regarding authorship of any document by accused Raj Bal Tyagi. He denied a suggestion that he did not deliberately express his opinion in order to favour CBI although he had reached to a definite opinion that the specimen handwriting of accused Raj Bal Tyagi was not matching with the questioned document. Thus, it may be seen that the opinion of the GEQD has not been disputed by any of the accused persons regarding writing and signing on the documents. Even during examination of other CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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witnesses the signatures on any of the documents have not been denied by accused persons, except by accused/Raj Bal Tyagi for allegedly signing documents in the name of Gurdayal Prasad (a dead man).

3.1 The statement of accused persons were recorded under section 313 Cr.PC wherein they denied all the incriminating evidence and claimed that they are innocent. The accused persons did not lead any evidence in their defence.

3.2 I have heard Ms.Shashi Vishwakarma, Id.Public Prosecutor for CBI and the accused persons/their Id.counsels and perused the entire material on record including the written arguments as filed by accused nos.1, 4, 5 and 6.

3.3.1

The FIR of the case, which has been proved

as Ex.PW□22/A was registered with CBI on 30.11.06 based on the complaint made by Sh.M M Lal, Chief Vigilance Officer of the bank. A copy of the said complaint is part of the FIR. The complaint dated 30.11.06 as made to CBI by the bank has been proved as Ex.PW□3/B. 3.3.2 As per the FIR, accused/S K Chawla (A□) during his posting as Chief Manager of the bank at Nangal Raya Branch between 03.03.04 to 24.02.06, in collusion with other unknown persons had dishonestly and fraudulently allowed over drawings in cash credit accounts/overdraft accounts beyond the sanctioned limit and also by exceeding his discretionary powers. It is further alleged in the FIR that he had dishonestly and fraudulently purchased local and outstation cheques/bills submitted by borrowers without any sanctioned limits and beyond his discretionary powers by abusing his official position thereby causing wrongful loss to CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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the bank and corresponding wrongful gain to the borrowers to the extent of Rs.114.57 lacs and the said transactions were not reported to by accused/S K Chawla (A□) to his controlling authorities and some of the sale deeds of the properties offered as collateral securities by the borrowers have been found to be false/forged. The complaint and FIR mentioned the names of the accounts in which the fraud had taken place due to collusion between accused/S K Chawla (A□) and borrowers/guarantors, on the other hand. 3.3.3 The operative circulars and guidelines which have been violated/exceeded to by accused/S K Chawla (A□) while sanctioning/allowing operation of accounts in question have also been proved by prosecution. The bank's operational guidelines of 'SBBJ Sulabh Vyapar Rin Yojna' issued vide circular no.C□/14/2003□4 dated 24.09.03 under which the loan has been sanction in various accounts in question has been proved as Ex.PW□9/Y□5 (D□5) which inter CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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alia stipulates in the column of security that the 'valuation certificate is to be obtained on the landed property offered as collateral security from the approved valuer, the branch manager concerned should also make his/her own assessment about the present market value of the property to be mortgaged coupled with local enquires and he will ensure that offered security/property is marketable.' 3.3.4 The circular of the bank bearing no.Reorg/6/96□97 dated 09.09.1996 has been proved as Ex.PW□18/A□5 (D□4) vide which powers have been delegated to officers of the bank according to their ranks which inter alia provides that "No functionaries under any circumstances will exceed the powers delegated to them except with prior permission of the respective Controlling Authority. In case of very emergent and genuine situations (where prior permission is CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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practicably impossible) exceeding the powers may be acceptable as an exception, provided the same is reported to respective Controlling Authority on the same day and a telephonic permission has been obtained." 3.3.5 The bank's circulars governing loan against equitable mortgage of immovable property (mortgage loan) bearing circular no.P/30/2002□03 dated 05.12.2002 and no.P/44/2003□04 dated 29.03.04 have been proved as Ex.PW□8/A□3 (colly) (D□7). A letter dated 09.12.08 proved as Ex.PW□8/A□7 shows the posting status of various officers of the bank who remained posted in Nangal Rya Branch. It shows that accused/S K Chawla (A□1) was placed under suspension on 25.02.06, Sh.G. K. Nirman was compulsorily retired on 17.12.07 and Sh.Prem Raj Mawar was retired on 23.03.06 under SBBJ Exit Option Scheme, 2005.

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3.4

Now, I shall proceed to discuss and

appreciate the evidence on record, arguments advanced by the parties and findings of the court, account wise. 4.1 Mortgage/Personal Loan in the name of Gurdayal Prasad and role of accused persons 4.1.0 The substratum of prosecution's case is that it was accused/Raj Bal Tyagi (A□3) who personated himself as Gurdayal Prasad to obtain personal loan by extending equitable mortgage of his immovable property already lying mortgaged with bank in loan account of M/s Davis Cornet International. It has been submitted by accused/Raj Bal Tyagi (A□3) that he retired from service of Indian Army and since then living at his native place and not at all involved in commission of any offence. He has submitted that his passport size photographs with bio□data were taken by a person under pretense to provide him a post□retirement job, CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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which photographs have been used on the documents of the bank. He has submitted that even handwriting expert did not opine that any of the signatures on bank's documents are in his handwriting.

4.1.1 On the other hand, the Id.Public Prosecutor has submitted that accused/Raj Bal Tyagi (A□3) was identified by PW□4/Sh.Yograj Bhatia (Manager) and PW□9/Sh.Ashok Kumar Garg (Dy.Manager). She has submitted that PW□9 had identified accused Rajbal Tyagi (A□3) as the person who had signed in the name of Sh.Gurdayal Prasad, whereas I find from his testimony that he simply identified him (A□3) on the basis of photograph affixed on guarantee deed (D□20), Ex.PW□/A in a loan account of M/s Davis Cornet International, executed by an imposter in the name of Sh.Gurdayal Prasad. There was no possibility of him identifying accused/Raj Bal Tyagi as signatory to any document as he was posted to Nangal Raya Branch only in CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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July, 2005 whereas no document of bank after July, 2005 was purportedly signed in the name of Sh.Gurdayal Prasad. The deed of guarantee, Ex.PW□/A was executed on 12.01.05 i.e much before PW□ joined the branch, and even the personal loan was sanctioned in the name of Gurdayal Prasad on 21.06.05 which is also prior to his joining the branch. The veracity of the testimony of PW□Yograj Bhatia is required to be appreciated carefully for reasons discussed in succeeding paragraphs.

4.1.2 The main witness of prosecution in respect of personal loan sanctioned and disbursed in the name of Gurdayal Prasad (a person who had already expired in 1990) vis□□is role of accused/Sri Kant Chawla (A□), Virender Kumar Syal (A□), Raj Bal Tyagi (A□), Dheeraj Prasad (A□) and Bhupender Pal Singh Bakshi (A□), is Sh.Yograj Bhatia (PW□), then posted as Manager (Personnel) in SBBJ, Nangal Raya branch during the relevant period, who had CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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sanctioned personal/mortgage loan of Rs.15 lacs in the name of Sh.Gurdayal Prasad vide his sanction order dated 21.06.05. Sh.Gurdayal Prasad had already mortgaged his immovable property for securing CC hypothecation limit of Rs.35 lacs sanctioned by Sri Kant Chawla (A□) to M/s Davis Cornet International (a proprietorship firm of accused/Virender Kumar Syal). Sh.Yograj Bhatia has proved loan application of Sh.Gurdayal Prasad as Ex.PW□/A (D□) dated 17.06.05 which also contains the sanction order on its last (5th) page showing that personal loan of Rs.15 lacs was sanctioned by him on 21.06.05.

4.1.3 A pre□sanction survey report of Gurdayal Prasad has been collected by CBI vide production memo dated 05.05.08 (D□), Ex.PW□/E□. The report has been proved by Sh.Yograj Bhatia as Ex.PW□/A□ which is dated 17.06.05 reading as "I visited the house no.9/5E, East Patel Nagar, New Delhi on 17.06.05. It is double storey corner CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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house. The son of owner met me at the time of inspection. The property is already mortgage to our bank against CC(HYP.) limit of Rs.35 lacs (25 CC HOW BD) fvg Davis Cornet International. The property is situated at poss area and mortgage loan of Rs.20,00,000/□may be sanctioned to Sh.Gurdayal Prasad as applied by him." It is quiet significant to mention here that the amount of mortgage loan applied by Gurdayal Prasad, as per his loan application, Ex.PW□/A (D□) is Rs.15.00 lacs and not Rs.20.00 lacs as mentioned in report, Ex.PW□/A□. It is also interesting to note that in the column of details of bank accounts, the nature of account is mentioned as 'SB' and the branch of SBBJ is mentioned as 'Nangal Raya' whereas the account in the name of Gurdayal Prasad was opened on a subsequent date i.e. 21.06.05. These facts show that Sh.Bhatia had acted mechanically even if not intentionally which jeopardized interest of the bank.

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4.1.4 The account opening form in the name of

Sh.Gurdayal Prasad showing saving A/C No.14343 (D□35) opened on 21.06.05 has been proved by Sh.Yograj Bhatia as Ex.PW□5/B, which account had been introduced by accused/Virender Kumar Syal (A□2) being account holder as proprietor of M/s Davis Cornet International. Sh.Yograj Bhatia has signed on the same as verifying officer on 21.06.05. It is noteworthy that in the introduction column "I certify that I have known Mr./Mrs./Miss _____ for the last _____ months/years" the spaces have been left blank. Even in column below it showing which documents have been taken as proof of residence, have also not been tick marked in the space provided for it. However, in nomination form name of Sh.Dheeraj Kumar (not 'Dheeraj Prasad', which is name of A□4) as son of account holder with 35 years of age is mentioned. Accused/Virender Kumar Syal (A□2) has also signed as witness on this account opening form of Sh.Gurdayal Prasad.

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4.1.5

The photocopies of election ID Card & PAN

Card in the name of Sh.Gurdayal Prasad are available with account opening form in that name, Ex.PW□5/B (D□35). ID Card and PAN Card are separately Mark A=Ex.PW□4/DA and Mark B=Ex.PW□4/DB. Admittedly, these copies are forged documents.

4.1.6 In his cross□examination PW□Yograj Bhatia said that he had seen the original of PAN Card and election I□Card before submitting his report. He then said that he had seen the said documents on 21.06.05 i.e at the time of opening of the account. Thus, contradiction in his statement is clear as the report was made by him on 17.06.05 (Ex.PW□4/A□2) and account was opened on 21.06.05.

4.1.7 The copies of ID Card and PAN Card are neither self attested by imposter, who personated himself as CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Gurdayal Prasad, nor they have been attested by Sh.Yograj Bhatia. Had Mr.Bhatia seen originals of these documents he would have at least attested the copies by signing on the same, even if he forgot to get signature of imposter Sh.Gurdayal Prasad on it. For example, if we see the account opening form of accused/Rakesh Kumar Vij (A□5), Ex.PW□9/X□ (D□75) the appropriate column of ID proof taken i.e election I□card and rent agreement are tick marked and the copy of election I□card has been self attested by him which is Ex.PW□9/X□2 and the copy of his rent agreement, Ex.PW□24/D□7 (D□68) is also self attested by him. It has been admitted by Sh.Bhatia in his cross□examination that there is no signature of issuing authority on the copy of election I□card, Ex.PW□14/DA, which makes it difficult to believe that he would have seen original election I□card. Had Sh.Bhatia seen the copy of I□card or its original at the time of opening of account in the name of Sh.Gurdayal Prasad, he would have noticed the forgery of the document which was CBI Case

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apparent on face of it.

4.1.8 As regards the copy of PAN Card, Mark B=Ex.PW□4/DB in the name of Gurdayal Prasad, it has been clarified by PW□5/G. L. Kanwar, Dy.Manager of the bank, during his cross□examination that for opening of the account, the bank is required to verify the original documents concerning the address and identity and thereafter used to accept the certified copies but in this case the documents of identity of the person in whose name the account was opened, has not been certified and not even got self attested from the person opening the account. It has been admitted by PW□9/A K Garg during his cross□examination that it is not bearing the mark of Government of India, the way it is appearing on another PAN Card of Mr.Mohit Tyagi shown to him, a copy of which has been proved as Ex.PW□9/D□3A. He also admitted that PAN Card, Ex.PW□4/DB is materially different from the copy of card, Ex.PW□9/D□3A, which is CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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copy of an actual PAN Card. Thus, the PAN Card, the copy of which was filed with account opening form, was also forged on face of it, which could be easily noticed by Sh.Bhatia, had he seen the same while opening account in the name of imposter.

4.1.9 Thus, the statement of Sh.Bhatia made during his cross□examination, that the original of the ID Card and PAN Card were shown to him, does not appear to be true and the reason for him deposing falsely will be seen little later.

4.2 Although Sh.Yograj Bhatia (PW□4) has deposed that he had visited residence of Sh.Gurdayal Prasad and prepared his visit report in his own handwriting and he identified signature of Gurdayal Prasad at point 'C' and his photograph at point 'D' (which is in fact photograph of A□3/Raj Bal Tyagi) but for reasons discussed in succeeding CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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paragraphs I am unable to believe his version particularly his identifying Raj Bal Tyagi as the person, who signed in the name of Gurdayal Prasad or that accused/Dheeraj Prasad had met him at the residence of Gurdayal Prasad and misrepresented to him that he is son of Gurdayal Prasad. 4.2.1 The application for mortgage loan was made by Gurdayal Prasad on 17.06.05 and Sh.Yograj Bhatia has prepared his visit report to house of Gurdayal Prasad on the same day, then where was an occasion for visiting his house without accompanying said Gurdayal Prasad. He said during his cross□examination by ld.counsel for A□3/Raj Bal Tyagi that he had visited house of Gurdayal Prasad with accused/Virender Syal (A□2) on the instruction of S K Chawla (A□1) as he was new to Delhi and had joined the branch only 1½ months before.

4.2.2
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It was accused/Virender Kumar Syal who
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had introduced account of Gurdayal Prasad and witnessed his signature on account opening form of Gurdayal Prasad. Why accused/V K Syal (A□2) had accompanied to the house of Gurdayal Prasad on 17.06.05 whereas according to Mr.Bhatia, Gurdayal Prasad (i.e Raj Bal Tyagi) himself was available in the bank on that date and made a loan application, although at that time accused/Virender Kumar Syal (A□2) was not in picture in respect of loan which was sanctioned subsequently on 21.06.05 for which he (A□2) became guarantor. A natural course would have been that Sh.Yograj Bhatia ought to have accompanied the applicant (if it was A□3/Raj Bal Tyagi) to the house of Gurdayal Prasad for the purpose of physical verification of his property and the antecedents of prospective borrower, more particularly when he has shown in his report that he visited house of Gurdayal Prasad on 17.06.05. During his cross□examination by ld.counsel for A□2, he (PW□4) has deposed that for visit he had left the bank at about 11.30 a.m/12.00 noon, which CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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clarifies that it is not his stand that he had gone for visit to the house of Gurdayal Prasad in the evening when said Gurdayal Prasad had left the bank after making his loan application. 4.2.3 Sh.Yograj Bhatia has narrated in his report, Ex.PW□4/A□2 that son of owner had met him at the time of inspection. He identified accused/Dheeraj Prasad, during cross□examination but on the report he did not obtain the signature of either Dheeraj Prasad (A□4) or V K Syal (A□2) to show that either of them had identified the mortgaged property or residence of Gurdayal Prasad, who had already expired in 1990. Had he gone there and made minimum enquiry from the neighbourhood, he would have come to know that Gurdayal Prasad had already expired 15 years back and that Dheeraj Prasad (A□4) is not son of Gurdayal Prasad. The identification of accused/Dheeraj Prasad in the court at the time of evidence by Sh.Bhatia also does not have any evidentiary value because when accused/Dheeraj CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Prasad asked I.O.of the case(PW□22) as to "how come Mr.Yog Raj Bhatia was present when you had taken my statement, when he was not called by you at your office?"

the IO replied, "I had called Sh.Yograj Bhatia to come to my office but I had not told him that Dheeraj Prasad was also called in my office." Similarly, his identification of accused/Raj Bal Tyagi (A□3)in the court, during trial,is also of no value as it was easy for anyone to identify him on the basis of photograph affixed on loan application, account opening form and guarantee deed.Accused Raj Bal Tyagi is not disputing his photographs.

4.2.4 PW□/Smt.Kamla Kumari, daughter of late Gurdayal Prasad, deposed that Gurdayal Prasad expired in 1990. She proved his death certificate as Ex.PW□/E (D□ 88). She deposed that on receiving a thanks giving letter from the bank in year 2005 for opening of an account in the name of Sh.Gurdayal Prasad, she had gone to bank and told them CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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that her father had expired in the year 1990 and, therefore, there was no question of him opening an account in the year 2005. She also made an application to the bank in this respect along with death certificate of her father. During her cross□ examination by ld.counsel for accused/Raj Bal Tyagi, she stated that no official of the bank ever visited her and as such she had no occasion to show the original documents concerning the property in question.

4.2.5 Similar is the testimony of PW□/Smt.Meenu Prasad, who is daughter□n□law of late Gurdayal Prasad and mother of accused/Dheeraj Prasad (A□4), who had also accompanied PW□ to the bank on receipt of thanks giving letter in name of late Gurdayal Prasad. She deposed during her cross□examination that the name of the bank official whom she met was Yograj Bhatia, who gave her, his visiting card. She said that she rang Sh.Yograj Bhatia after about two months who told her that since it was internal matter of CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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the bank so she need not bother herself.

4.2.6 None of these witnesses have been declared hostile by prosecution and they were not suggested by CBI that Sh.Yograj Bhatia had actually visited their house for verification. Thus, it is an admitted position that Sh.Yograj Bhatia or any officer of the bank did not actually visit house of Sh.Gurdayal Prasad and thus, there was no question of accused/Dheeraj Prasad meeting Sh.Bhatia at his house and telling him that his father Gurdayal Prasad (who in fact was his late grand father) had gone to market. In Ex.PW□4/A□2, name of Dheeraj Prasad has not been mentioned as the person who met Sh.Yograj Bhatia at Gurdayal Prasad's house. It is mentioned therein that son of Gurdayal Prasad met him at the house whereas Dheeraj Prasad (A□4) is not son of late Gurdayal Prasad.

4.2.7 Sh.Yograj Bhatia has deposed in his
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examination in chief that accused/S K Chawla (A□) was the Chief Manager, who had called him in his chamber and directed him to sanction personal loan to Sh.Gurdayal Prasad. During his cross□examination he said that as the property no.9E/5, East Patel Nagar was already mortgaged so he did not enter into further enquiries. He was not suggested by ld.counsel for accused/S K Chawla during cross□examination, that Sh.S K Chawla had not called him in his chamber and had not directed him to sanction personal loan to Sh.Gurdayal Prasad. Thus, when it is established that Sh.Bhatia had sanctioned the loan as dictated by accused/S K Chawla (A□), Chief Manager, then there is a high degree of probability that he opened account in the name of Gurdayal Prasad without insisting that said Gurdayal Prasad appears before him in person or signs the documents in his presence.

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4.2.8 If, we carefully see loan application of

Sh.Gurdayal Prasad under the heading "Application form for loan against equitable mortgage of immovable property"

Ex.PW□4/A (D□45), we find that the address of Sh.Gurdayal Prasad is mentioned as 9/5E, East Patel Nagar, New Delhi□08, in column no.3 whereas in column no.11 of the same application under the heading details and value of the property proposed to be mortgaged, the address is mentioned as 9/5, East Patel Nagar after cutting/cancelling "9E/5, East Patel Nagar 250 sq.yards." The new measurements against house number is mentioned GF.1080 sq.ft., FF□080 sq.ft., SF□080 sq.ft. Had Sh.Yograj Bhatia himself visited the house of Gurdayal Prasad he would have come to know about the discrepancy in the address of the mortgaged property vis□a□vis address of applicant and also about the actual occupants of different portions/floors of the said house as deposed by daughter and the daughter□in□law of late Gurdayal Prasad (PW□ and PW□2). During his cross□CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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examination by ld.counsel for accused/V K Syal (A□2) he admitted that he had not checked the papers of the property which was mortgaged in an earlier transaction about which he had no personal knowledge and he was orally informed about this fact by accused/S K Chawla (A□) who was the Chief Manager of the branch at that time.

4.2.9 From his testimony, it transpires that he heavily depended upon accused/Sri Kant Chawla, who was already posted as Chief Manager of the branch and did not apply his own mind as a prudent bank officer. He admitted during his cross□examination by ld.counsel for A□/S K Chawla that department had not promoted him for one year as a penalty for not observing the rules and his lapses in the grant of personal loan. Had he been colluding with accused persons, he would not have sent a thanks giving letter to Gurdayal Prasad for opening account with his bank, hence his mistake

was that he did not apply his mind as a prudent CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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bank officer and simply believed accused/Sri Kant Chawla and sanctioned personal/mortgage loan in the name of Gurdayal Prasad on directions of S K Chawla (A□). There is nothing to evince that Dheeraj Prasad was in collusion with accused persons in grant of personal loan in name of Gurdayal Prasad. Had he been so colluding, he would have managed that the thanks giving letter sent by bank is either not dispatched or even if dispatched, he could himself have taken delivery of the same and thereby avoiding disclosure of this fact to his aunt and mother (PW□ and PW□). 4.2.10 It is the case of CBI itself in the charge sheet that the amount of Rs.13,96,305/□ was withdrawn by accused/V K Syal from the said account of Gurdayal Prasad but he repaid the same and closed the account when accused/Yograj Bhatia raised alarm after coming to know the factum of death of Sh.Gurdayal Prasad in 1990 itself from PW□ and PW□. When IO (PW□2) deposed that he had CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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come to know during investigation that the amounts in account of Gurdayal Prasad were deposited by accused/V K Syal (A□) vide vouchers, Ex.PW□4/DC, DD, DE & DF, it was not controverted by accused/V K Syal (A□), thereby giving rise to the conclusion that he admitted this fact. 4.2.11 During his cross□ examination, Sh.Bhatia stated that he had sent a letter of thanks to Gurdayal Prasad and about 7□10 days thereafter two ladies viz Bua and mother of accused/Dheeraj came and told him that Gurdayal Prasad had already expired and that on his asking they had given a written complaint to him along with copy of death certificate on 27.06.05. He said that when he came to know about this fraud, he immediately rang to his Divisional Office, while accused/S K Chawla was on leave. He specifically deposed that when Sh.S K Chawla returned back from leave, he told him about these facts upon which accused/S K Chawla even scolded him as to why he had informed the CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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mater to Divisional Office.

4.2.12 Thus, it is proved from statement of Sh.Yograj Bhatia that he had sanctioned the personal/mortgage loan in the name of Sh.Gurdayal Prasad only at the direction of his Chief Manager/accused/S K Chawla. It is also proved, rather impliedly admitted also on the part of accused/V K Syal (A□) that he introduced the imposter as Gurdayal Prasad for opening an account in his name and repaid the personal loan of Gurdayal Prasad by depositing money in his account. Under such circumstances the burden of proof had shifted to him. Now, it was his burden to rebut as to who was that person whom he had introduced to the bank as Gurdayal Prasad by using photograph of Raj Bal Tyagi (A□) for opening an account in his name, which burden he failed to discharge. Hence, it is clearly established that he was in league with accused/SK Chawla (A□) in getting the personal/mortgage loan CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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sanctioned to an imposter in the name of a deceased person, namely, Gurdayal Prasad. I will discuss the nexus between accused/S K Chawla (A□) and V K Syal (A□) in introducing Gurdayal Prasad as a guarantor for a loan sanctioned to the latter in January, 2005 under the heading 'facilities sanctioned to Davis Cornet International and role of accused persons.' (Para 5 infra) 4.2.13 There is no evidence or even allegation that accused/Raj Bal Tyagi received any benefit out of this transaction or he ever visited Bank's Nangal Raya Branch. The handwriting expert did not give a positive opinion that any of the signatures or writings on the loan application form or account opening forms or withdrawal/deposit vouchers were those of Raj Bal Tyagi. It is not a case in which the questioned writings/signatures were very limited which would have prevented the Government's handwriting expert to CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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express any opinion, because in the case in hand there are more than twenty signatures made on different documents of the bank by writing complete name as "Gurdayal Prasad". Thus, the only evidence against accused/Raj Bal Tyagi is the availability of his photograph on the loan application and account opening form without there being any attestation or signature on these photographs and testimony of PW□4/Yograj Bhatia that he signed as Gurdayal Prasad in his presence, although he had shown his ignorance as to who had filled the account opening form in the name of Gurdayal Prasad, Interestingly, he also could not tell as to who had deposited Rs.5.00 lacs on 30.06.05, Rs.4.00 lacs on 01.07.05, Rs.2,96,305/□on 08.07.05 and Rs.2.00 lacs on 08.07.05 vide vouchers Ex.PW□4/DC, DD, DE & DF to adjust the personal loan granted in the name of deceased/Gurdayal Prasad. This had admittedly happened soon after giving a complaint to him by PW□ and PW□ on 27.06.05 and a natural effect of this revelation on his mind would have been CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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that he must be highly perturbed with the situation that a loan of Rs.15 lacs was sanctioned and disbursed by him in the name of a deceased person with fake security of mortgage which required urgent liquidation. It appears that he deliberately concealed the fact as to who had actually adjusted the account after discovery of fraud and thus he was shielding somebody who, in all probability, was introducer and guarantor of the account, V K Syal (A□) and the Chief Manager of the branch/S K Chawla (A□) on whose instructions he had sanctioned this personal loan. It is noteworthy that during his cross□examination by accused/Raj Bal Tyagi (A□), IO of the case Sh.B M Pandit (PW□ 22) stated that the amounts in the said account in the name of Gurdayal Prasad were deposited by accused/V K Syal (A□), vide vouchers, Ex.PW□4/DC, DD, DE and DF. The obvious reason for such a deposit by accused/V K Syal (A□) was that he was the actual beneficiary of this personal loan and not accused/Raj Bal Tyagi (A□) whose photograph was used for CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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opening the bank account or accused/Bhupinder Pal Singh Bakshi (A□6), who signed guarantee deed on asking of accused/V K Syal (A□2).

4.3.1 We have already seen the reasons for reaching to a conclusion that version of Mr.Yograj Bhatia about involvement of A□3/Raj Bal Tyagi and Dheeraj Prasad (A□4) is not only unsafe to accept but would also amount to travesty of justice and hence can not be relied upon. The reason for such a version coming from him appears to be motivated by fear of loosing his job as he could be indicted by his department for his involvement or of his utter negligence in sanction of a personal loan in the name of a deceased person (Gurdayal Prasad) with a bogus security of mortgage of residential house, which he did without any physical verification of the security and the borrower.

4.3.2

As regards the copy of voter I Card and PAN

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Card used for opening of the bank account in the name of Gurdayal Prasad, I have already discussed the reasons for not believing that the same were filed by A□3 or original verified by Sh.Yograj Bhatia.

4.3.3 As regards the fact as to how his photographs were used on his account opening form in the name of Gurdayal Prasad and loan application, Raj Bal Tyagi (A□3) has explained in his statement u/s 313 Cr.PC (Q.115) that his photographs have been used without his consent or knowledge and that he never visited Nangal Raya Branch or met any bank officer. Besides, PW□4/Yograj Bhatia, no other bank official of Nangal Raya Branch deposed that Raj Bal Tyagi was ever seen visiting Nangal Raya Branch of SBBJ. The handwriting expert (GEQD) also did not opine that any of the signatures or writings made on the loan application, account opening form or any of the vouchers pertain to him. I have already discussed as to why the CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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testimony of Sh.Yograj Bhatia about role of Raj Bal Tyagi (A□3) and Dheraj Prasad (A□4) does not inspire confidence of this court.

4.4.1 As regards involvement of accused/Bhupinder Pal Singh Bakshi (A□6), the only allegation against him is that he stood guarantor to the personal loan granted in the name of Sh.Gurdayal Prasad, vide guarantee deed, Ex.PW□4/A□4 and A□5 (D□36). It is admitted case of CBI that M/s Pavi Overseas of accused/Bhupinder Pal Singh Bakshi (Director) was account holder of SBBJ, Nangal Raya Branch and there is no other fault on his part except for becoming guarantor to personal loan of Rs.15 lacs sanctioned to Gurdayal Prasad (a dead man), which loan was admittedly repaid. There is nothing on record to connect him to the imposter whom loan was sanctioned and disbursed in the name of Gurdayal Prasad. Even PW□4/Yograj Bhatia could not say that B.P.S.

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(A□6) accompanied imposter Gurdayal Prasad when he signed guarantee deed. In his answer to question no.15 of statement u/s 313 Cr.PC, he said that accused/Virender Kumar Syal had asked him to stand guarantor for Gurdayal Prasad and as such at his instance he had given guarantee for Gurdayal Prasad, who was not known. This appears to be a plausible explanation. There is nothing to show that he had any dishonest intention or derived any benefit out of this transaction.

4.4.2 PW□4/Yograj Bhatia has admitted in his cross□examination that the liability of guarantor starts if the account is overdue and the borrower is not making the payment. He admitted that the account of Gurdayal Prasad had been liquidated. Similarly, PW□5/G L Kanwar, Dy.Manager of the bank has admitted that the responsibility of the guarantor is only towards the repayment of the loan amount and that on repayment of loan his liability is CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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discharged. It is admitted fact that personal loan of Gurdayal Prasad was adjusted much before registration of FIR of the case. Thus, even the civil liability of accused/Bhupinder Pal Singh Bakshi (A□6) had not arisen. Ld.counsel for accused/Bhupinder Pal Singh Bakshi (A□6) has relied upon several authorities to argue that where the liability is of civil nature, the superior courts have quashed the FIR, even if the same facts made out some criminal offence also. I need not discuss those judgments because from the evidence on record and facts and circumstances as discussed above, I have reached to the conclusion that there is no adequate evidence to fasten a criminal liability against accused/Bhupinder Pal Singh Bakshi (A□6). 4.5 In view of above discussion, I hold that the prosecution has failed to prove its case against accused/Raj Bal Tyagi (A□3), Dheeraj Prasad (A□4) and Bhupinder Pal Singh Bakshi (A□6) beyond reasonable doubts hence they CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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are liable to be acquitted. The account of Gurdayal Prasad (a dead person) with photograph of accused/Raj Bal Tyagi (A□3) was introduced by accused/Virender Kumar Syal (A□2) and, therefore, burden of proof had shifted to him to prove as to who was that imposter whom he had introduced to the bank as Gurdayal Prasad and got sanctioned personal loan of Rs.15 lacs, which he failed to discharge. As per IO of the case (PW□22), the personal loan of Gurdayal Prasad was liquidated by accused by deposit through vouchers, Ex.PW□4/DC, DD, DE and DF, which fact remained unchallenged. When he was not the guarantor of the account, it was not his duty to liquidate the loan amount. The natural conclusion is that since he was real beneficiary, hence he repaid the loan amount It is also established that accused/S K Chawla (A□1) had directed Sh.Yograj Bhatia for sanction of this personal loan in the name of Gurdayal Prasad, whom he had already accepted as guarantor and mortgagor to secure facilities sanctioned by him (A□1) to CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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accused/V K Syal (A□2). Under such circumstances the criminal conspiracy between accused/S K Chawla (A□1) and V K Syal (A□2) to cheat the Bank by inducing to sanction and disburse loan amount of Rs.15.00 lacs in the name of a dead man can easily be inferred. The refund of cheated amount does not purge accused/S K Chawla and V K Syal (A□2) of the offence of cheating, which is a well settled position of law. 5.1 Credit Facilities sanctioned to M/s Davis Cornet International and role of accused persons 5.1.1 Seizure memo, vide which the documents pertaining to M/s Davis Cornet International, were seized by CBI, has been proved as Ex.PW□9/A (D□6). The application cum appraisal form submitted by accused/V K Syal (A□2) as proprietor of M/s Davis Cornet International, vide which he applied for Cash Credit Hypothecation of Rs. 35 lacs and bill discounting under LC (foreign) for Rs.10 lacs CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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has been proved as Ex.PW□5/A (D□7). Purpose of advance has been mentioned as 'to promote business and working capital requirement', the details of security offered as collateral security has been mentioned as 9E/5, East Patel Nagar, New Delhi of one Gurdal Prasad, the present market price of which was shown as Rs.1,02,96,000/□and valuation dated 31.12.04 by M/s Chani & Associates, is also mentioned. The application is dated 08.01.05. The appraisal note available on page no.6 of this application cum appraisal form is the appraisal note showing that the note has been appraised by the concerned officer on 12.01.05. 5.1.2 PW□5/Govind Kishan Nirman, who remained posted as Dy.Manager in the same branch during 2002 to 2006 has proved this application cum appraisal form. PW□8/Raman Chaudhary has proved that Sh.Prem Raj Mawar, Dy.Manager was the officer, who had signed the CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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appraisal note at point C. 5.1.3 PW□9/Ashok Kumar Garg has proved that 'the appraisal note at page 6 of Ex.PW□5/A is filled by the then Deputy Manager and is certified by the then Chief Manager/Sh.S K Chawla.' He said that 'vide the appraisal note, Sh.S K Chawla has certified that the landed properties offered as collateral security has been visited/verified by the Chief Manager and based on local enquiries made by him, he was satisfied that the market value stated by the bank's empaneled approved valuer is realistic and that there is no adverse market report on the borrower/guarantors.' This fact has not been disputed by accused in cross□examination of PW□9. When PW□1 and PW□2, who are owners and occupiers of house mortgaged by the guarantor in the name of Sh.Gurdal Prasad, deposed that no bank official had visited their house, accused/S K Chawla (A□1) did not put to them that he had visited their house for verification of CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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guarantor/Gurdal Prasad and physical inspection of the property in question. Ld.counsel for accused/S K Chawla (A□1) has tried to suggest to IO of the case PW□22/Sh.B M Pandit that it was

Sh.Yograj Bhatia, who had visited the property in question, whereas it is not a disputed fact that Sh.Yograj Bhatia (PW□4) did not even join the Nangal Raya Branch when loan was sanctioned to M/s Davis Cornet International in January, 2005. Accused/S K Chawla (A□) has thus tried to mislead the court to create an impression that Sh.Yograj Bhatia had physically inspected the property mortgaged to secure the loan advanced to M/s Davis Cornet International in January, 2005, whereas he (Sh.Yograj Bhatia) had purportedly inspected the property while granting a personal loan of Rs.15.00 lacs to Sh.Gurdayal Prasad in June, 2005 (see discussion in para 4 infra).
5.1.4 The stock statement which is attached with the application has been proved as Ex.PW□9/B under the CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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signatures of accused/V K Syal (A□2) as authorized signatory of M/s Davis Cornet International, which is dated 06.01.05, which has been separately proved as Ex.PW□9/B. Ex.PW□9/W□ is also part of the same stock statement which shows that accused/S K Chawla (A□) as Chief Manager of the branch has calculated the drawing power as Rs.44,98,400/□after taking valuation of stocks and book debts as Rs.56,23,000/□

5.1.5 The opinion report given by accused/S K Chawla (A□) about Gurdayal Prasad (guarantor) which is also dated 12.01.05 has been proved as Ex.PW□9/C giving realizable value of his house property bearing no.9E/5, East Patel Nagar, New Delhi as Rs.1,02,96,000/□ value of gold etc. at Rs.4 lacs, value of movable assets as Rs.4 lacs, the total net worth as Rs.1,06,96,000/□of the said guarantor.

5.1.6 Since it is report of accused/S K Chawla
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(A□) himself, therefore, it is understood to give an impression that he himself had verified about the net worth of prospective mortgagor/Gurdayal Prasad by meeting him personally and visiting the property offered in equitable mortgage, whereas it is admitted fact on his behalf as seen from testimonies of PW□ and PW□2 that Gurdayal Prasad had already expired in 1990 and the property documents are with his legal heirs who had got recorded their names in records of the Government. Accused/S K Chawla (A□) did not even try to suggest to PW□ and PW□2 that he or any officer of the Bank had visited their house for physical verification of the property or the said proposed guarantor/Gurdayal Prasad.

5.1.7 During cross□examination of PW□3/Sh.M M Lal (complainant) by ld.counsel for accused/S K Chawla (A□) he clarified, "in case the loan is of bigger amount then besides the field officer, branch manager is also supposed to CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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verify the assets himself. It is also correct to say that in case the branch manager do not intend to visit the property to be mortgaged then he has the discretion to depute any of his junior officer to verify the property and report to him. The branch manager is to personally ensure that the loan given is viable and the properties to be mortgaged are marketable. The branch manager when is delegating his authority to verify the property then he will have to personally satisfy himself in all respects."

5.1.8 It is not the defence of accused/S K Chawla (A□) that he had assigned to some subordinate officer, the work of verification of guarantor/Gurdayal Prasad and his financial status or status of his property offered in mortgage to secure the loan of accused/V K Syal's proprietorship firm M/s Davis Cornet International. Thus, he was clearly in league with accused/V K Syal (A□) as a consequence of which the Bank is duped of the public money without there CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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being any real guarantor or his collateral security to fall back upon on default by the borrower in making repayment of loan.

5.1.9 Accused/S K Chawla (A□) has mentioned in his appraisal note that the valuation and the title search reports were obtained but there was no such report found and it has also not been suggested to any of the witnesses either by accused/S K Chawla (A□) or any other accused that there were such valuation or title search reports taken by accused/S K Chawla (A□) while sanctioning loan to M/s Davis Cornet International.

5.1.10 In written arguments, it has been submitted by accused/S K Chawla (A□) that PW□Yograj Bhatia, who sanctioned the personal loan, had verified the property of the guarantor while sanctioning him personal loan. This submission is wholly misplaced and misleading as the CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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personal loan was sanctioned by Sh.Yograj Bhatia only in June, 2005, whereas the instant facility was sanctioned to M/s Davis Cornet International on 12th January, 2005. It has also come in evidence that Sh.Bhatia had joined Nangal Raya Branch on 02.05.05 only and thus he was not even posted in the branch when loan was sanctioned to M/s Davis Cornet International.

5.2.1 Ex.PW□8/A□ (D□8) is the letter of accused/V K Syal (A□) addressed to the Chief Manager of the branch dated 10.12.04 stating that he had enclosed balance sheets for the year 2003□04 and ITRs for last years making a request to sanction the CC limits of Rs.35 lacs + LC limit of Rs.20 lacs. The loan sanction order has been proved as Ex.PW□8/A□ (D□9), vide which CC (Hypothecation) of Rs.25 lacs and bills negotiated under LC (foreign) of Rs.10 lacs has been sanctioned. The order

has been signed by accused/S K Chawla (A□) at point A and the CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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same has been acknowledged by accused/V K Syal (A□) as proprietor of M/s Davis Cornet International by signing at point B. There is signature of guarantor/Gurdayal Prasad also on the said document at Q□26 but as per GEQD opinion, it has not been possible to express any opinion on the basis of material supplied to him, as observed by him in report, Ex.PW□4/K (D□05). However, the signature of Chief Manager at point A (Q□350) on Ex.PW□8/A□ (D□9) has been proved by GEQD to be that of accused/S K Chawla (A□) besides oral testimony of witnesses discussed above. In this respect I find that the GEQD opinion, Ex.PW□4/K has not been challenged by any of the accused persons. The signatures of accused/V K Syal (A□) as proprietor of M/s Davis Cornet International, at point B, on the same has also been proved and even otherwise, it has not been denied. 5.2.2 Similarly, the Deed of Guarantee executed by Gurdayal Prasad has been proved as Ex.PW□/A, on which CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Gurdayal Prasad had signed on all pages at points Y (Q□12 to Q□20). But as already discussed, GEQD, vide his report, Ex.PW□4/K (D□05) could not express any opinion in this respect after considering the specimen handwriting of accused/Raj Bal Tyagi, who had allegedly signed as Gurdayal Prasad.

5.2.3 It has been proved by PW□7/Prem Raj Mawar, Dy.Manager of the branch that account opening form of accused/V K Syal (A□) has been verified by him which is Ex.PW□7/A (D□22). He also proved letter regarding grant of individual limits as Ex.PW□7/A□ (D□21 containing 47 pages). It is worthwhile to mention that the appraisal note for sanctioning loan was put up by PW□7/Prem Raj Mawar, then Dy.Manager. During his cross□examination, he has admitted that the entire paper work of cash credit limit of M/s Davis Cornet International was done and processed by him and thus he was the best witness to depose as to whether the CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Guarantee Deed was signed in his presence and whether it was accused/Raj Bal Tyagi (A□3), who had signed at point Y on Guarantee Deed, Ex.PW□/A (D□20).

5.2.4 It appears that the complicity of Sh.P R Mawar in putting up an appraisal note for sanction of loan to M/s Davis Cornet International, has been over looked during investigation and he was the only witness who could depose regarding the alleged role of accused/Raj Bal Tyagi (A□3) in presenting himself as Gurdayal Prasad (a dead man) and signing the Deed of Guarantee, Ex.PW□1/A, as such. Neither the eye witness could prove this fact nor the handwriting expert (GEQD) could opine that the signatures or any of the writings on the Guarantee Deed or any documents have been done by accused/Raj Bal Tyagi (A□3) in the name of Gurdayal Prasad. Ex.PW□9/Q is the letter of

indemnity given by accused/V K Syal (A□2) by putting his signature at point A (Q□299) and the same has been confirmed by GEQD CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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opinion, Ex.PW□24/K. It has not been denied by him. In fact neither accused/S K Chawla (A□) nor accused/V K Syal (A□2) have denied/disputed any of the signatures on the documents proved by the prosecution.

5.2.5 The ld.Public Prosecutor has drawn attention of the court to the statement of PW□9/Sh.A K Garg identifying photograph of accused/Raj Bal Tyagi (A□3) at guarantee deed, Ex.PW□/A to argue that there is an ocular evidence regarding signing of guarantee deed by accused/Raj Bal Tyagi in the name of Gurdayal Prasad. But from testimony of PW□9, it is clear that he remained posted in Nangal Raya Branch w.e.f. July, 2005 to April, 2007 whereas the guarantee deed, Ex.PW□/A was executed in January, 2005 on which date PW□9 had not joined the said branch. Thus, the testimony of PW□9 is based only on identification of accused/Raj Bal Tyagi (A□3) on the basis of his photograph affixed on Ex.PW□/A and nothing more.

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5.2.6

The consent clause given by borrower/V K

Syal, as proprietor of M/s Davis Cornet International bears his signature at point A (Q□301) and is Ex.PW□9/S. Consent clause in the name of Gurdayal Prasad bearing his signature at point Q□225 has been proved as Ex.PW□9/T (D□21). 5.2.7 Needless to reiterate that prosecution could not establish either by ocular evidence or by expert's opinion that accused/Raj Bal Tyagi (A□3) had signed as Gurdayal Prasad at point Q□225.

5.3.1 The affidavit given by accused/V K Syal (A□2) has been proved as Ex.PW□9/U (D□21) and a letter regarding grant of individual limits within over all limits of Rs. 35 lacs dated 12.01.05 has been proved as Ex.PW□7/A□, on which, it is not even mentioned as to whom this letter has been addressed, although it has been signed by accused/V CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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K Syal at point A, as proprietor of M/s Davis Cornet International. His agreement of hypothecation of goods and assets has been proved as Ex.PW□8/A□3 bearing his signature at points A on all pages (Q□285 to Q□292). Memorandum of loan agreement has been proved as Ex.PW□8/A□4 (D□221) which has been executed by accused/V K Syal (A□2) by signing as proprietor of M/s Davis Cornet International and on its last page, accused/S K Chawla (A□) had signed at point B for and on behalf of the Bank.

5.3.2 The account opening form for opening an account in name of M/s Davis Cornet International has been proved as Ex.PW□7/A with signatures of accused/V K Syal (A□2) as proprietor of the firm at point D. The signature has been verified by Sh.P R Mawar by putting his signature at point A on Ex.PW□7/A. This application also bears photograph of accused/V K Syal (A□2) at point C. GEQD, CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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vide his opinion, Ex.PW□24/K (D□05) has confirmed the signature of accused/V K Syal (A□2) at Q□41 and it is also not disputed by accused/V K Syal (A□2).

5.3.3 The statement of account of M/s Davis Cornet International for the period 12.01.05 to 11.08.05 has been proved as Ex.PW□8/A□5 (5 sheets) which is bearing no.01600052186 and cash credit (stocks) which has been certified by PW□8 himself and the certificate u/s 2A of Bankers' Book of Evidence Act, 1891 in this respect has been proved as Ex.PW□8/A□6. Another statement of account pertaining to A/C No.51025483637 of M/s Davis Cornet International for the period 11.08.05 to 31.12.05 (2 pages) has been proved as Ex.PW□8/A□7 and the certificate under Bankers' Book of Evidence Act has been proved as Ex.PW□8/A□8.

5.3.4 PW-3/M M Lal, who was Chief Vigilance
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Officer of SBBJ and also complainant in this case, has deposed that he had directed Sh.P S Yadav, Chief Manager (Vigilance) to visit Nangal Raya Branch and to investigate the account and report to the bank, who had visited the bank and made a report dated 15.05.06 which is Ex.PW□3/A (D□14).

5.3.5 Sh.P S Yadav has also been examined by the prosecution as PW□8, who deposed that during investigation it transpired that heavy over drawings over and above the sanctioned limits and beyond the discretionary powers of the branch manager were being given. He also deposed that during investigation by him, it also transpired that certain local and outstation cheques were purchased without any sanctioned limits and without discretionary powers and the said transactions were not reported to the higher authorities. He clarified during his cross□examination by ld.counsel for accused/V K Syal (A□2) that the simple violations of the systems and procedures without having any CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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malafide, are called irregularities and if the action is malafide or concealments of facts, it becomes illegal. He deposed that his report, Ex.PW□3/A shows malafide action on the part of bank officials.

5.3.6 One of the arguments advanced by ld.counsel for accused/S K Chawla (A□1) is that the

statement of account of M/s Davis Cornet Fashions Pvt. Ltd. (D62), Ex.PW18/D (Colly) would show that as on 31.03.06 the account was regular and well within the sanctioned limit of Rs.40 lacs only as the outstanding on that date was Rs. 39.83 lacs, which is the position of the account after accused/S K Chawla (A1) had relinquished the charge of the branch. This submissions is misleading as is clear from the statement of PW4/Sushil Kumar Goel, who was working as Asstt.General Manager and posted in Zonal office of SBBJ, New Delhi. He has deposed that he was controller of the branches in respect of general administration and Nangal CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Raya Branch was under his control. He said that when he inspected the said branch on 13.01.06 for the first time he found that the Transit Voucher Book and Regularity Permitted and Reported Registers were not being maintained in the branch. When he found that Limit Excess Report which is a computer generated report was not readily available and when he asked for the same from accused/S K Chawla (A1), he assured him that he will fulfill the requirement and will submit a detailed report. An entry was made by him in the observation register. He also proved that the Limit Excess report was received from accused/S K Chawla in February, 2006 in which he found that many accounts were overdrawn. He also testified that Chief Manager has discretion to approve clean limit (i.e. without security) for an amount upto Rs.3 lacs and has also the discretion to purchase the clean cheques upto the amount of Rs.6 lacs. He specifically deposed that as per the statement of account (D62), Ex.PW4/A2, the limit sanctioned for M/s Davis CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Cornet Fashions Pvt Ltd was Rs.40 lacs but on 26.02.07, there was a debit balance of Rs.76 lacs approximately. 5.3.7 In his cross examination by ld.counsel for V K Syal (A2), he has deposed that on 31.03.06 the borrower had deposited an amount of Rs.40,000/ However, there is an entry on the said date of Rs.35,78,400/ but in fact this entry was in respect of purchase of a bill as per instructions of the borrower but when later on they found that the said transaction was not genuine so the amount of Rs.35,78,400/ was debited in the account of the borrower on 29.04.06. He also brought a letter of State Bank of Patiala, Coimbatore branch, addressed to Branch Manager, SBBJ, Nangal Raya branch dated 24.04.06 and on the basis of the same he said that his letter is connected with entry pertaining to purchase of bill of Rs.35,78,400/ This letter was marked Ex.PW4/DA. When he was asked as to how this letter is connected with entry of Rs.35,78,400/ he produced letter of CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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BO Nangal Raya in this respect and proved it as Ex.PW4/DB (both these letters are kept in file containing additional documents). Despite full opportunities given to accused/S K Chawla (A1) he did not cross examine this witness and hence not disputed the version of PW4/S K Goel.

5.4.1 Another aspect in grant of credit facilities to M/s Davis Cornet International is that the forged and fabricated financial statements/balance sheets were got prepared by accused/V K Syal (A²) for financial years ended on 31.03.03 and 31.03.04 which were utilized by him by submitting the same to the bank and were accepted by accused/S K Chawla (A¹) without any verification showing his active connivance. PW⁷/Sanjay Jain is Chartered Accountant by profession working in the name and style of M/s Sanjay Ramesh Jain & Company with office address as 103, Friends Complex, E⁷A, Jawahar Park, Laxmi Nagar, CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Delhi. He deposed that he purchased the office premises in May, 2003. On seeing the document which is copy of audit report (D⁴⁰) dated 21.09.03, he said that it has not been prepared by him and it does not bear his signature, mobile number or firm's name. He also deposed that said audit report bears the name of Mittal & Goyal Associates which firm did not exist at the given address and he never had any partner in the name of Sh.S K Goyal. The said report was marked as Ex.PW⁷/1.

5.4.2 It is worthwhile to note that this is the audit report prepared on the letter head of Mittal and Goyal Associates, Chartered Accountants, 103, Friends Complex, E⁷A, Jawahar Park, Laxmi Nagar, Delhi in respect of Profit & Loss Account and Balance Sheet of M/s Davis Cornet International, New Delhi as on 31.03.03. Another audit report dated 30.08.04 with Profit & Loss Account and Balance Sheet for the year ended on 31.03.04 is Ex.PW²²/E⁴ CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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(D⁴⁰) which is also given by same auditor. These are the audit reports and balance sheets which were utilized by accused/V K Syal (A²) for obtaining loan from SBBJ, Nangal Raya branch in the name of his proprietorship firm/Davis Cornet International, which have been proved as forged and fabricated as there was no such firm of Chartered Accountants.

5.4.3 Thus, it is proved that accused/V K Syal (A²) submitted these forged audit reports and balance sheets of the firm to the Bank which were submitted in order to claim sanction of loan from the bank and the same were accepted by accused/S K Chawla (A¹) without any verification clearly establishing his connivance with accused/V K Syal (A²) to favour him in the matter of grant of loan/financial limits.

5.5.1
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Sh.Raman Chaudhary (PW-18) deposed that
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M/s Davis Cornet International, M/s Davis Cornet Fashions Pvt Ltd and M/s Ess Vee Exports were

sanctioned credit facilities under Bank's scheme of "SBBJ Sulabh Rin Vyapar Yojna" under circular dated 24.09.03, Ex.PW□12/A□2 dated 05.09.02 and 29.03.04 (D□7), Ex.PW□18/A□3. He also proved extract of Chapter 11 of Bank's Book of Instructions as Ex.PW□18/A□4, circular of delegation of financial powers to bank officials as Ex.PW□18/A□5 (D□4), extract of Chapter 12 of the Bank's Book of Instructions as Ex.PW□18/A□6 (D□6). He also clarified that the difference between Circulars dated 29.09.03 and 29.08.05 pertaining to "SBBJ Sulabh Rin Vyapar Yojna" is that earlier the rate of interest was higher and quantum of loan was less whereas in the subsequent circular the rate of interest was less, the loan amount was more. This would make it clear as to how accused/S K Chawla favoured company of accused/V K Syal in granting higher amount of loan with relatively lower rate of CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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interest as compared to finance given to his proprietorship concern whose account had become highly irregular when it was closed by transferring the amount from company's loan account (see discussion in para 6 under the heading "sanction of loan to M/s Davis Cornet Fashions Pvt Ltd and role of accused persons").

5.5.2 PW□18/Sh.Raman Chaudhary has also proved that as per bank's policy cheque of any borrower can be purchased if the amount of the cheque falls within the discretionary power of Chief Manager within overall indebtedness of the firm/company as per bank's instructions Ex.PW.18/A.15. He also deposed that discretionary power of Chief Manager under Advances against Bills (clean) was Rs. 6 lacs at that point of time and it was subject to the reporting as contained in the said circular. As regards purchasing of documentary bill, he deposed that as per these guidelines the discretionary power of Chief Manager was Rs.40 lacs CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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and the Chief Manager has to confine his discretionary power within the limit already sanctioned to the party. He deposed that it has been prescribed in the aforesaid circular that whenever any loan/limit is granted by the competent authority, the same has to be conveyed to the controlling authority on the same date when such power is exercised and it has been prescribed that in no circumstances the competent authority shall exceed its discretionary power in grant of limit/loan without prior permission of the respective controlling authority. He also deposed that as per aforesaid circular the overdrawing power of Chief Manager was Rs.3 lacs in case of unsecured loan.

5.5.3 He deposed that the statement of account of M/s Davis Cornet International for the period from 12.01.05 to 09.08.05 and for the period from 11.08.05 to 17.09.05 already Ex.PW.18/A.5 and 18/A.7 respectively reflected that there are frequent overdrawing which were allowed to the party. He CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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also testified that cheque refer register (D.11) reflected that two cheques of Rs.5 lacs each were allowed to be debited to the cash credit account of M/s Davis Cornet International bearing account No.51025483637 by Sh.S.K.Chawla, Chief Manager on 20.08.05 despite the fact that account was showing an outstanding of Rs.25,85,680.30p, against the limit of Rs.25 lacs i.e. it was already overdrawn by Rs. 85,680.30 on that day and with this debit of two cheques of Rs.5 lacs each, the outstanding amount had risen to Rs. 35,85,680.30 against sanctioned limit of Rs.25 lacs. He proved that 'pay' order in this respect is contained at point A of page no.6 of cheque refer CD register (D.11) and the said page is separately Ex.PW.18/B and likewise at page No.9, page no.10 at points A, the debits were raised in the account despite the outstanding which was beyond the sanctioned limit and no available balance was there in the said account of M/s Davis Cornet International. He identified those entries at points A on page Nos. 9 & 10 on Ex.PW.18/B.1 and B.2 CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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respectively in register marked as Ex.PW.18/C. 5.5.4 He also deposed that as per the record and as per his knowledge the overdrawings so allowed by Sh.S.K.Chawla were not reported to controlling authority. After seeing the statement of account of M/s Davis Cornet International Ex.PW.18/A.5 & A.7 he stated that same was irregular. He proved the certified copy of statement of account in respect of Davis Cornet Fashion Pvt. Ltd. having account No.61001067095 for the period from 16.09.05 to 30.04.06 as Ex.PW.18/D (D.62). He deposed that the said account of company was a cash credit account in which limit of Rs.40 lacs was granted and an amount of Rs.37,13,396/□was debited in the account on 17.09.05 for the credit with the remarks "account closed funds transferred to 005125483637 against the limit of Rs.40 lacs". He pointed out the said entry at page no.1 at point A on Ex.PW.18/D. He also deposed that Ex.PW.18/A.7 reflects that A/c No. 005125483637 CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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pertains to Davis Cornet International and thus the said amount was transferred from account of company to account of Davis Cornet International.

5.5.5 Sh.Raman Chaudhary (PW□8) also proved that entry dated 24.03.05 in the account of M/s Davis Cornet International Ex.PW.18/A.5 reflected that two bills of US \$ 44,500/□(equivalent to Rs.38,63,406 @ Rs.43.72p. per dollar) were credited in the account being the proceeds of these two bills. He deposed that negotiated bills are usually purchased/negotiated by the bank with approval of an officer of the bank when the same is within the sanctioned limit and if it is beyond the sanctioned limit the same has to be allowed by the branch head provided the same is within his discretionary powers. He said that in this case since the bills negotiated limit sanction to M/s Davis Cornet International was Rs.10 lacs only, therefore, the approval for bill purchased to the extent of Rs.38,63,406/□was much beyond the CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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sanctioned limit.

5.5.6 It has been submitted by ld.counsel for accused/S K Chawla (A□) that review sheet of M/s Davis Cornet International was sent to AGM/Controller of the branch which was noted by him. The noting by superior authority in respect of loan sanctioned within the financial powers of the branch, on receipt of a review sheet does not mean that the controlling/superior authority has certified its correctness/genuineness. Hence this fact does not absolve the sanctioning authority accused/S K Chawla (A□), of his responsibility.

5.5.7 It has also been argued on behalf of accused/S K Chawla (A□) that the sanction of financial limits to accused/V K Syal (A□) M/s Davis Cornet International was recommended by Sh.Prem Raj Mawar, the then Dy.Manager of the branch, hence only he was responsible for CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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the lapses. Sh.Prem Raj Mawar has been examined as PW□7 but accused/S K Chawla (A□) did not ask from him any question, although on a subsequent date when he was cross□examined by ld.counsel for accused/V K Syal (A□), he had admitted that the entire paper work of cash credit limit of M/s Davis Cornet International was done and processed by him. No where it was suggested to him by accused that he had recommended for sanction of limits in this case. Even a recommendation by a subordinate would not absolve the sanctioning authority of his responsibility.

5.5.8 It has then been argued by ld.defence counsel for accused/S K Chawla (A□) that CBI did not submit original sale deed of collateral security, search report of Mr.Sanjay Rathi, Advocate dated 28.12.04 and valuation report of M/s Chaney & Associates dated 31.12.04. It was accused/S K Chawla (A□) who had mentioned in his process/sanction note that such title search and valuation CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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reports were obtained {see page 6 of Ex.PW□5/A (D□7)} respectively on 28.12.04 and 31.12.04. This is incorrect on face of it as even the application for sanction of limits was made by accused/V K Syal (A□) on 08.01.05 (see page 4 of Ex.PW□5/A) and prior to that this customer had no dealings with SBBJ. If at all there could be any title search or valuation of the property, shown as mortgaged by Sh.Gurdayal Prasad (who had already expired in 1990), it would have been done between the date of application for grant of loan (i.e. 08.01.05) and the date of actual sanction (i.e. 12.01.05). Hence falsity of the claim of accused/S K Chawla (A□) that there were such reports taken, is clear. Thus, there could not be any possibility of CBI producing any such reports within the charge sheet.

5.5.9 Further, when PW□1 and PW□2, who are the owners of the property shown mortgaged to secure the loan granted to M/s Davis Cornet International, were examined CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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before the court, accused/S K Chawla (A□) preferred not to put any question to them, even though they had stated during cross□examination by ld.counsel for accused/Raj Bal Tyagi (A□3) that no official of the Bank, valuer or any advocate ever came to visit their property regarding verification. They also told that at no point of time they had shown the original documents to any of them and that the same are kept by them in bank locker. Thus, it now does not lie in the mouth of accused/S K Chawla (A□) to agitate any of these issues at the stage of final arguments when he did not put across this defence to the relevant witnesses. Yet if he was so sure that such reports of panel advocate and the valuer were obtained at the time of processing of the loan application and that he had actually taken on record the original title deed of Sh.Gurdayal Prasad while creating equitable mortgage, he could very well summon the same in defence evidence. He did not do so obviously as he very well knew that none of these documents were ever taken by him, which is clear from CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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statement of PWs, as discussed above.

6.0 Sanction of loan to M/s Davis Cornet Fashions Pvt Ltd. and role of accused persons 6.1.1 The application cum appraisal form in respect of M/s Davis Cornet Fashions Pvt Ltd has been proved as Ex.PW□4/A (D□56) which show the name of directors as accused/V K Syal (A□2) and his wife Smt.Rashmi Syal (accused since discharged), resident of A□2/185, Paschim Vihar, New Delhi. The type of facility sought, has been mentioned as cash credit (HYP.) of Rs.40 lacs and LC (documentary/BG) for Rs.20 lacs. The same bears signatures of accused/V K Syal (A□2) and his wife/Rashmi Syal as directors of the company and is dated 03.09.05. Signature of accused/V K Syal (A□2) has been marked as Q□302 at page no.4 which is also separately marked CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Ex.PW□24/D□4.

6.1.2 It is worthwhile to mention that there is no dispute on behalf of accused persons as to these signatures. At page no.5 of the same application from which portion of the appraisal form starts, it has been mentioned that amount of loan applied is Rs.40 lacs fund based and Rs.30 lacs non fund based whereas the application at page no.2, it shows that CC (H) applied was for Rs.40 lacs and LC/BG applied for was Rs.20 lacs. The business address of the company has been mentioned as A□3/314, 2nd Floor, Paschim Vihar, New Delhi. The property offered as collateral security is property of one Ramphal Rathi. The limits sanctioned by accused/S K Chawla (A□), vide his sanction order dated 16.09.05 was Rs. 40 lacs as CC(H) against book debts and stocks and BG (inland) for Rs.10 lacs.

sanction of the facilities has been proved as Ex.PW□4/A□ bearing signature of accused/S K Chawla (A□) at point A and signature of accused/V K Syal (A□2) and his wife at points B & C respectively. The statement of account of M/s Davis Cornet Fashions Pvt Ltd. for the period of 11.08.05 to 26.02.07 has been proved as Ex.PW□8/D along with a certificate u/s 2A of Bankers' Books of Evidence Act as Ex.PW□4/A□2 (D□62). PW□5/Sh.G K Nirman has proved that the application cum appraisal form (D□56), Ex.PW□4/A has been filled in the handwriting of accused/S K Chawla (A□). He has also proved that sanction order, Ex.PW□4/A□ is also in the handwriting of accused/S K Chawla (A□). 6.1.4 The account opening form of M/s Davis Cornet Fashions Pvt Ltd. bears photograph of accused/V K Syal (A□2) and his wife/Rashmi Syal along with their signatures as directors of the company. Accused/S K Chawla (A□) has signed on it verifying their signatures and CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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authorizing opening of account. Whereas the address of accused/V K Syal (A□2) has been mentioned as A□3/314, Paschim Vihar, New Delhi, the address of his wife Smt.Rashmi Syal has been mentioned as A□2/185, Paschim Vihar, New Delhi. The registered office of the company has been shown at A□3/314, 2nd Floor, Paschim Vihar, New Delhi. 6.1.5 As is evident from Ex.PW□9/Y and other documents/statement of accounts, M/s Davis Cornet Fashions Pvt Ltd. had taken over the liabilities of its promoter's (V K Syal) erstwhile proprietorship concern/M/s Davis Cornet International which was enjoying C C limit of Rs.25 lacs before conversion into a limited liability company and the outstanding balance of Rs.37,13,396/□in the proprietorship concern's account was transferred to the company's account on 17.09.05. It is also mentioned therein that earlier the Nangal Raya Branch had financed Rs.38.85 lacs against two export bills in the account of proprietor's CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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concern and these bills were rooted through Connaught Circus branch and although Connaught Circus had returned these bills to Nangal Raya Branch through IBIT account in May, 2005 but the branch had responded to the entry on 12.07.05 leading to the irregularity in the account of proprietorship concern which was later on transferred to the company's account and the branch did not report irregularity in the erstwhile account. It is also mentioned that the account became irregular on 21.09.05 and thereafter drawings have been allowed to continue despite irregularity persisting in the account and there had been frequent debits and credits permitted thereafter but no transaction in the account except for application of interest has been made after 13.01.06.

6.1.6 A cheque for Rs.9,98,500/□purchased by the branch on 09.12.05 in this account was still found outstanding which was sent to Chandigarh branch for collection. The CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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said cheque is reported misplaced/lost. 6.2.1 Although, the liabilities of the proprietorship concern i.e M/s Davis Cornet International were taken over by the company way back on 17.09.05 after company's account was opened on 16.09.05 but it may be seen that accused/V K Syal (A□2) kept on corresponding with the bank on the letter head of M/s Davis Cornet International and one such letter dated 30.03.06 is Ex.PW□9/N□2 and another such letter dated 08.03.06 is Ex.PW□9/N□4.

6.2.2 By a letter dated 14.03.06, accused/V K Syal (A□2) being director of M/s Davis Cornet Fashions Pvt Ltd. informed the bank that the new office of his company is 106/127, Rajouri Garden, New Delhi. However, PW□8/Raman Chaudhary, who is successor of accused/S K Chawla has proved that when he along with Sh.Ashok Garg, Dy.Manager (PW□9) paid visit to the said office on 26.05.06 CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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and 20.07.06 they noticed that no stocks were available there and they made remark in this respect in register, Ex.PW□8/A□2 at point Y to Y and Z to Z. 6.2.3 The audit report in respect of M/s Davis Cornet International under proprietorship of accused/V K Syal (A□2) (with PAN No.AATPK9514G) dated 30.05.05 by M/s S Khurana & Company (Chartered Accountant) for the balance sheet and Profit & Loss Account as on 31.03.05 with copies of balance sheet and Profit & Loss account signed by accused/V K Syal (A□2) as proprietor of the said concern have been marked as Ex.PW□9/N□5 (Colly). 6.3.1 Apparently, the documentation of loan granted to M/s Davis Cornet Fashions Pvt Ltd., it may sound that there was no illegality as it is very well permissible under the banking norms that the liability of a sole proprietorship firm can very well be taken over by a private company CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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promoted by the sole proprietor. Further, unlike the other accounts of this case, there was no fake guarantor or fictitious collateral security to secure the facilities sanctioned to M/s Davis Cornet Fashions Pvt Ltd.

6.3.2 But when we carefully see the whole affairs, we find that after the fraud in respect of personal/mortgage loan sanctioned in the name of Gurdayal Prasad (a dead man) was exposed soon after sanction in June, 2005, it became clear that the guarantee of Gurdayal Prasad and mortgage of property in his name to secure the loan advanced to M/s Davis Cornet International in January, 2005 was also fake.

6.3.3 Thus, there was an urgent requirement of taking legal action against accused/V K Syal (A□2) who arranged such a fake security and impostor as guarantor as also against accused/S K Chawla (A□1) with whose active CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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connivance all this had taken place (see discussion in para

5). But instead of bank becoming alert and active to such a fishy situation existing in Nangal Raya Branch in June, 2005 itself, accused/S K Chawla (A□) was kept posted as branch head of Nangal Raya Branch even thereafter. The result was that despite the account of M/s Davis Cornet International remaining irregular and overdrawn and revelation of fraud and forgery in obtaining financial assistance from bank, its owner□accused/V K Syal (A□2) was not only given a safe passage but also a private company promoted by him along with his wife, was sanctioned higher amount of financial limit i.e. Rs.40.00 lacs in CC(H) and Rs.10 lacs in BG/documentary credit. These facilities were sanctioned to the company on 16.09.05, out of which the liability of M/s Davis Cornet International was squared off on 17.09.05 by transfer of Rs. 37,13,396/□(against sanctioned limit of Rs.25.00 lacs) to the proprietorship concern's loan account from company's loan account. Not only this, the two export bills of the value of Rs.

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38.85 lacs purchased in proprietorship's account in May, 2005 returned unpaid from Connaught Circus branch of SBBJ (authorized to deal in foreign exchange) on 12.07.05 leading to irregularity in proprietorship concern's account which was later on transferred to company's account without reporting irregularity in the erstwhile account. The evidence on record shows that accused/S K Chawla (A□) not only exceeded his delegated financial powers and sanctioned limit in purchasing the two export bills but also deliberately did not debit the same to the account of M/s Davis Cornet International soon on receipt of information from Connaught Circus branch about those bills remaining unpaid (see para 6.5 infra). This suppressio falsehood was practiced by accused/S K Chawla because had the bills amount been debited in the account of firm, the outstanding amount in the account would have been so high that it would not have become possible for him to sanction any loan to the company promoted by accused/V K Syal (A□2).

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6.3.4

As against sanction of facilities to the

company on 16.09.05 its account became irregular by 21.09.05 which means the account had gone into quick mortality. Yet the account was permitted to operate resulting into a debit balance of Rs.76,27,149/□as on 31.03.07. 6.4.1 PW□9/Hari Shanker Nial, working in SBBJ has deposed that he used to deal with transaction of LC at Connaught Circus branch and whenever any foreign bill was received from a customer he used to send the same to the buyer's bank in the foreign country for realization of the said bill from the foreign bank. He used to convert the foreign currency into Indian rupee and credit to the customer's account. He also deposed that if money is not received from the

foreign bank he used to give reminder to the foreign bank and used to inform the customer by telephone.

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6.4.2 He proved the letter signed by him as

Ex.PW9/A (D39, Page16) and deposed that since the foreign bill no.C9931/05 was not realized so he sent the letter to SBBJ, Nangal Raya branch in which customer was M/s Davis Cornet International. He also proved another letter (D39, Page15) as Ex.PW9/B which pertains to the reminder sent by him to SBBJ, Nangal Raya branch and another reminder dated 23.11.05 has been proved by him as Ex.PW9/C. 6.4.3 He proved letter dated 03.11.05 (D39, Page04), vide which he had reminded the branch that drawee had not paid bills despite repeated reminders. Said letter is Ex.PW9/D. He deposed that when the bill is sent for collection the fund of the bank is not involved and it is involved only when the bill is sent for negotiation or purchase. He stated that these two bills were sent for collection.

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6.4.4 He also stated that the complete discharge

mentioned in his letters mean that his branch is not retaining any document but is sending the entire documents to the concerned branch. He also deposed that his branch was acting as an agent in this process. His statement was not challenged by the accused persons in cross-examination. 6.5.1 The statement of PW12/Sh.Hari Shankar Mishra, who was working as Manager of SBBJ, Connaught Circus Branch (dealing in foreign exchange) is also relevant as he has proved letter of Nangal Raya Branch dated 18.03.05 for negotiation of the documents pertaining to LC No.804438 and 804437 in account of M/s Davis Cornet International as Ex.PW12/A. 6.5.2 He proved a letter dated 13.05.05 (D43), Ex.PW12/D vide which he had written to Chief Manager, BO-CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Nangal Raya that despite representing export bills for payment as desired by the branch payment of the bills was not forthcoming and hence advised the branch to contact the customer for early payment of the bills. It was also informed to the branch that if the payment of the bills was not received by 17.05.05, the bills will be crystallized as per the Foreign Exchange Dealers Association of India Rules. 6.5.3 PW12 has then deposed that on 29.06.05 he again wrote a letter to BO-Nangal Raya, Ex.PW12/E that as per RBI guidelines bills were crystallized and a sum of Rs. 19,42,698/

were debited to IBIT (Inter Bank Item in Transit) account on 20.05.05 (wrongly typed as 20.02.05) in statement of witness which date is clear from Ex.PW□2/E). In the same letter a request was made that "looking to the quarterly closing of June, 2005, you are advised to afford us credit for our outstanding IBIT entries without further delay."

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6.5.4

He further proved a letter dated 05.07.05

written to BO□Nangal Raya as Ex.PW□2/F vide which BO□Nangal Raya was informed for fresh instructions for realization of export proceeds when said bills remained unpaid. During his cross□ examination, PW□2 had proved a letter dated 23.03.05 as Ex.PW□2/DA (D□43) vide which Chief Manager, BO□Nangal Raya had advised his branch to clear the LC and the Nangal Raya Branch shall take the responsibility for the discrepancies in the LC as advised by Connaught Circus branch. Thus, it is clear that accused/S K Chawla (A□), being Chief Manager of the branch was fully aware about the liability of Rs.38.85 lacs which had devolved on account of discounted foreign bills remaining unpaid, over and above the liability of Rs.37,13,396/□ against limit of Rs. 25.00 lacs, yet he sanctioned enhanced limits to successor company of the proprietor□ V K Syal (A□2) by concealing the devolution of the liability of the proprietor (A□2) due to foreign bills remaining unpaid, as discussed above.

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6.5.5

Thus, per se it may appear that there was no

illegality committed while sanctioning loan to the company but under cover it was a bigger fraud and cheating of the bank's funds in sanctioning of loan to the company keeping in view the track record of its promoter (A□2). Thus, as deposed by PW□9/Sh.A K Garg, the account of the company was declared NPA on 31.03.06 and Loss Asset on 31.03.07 which means the collateral security offered by the borrower was not available and the account has been declared as fraud account.

7.0 Loan Sanctioned and disbursed to M/s Ess Vee Exports 7.1.1 Loan application□um□ appraisal form in respect of M/s Ess Vee Exports under proprietorship of accused/Rakesh Kumar Vij (A□5) has been proved as CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Ex.PW□8/F (D□66) showing his address as A□2/185, Paschim Vihar, New Delhi and his business address as 704, Vishal Tower, District Centre, Janakpuri, New Delhi. 7.1.2 On the 2nd page of this

document, the nature of facility sought have been mentioned as cash credit (HYP.) against stocks, book debts and bills discount (DA) without mentioning the amount of facility sought by the applicant. The details of security offered as collateral security has been mentioned as 154, Block N, Greater Kailash, New Delhi and the title deed has been shown in the name of Smt.Shanti Devi wife of late Sh.Surender Nath with its present market value as Rs.199.86 lacs. The application is dated 20.04.05 bearing signature of accused/Rakesh Kumar Vij (A⁵) as proprietor of M/s Ess Vee Exports at point A on page no.4. At page no.6, it is mentioned that the valuation has been carried out by bank's approved valuer and it is also mentioned that "search report is dated 13.04.05.

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7.1.3

The computation of eligible working capital

limit have been calculated by accused/S K Chawla (A¹) on page no.6 and limits have been recommended/sanctioned to the tune of Rs.25 lacs towards CCH and Rs.10 lacs towards bills discounted (DADP), total amounting to Rs.35 lacs. Below this sanction, signature with official stamp of accused/S K Chawla (A¹) is appearing at point A. He has certified that the movable properties offered as collateral security have been verified by him and based on legal enquiries made by him, he has satisfied himself that the market value stated by the bank's empaneled panel valuer is realistic. There is no date mention with his sanction order available at page no.6. Report is also prepared in respect of guarantor/Smt.Shanti Devi wife of late Sh.Surender Nath at page no.6 of this application¹ cum¹ appraisal form mentioning therein that besides realizable value of the property offered in mortgage, she also possessed resources as jewelery to the CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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tune of Rs.5 lacs, value of movable assets of Rs.5 lacs and the total of her movable and immovable assets was Rs. 2,04,86,000/¹ This net worth has been certified by him by putting his signature with official stamp at page no.7 on this application.

7.1.4 On the next page, there is signature of accused/Rakesh Kumar Vij (A⁵) at point B along with his firm's stamp which is his stock statement but the statement is blank in respect of name of borrower, place of storage, particulars of stock, particulars of book debts and particulars of insurance. Particulars of borrowing power on the last page of this document has also been left unsigned by accused/S K Chawla (A¹), although his official stamp is available on it.

7.1.5 The sanction order, vide which the CC limit of Rs.25 lacs and bills discounted (DPDA) limit of Rs.10 lacs CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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has been sanctioned, is proved as Ex.PW□24/D□7 (D□77) bearing signature of accused/S K Chawla (A□) at point A (Q□351) and acceptance thereof by accused/Rakesh Kumar Vij (A□5) has been made by him by putting his signature with stamp of his firm at point B (Q□243). Guarantors/V K Syal (A□2) and Smt.Shanti Devi have also signed on the same at Q□319 and Q□245 respectively. In the body of the sanction order, the condition stipulated is that Smt.Shanti Devi will be guarantor and will mortgage her house no.154, Block□N, Greater Kailash□, New Delhi.

7.1.6 The agreement of hypothecation is Ex.PW□24/D□8 (D□73) executed between accused/Rakesh Kumar Vij (A□5) and bank through accused/S K Chawla (A□). The signature of accused/Rakesh Kumar Vij (A□5) is available with stamp of his firm at Q□234 to Q□242 on this agreement and on the last page of the agreement i.e. page no.7, accused/S K Chawla (A□) has also signed on behalf of the CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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bank with his official stamp.

7.1.7 Agreement of loan for over all limit executed by accused/Rakesh Kumar Vij (A□5) on behalf of his firm M/s Ess Vee Exports has been proved as Ex.PW□22/E□3 (D□73) and affidavit of accused/Rakesh Kumar Vij (A□5) has been proved as Ex.PW□24/D□9 (D□73) bearing his signatures from Q□229 to Q□233. This affidavit shows that it does not bear any attestation and has not been executed before a notary public or any other authority authorized to administer oath. 7.1.8 Account Opening Form of accused/Rakesh Kumar Vij (A□5) for opening current account with Nangal Raya branch of the bank has been proved as Ex.PW□9/X□ which bears his photograph and signature. Signature of his introducer/V K Syal (A□2) has been proved at point B and the signature of accused/S K Chawla (A□) have been proved at point C, who has verified the same. A copy of the election CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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identity card of accused/Rakesh Kumar Vij (A□5) is also enclosed with this account opening form, Ex.PW□9/X□ bearing his signature at point A which is for attesting the photocopy. The consent clause executed by accused/Rakesh Kumar Vij (A□5) bearing his signature at point A (Q□244) has been proved as Ex.PW□24/D□8 which is dated 23.04.05, consent clause of the guarantor/Smt.Shanti Devi purportedly bearing her signature at point Q□246 and signature of V K Syal at point A (Q□320) has been proved as Ex.PW□24/D□9 (D□78).

7.1.9 A copy of memorandum of equitable mortgage by deposit of title deed by Smt.Shanti Devi with the bank has been proved as Ex.PW□9/X□9 (colly) (D□100) showing signature of accused/S K Chawla (A□) at point C and signature of Sh.Prem Raj Mawar at point E on its 2 nd page. The acknowledgments posted to the bank by the guarantor have been proved as Ex.PW□24/D□20 and D□21.

Signatures of Smt.Shanti Devi are available at points Q²⁵² and Q²⁵³. Like affidavit of accused/Rakesh Kumar Vij (A⁵), purported affidavit of Smt.Shanti Devi, Ex.PW²⁴/D²² bearing her signatures at Q²⁴⁷ to Q²⁵¹ (D⁸⁰) also does not bear any mark, stamp or signature of any notary public or any other authority competent to administer oath. 7.1.10 Statement of account of M/s Ess Vee Exports bearing no.01600052201 for the period 23.04.05 to 11.08.05 has been proved as Ex.PW¹⁹/X⁵ with certificate under Bankers' Book of Evidence Act as Ex.PW¹⁹/X⁴ (D⁸³). Another statement of account of M/s Ess Vee Exports for A/C No.51025483659 along with certificate under Bankers' Book of Evidence Act has been proved as Ex.PW¹⁹/X⁶ and X⁷ (D⁸⁴) which are for the period 01.08.05 to 26.02.07. Various self drawn cheques, vide which the amounts have been withdrawn from the account by accused/Rakesh Kumar Vij (A⁵) have been proved as CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Ex.PW²⁴/D¹⁰ to D¹⁵ (D⁷⁶). One account payee cheque issued in favour of M/s Globel International for Rs.8 lacs has been proved as Ex.PW²⁴/D⁶.

7.1.11 A guarantee deed executed by Smt.Shanti Devi and accused/V K Syal (A²), who stood guarantor to the facilities sanctioned to accused/Rakesh Kumar Vij (A⁵) has been proved as Ex.PW¹⁹/X⁵=Mark PW¹⁶/1. The signatures of accused/V K Syal (A²) are appearing at points A on all pages of the agreement and the purported signatures of Smt.Shanti Devi are also appearing at points Q²⁵⁴ to Q²⁶¹. The photographs of said Smt.Shanti Devi and accused/V K Syal (A²) are affixed on the front page of this guarantee deed.

7.1.12 The rent agreement showing that Sh.Rajesh Kumar Khandelwal had let out his premises bearing no.704, Vishal Tower, District Centre, Janakpuri, New Delhi to CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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accused/Rakesh Kumar Vij (A⁵) has been proved as Ex.PW²⁴/D⁷. This photocopy of rent agreement has been attested by accused/Rakesh Kumar Vij (A⁵) by putting his signature in original at point A (Q³⁵² and Q³⁵³). The valuation certificate of M/s Chani & Associates in respect of this property is Ex.PW¹⁸/G (D⁷⁰). Non encumbrance certificate issued by Sh.Sanjay Kumar Rathi, Advocate is Ex.PW¹⁸/H (colly) (D⁷¹).

7.1.13 The bank had subsequently obtained one opinion from M/s Mohan & Company, Law Firm on 07.07.06 after detection of fraud and said search report is Ex.PW¹⁹/X¹ (D⁰³). The original office copy of sale deed in respect of plot bearing no.154, Block^N measuring 300 sq.yds in the residential area known as Greater Kailash situated at Zamrudpur in the Union Territory of Delhi executed by DLF Housing and Construction Pvt. Ltd. in favour of Sh.Surender Nath Jolly son of late Sh.L Nand Lal CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Jolly, has been proved as Ex.PW□1/A by Sh.Suraj Mal Jain. 7.1.14 It is necessary to clarify here that Sh.Suraj Mal Jain had first appeared before Id.predecessor of the court on 08.12.09 when other cases pertaining to the same FIR/RC were being tried together in the court and the seizure memo for seizing two sale deeds (office copies) from office of Archives Department of Delhi was available in the connected case in which sale deed of other property bearing no.E□84, Greater Kailash□, New Delhi was in question, which was subsequently transferred to the court of Sh.N K Kaushik, Id.Spl.Judge (CBI), Dwarka Courts, Delhi, which has since been decided and now pending in appeal before Hon'ble High Court.

7.1.15 A certified copy of the seizure memo dated 08.01.08 available in that file has been obtained by CBI and filed before this court showing that the exhibit was marked on CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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that seizure memo on 08.10.09 which means that the evidence of that case was recorded before Id.predecessor on the same date. There was only one seizure memo in respect of seizure of office copies of the title deeds of both the properties, the original of which was available in CC No. 20/09 but a copy of the same was not taken on record in this case.

7.1.16 On the same date i.e. 08.12.09 further examination of witness (PW□1) was deferred as counsels for the accused persons had agitated that document i.e. office copies of those sale deeds, were not supplied to them along with charge sheet. Thereafter the evidence of PW□1/Suraj Mal Jain was recorded on 25.11.10, on which date, his further examination in chief was deferred for the reason that the original document was not traceable on the record.

7.1.17 On 19.09.11, on which date, he proved the
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office copy of the original Deed of Conveyance dated 22.04.64 in respect of plot no.154, Block□N, Greater Kailash village□Zamrudpur as Ex.PW□1/A, he was also shown another sale deed of the same date purportedly of the same property where the name of village is mentioned as Zannanandpur, which was submitted by accused to the bank as Ex.PW□1/D. He compared both the sale deeds, Ex.PW□1/A and Ex.PW□1/D and said that the original sale deed was sent to Delhi Archives Department for proper preservation as the document was more than 25 years old which was registered with Sub□Registrar, New Delhi, vide registration no.2964, Book No.1, Vol.No.1125 on page Nos. 102 and 103 on 28.04.64 as mentioned at point ASI□01 on page no.4 of Ex.PW□1/A (contained in the file of additional documents).

7.1.18 He deposed that the sale deed, Ex.PW□1/D (QSD□2) which was submitted by the party to the bank is CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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different from original sale deed, Ex.PW□1/A, including signature of executant, who signed on behalf of DLF Housing and Construction Pvt. Ltd. as its Secretary and general attorney in many respects, enumerated by him during his examination in chief. Both these documents, Ex.PW□1/A (ASD□) i.e original office copy preserved by Delhi Archives Department and Ex.PW□1/D i.e the deed submitted by imposter/Smt.Shanti Devi to the bank for equitable mortgage were sent to GEQD for his opinion and the GEQD had submitted its report in respect of the same as Ex.PW□24/N (D□105) highlighting the differences between two sale deeds. GEQD had marked the admitted sale deed as ASD□ (Ex.PW□1/A) and questioned sale deed as QSD□2 (Ex.PW□1/D). GEQD also reached to the opinion that QSD□2 is careful and conscious imitation to ASD□ including the signatures and stamp impression.

7.1.19 It is worthwhile to mention that neither
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PW□1/Suraj Mal Jain nor GEQD/Mr.T Joshi (PW□24) had been put any suggestion in respect of their opinion on the falsity of sale deed deposited with the bank, Ex.PW□1/D. The exhibition of the documents by PW□1 has not been objected to by accused persons and its seizure from office of Delhi Archives Department has also not been agitated, hence non□availability of original seizure memo for seizing the office copy of sale deed from Delhi Archives Department in this case, does not affect the case in any manner. 7.1.20 Thus, it is admitted case of accused persons that false sale deed, Ex.PW□1/D was deposited by accused/Rakesh Kumar Vij with the bank pretending that guarantor/Smt.Shanti Devi (an imposter) had deposited the same to secure the sanction of loan by the bank to M/s Ess Vee Exports under proprietorship of accused/Rakesh Kumar Vij (A□5) and the same was accepted by accused/S K Chawla (A□). Accused/S K Chawla was fully aware of the fact that CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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the sale deed being deposited with bank to secure loan was a false sale□deed and said Shanti Devi, who signed as guarantor and affixed her photograph on guarantee deed was an impostor, because he had given a false inspection report in respect of guarantor Shanti Devi and her properties, while appraising loan application of accused/Rakesh Kumar Vij (A□5). The signatures and photograph of accused/V K Syal (A□2) are also available on the same guarantee deeds as co□guarantor with Smt.Shanti Devi besides his signatures on sanction letter as co□guarantor which gives rise to the conclusion that he was also party to the criminal conspiracy hatched by accused/S K Chawla (A□)

and accused/Rakesh Kumar Vij (A⁵) for granting loan to M/s Ess Vee Exports on the basis of bogus surety and forged property documents. 7.2.1 PW¹⁶/Smt.Anuradha has been examined by the prosecution, who has deposed that her motherⁱⁿlaw/Shanta Jolly had expired in the year 2006 and the CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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property no.154, Block^N, Greater Kailash, Part^I, New Delhi belonged to her. She has further deposed that after her death the property has been mutated in the name of Aanchal and Pranav Jolly, who are her children. She also proved a probate issued by the court of Id.ADJ, Delhi as Ex.PW¹⁶/A (D⁸¹).

7.2.2 She deposed that originally house belonged to her fatherⁱⁿlaw, who expired in the year 1972 and thereafter the property was transferred in the name of her motherⁱⁿlaw/Smt.Shanta Jolly, who had then executed a WILL in favour of her two children. She was shown the photograph affixed on the guarantee deed, Mark Ex.PW¹⁶/1=Ex.PW¹⁹/X⁵ (D⁶⁷) and after seeing the photograph, she said that the same is not of her motherⁱⁿlaw/Smt.Shanta Jolly. She also deposed that photocopy of sale deed dated 22.04.64, Mark PW¹⁶/2 is not the actual photocopy of the original sale deed, which was available with CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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her and the same is forged one.

7.2.3 On next date when she (PW¹⁶) appeared, she deposed that she could not bring the original sale deed in respect of the plot bearing no.154, Block^N, Greater Kailash, Part^I, Zamrudpur, New Delhi because she was not in possession of the sale deed as the property was already sold to one Raj Kumar Bhutani in December, 2008 and the original sale deed was delivered to him when property was sold to him. She however marked a photocopy of the original title deed brought by her as Mark PW¹⁶/3 and said that she was carrying the same. Whereas the original sale deed could not be brought on record by the prosecution but the office copy of the original sale deed as maintained by Delhi Archives Department and a photocopy of the original sale deed as produced by PW¹⁶ have been respectively marked as Ex.PW¹¹/A and Mark PW¹⁶/3.

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7.2.4

During her cross-examination, Ms.Anuradha

had deposed that earlier her motherⁱⁿlaw/Smt.Shanta Jolly was known as Smt.Shanti Devi. She also deposed that no bank official had met her in connection with mortgaging the property by anybody. She also deposed that she does not recognize any of the photographs and signatures on Mark PW¹⁶/1 i.e the guarantee deed executed by Smt.Shanti Devi and V K Syal (A²) in favour of the bank to secure loan granted to accused/Rakesh Kumar Vij (A⁵). Thus, it is seen that she was

not suggested by accused/Rakesh Kumar Vij (A⁵) that her mother-in-law/Smt.Shanta Devi @ Shanta Jolly had mortgaged the property with the bank to secure his loan. 7.2.5 However, during her cross-examination by ld.counsel for accused/V K Syal (A²), she admitted it as correct that both documents Mark PW⁶/2 and Mark PW⁶/3 are different. She denied a suggestion that both the documents apparently show different properties. She also CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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denied a suggestion that her mother-in-law had mortgaged the property no.N⁵⁴, Greater Kailash, Part¹, New Delhi with the bank for securing some loan.

7.2.6 Thus, it is seen that accused/V K Syal (A²) has made two contradictory suggestions to this witness. Firstly, that the document of the property brought by her show a different property than what was mortgaged with the bank and secondly that her mother-in-law had mortgaged the property for securing the loan of the bank. 7.2.7 Testimony of PW⁶ has remained unscathed during her cross-examination, which establishes that the lady, who is shown personated as Shanti Devi before the bank, was not the owner of the property. Once this fact has been proved that the title deeds of the property deposited with the bank is forged one and that the lady who is shown personated in the bank as Smt.Shanti Devi was an CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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imposter and not the real Shanti Devi @ Shanta Jolly, the burden shifted to A¹, A² and A⁵ to produce before the court that lady whose photograph and signatures are available on the guarantee deed and other documents in the name of Smt.Shanti Devi to secure loan sanctioned and disbursed to accused/Rakesh Kumar Vij (A⁵), which burden they failed to discharge.

7.2.8 The subsequent opinion given by law firm/Mohan and Company, Ex.PW⁹/X¹ (D¹⁰³) also confirms that the title deed deposited with the bank was not genuine.

7.3.1 It has been seen while appreciating the verification/confidential report given by accused/S K Chawla (A¹) in respect of Smt.Shanti Devi that he had found jewellery of Rs.5 lacs and other movable assets of Rs.5 lacs with said Smt.Shanti Devi, taken as guarantor by him and he CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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also certified that he had ensured about the value of the property offered in mortgaged by his personal visit. This clearly establish that accused/S K Chawla (A¹) was thick and thin into the conspiracy. Accused/V K Syal (A²) has signed the guarantee deed along with imposter Smt.Shanti Devi, which shows that he was fully aware about the fraud and forgery taking place in the sanction of loan to accused/Rakesh Kumar Vij (A⁵) representing his proprietorship firm M/s Ess Vee Exports. 7.3.2 PW⁶/Rajesh Kumar Khandelwal has deposed that he does not have any property or office

space in Vishal Tower, District Centre, Janakpuri or let out the same to anyone. He was shown the photocopy of rent agreement (D□68) and he denied that it bears his signatures. Said document was marked by him as Ex.PW□6/1=Ex.PW□24/D□7 and he stated that he does not know any person by the name of Sh.Rakesh Kumar Vij (A□5). However, his name, father's CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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name and address are correctly mentioned in the rent agreement.

7.3.3 PW□8/Sh.Raman Chaudhary, a subsequent Chief Manager of Nangal Raya Branch has deposed that as per Bank's Book of Instructions and Circulars issued from time to time, it was mandatory that the pre□sanction inspection of the unit as well as collateral security to be mortgaged be carried out. This requirement is not disputed. Accused/S K Chawla (A□) has not made any pre□sanction inspection report as to the inspection of unit or the collateral security offered as mortgage to secure loan. Had he visited the work place of accused/Rakesh Kumar Vij (A□5) i.e. Vishal Tower, he would have come to know that there was no such unit and had he visited the property proposed for mortgage, he would have certainly come to know about the falsehood. The omission of such an essential duty by sanctioning authority can not be termed as mere negligence but it leads CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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to a definite conclusion that he (A□) was fully aware of the fact that there was in fact no business activity for which a loan was being sanctioned to accused/Rakesh Kumar Vij (A□5) and that there was no real collateral security to fall back upon in case of default by the borrower in making repayment of loan. Thus, a tacit criminal conspiracy between accused/S K Chawla (A□) and accused/V K Syal (A□2) and accused/Rakesh Kumar Vij (A□5) is made out in this case to cheat the bank by using forged documents such as rent agreement of business premises, title deed of guarantor and planting a fake guarantee deed by utilizing services of an impostor lady impersonating as Shanti Devi for executing guarantee deed and mortgaging the property. 7.3.4 Once the prosecution had proved by examining PW□6/Ms.Anuradha that the photograph of lady affixed on guarantee deed is not of her mother□n□aw, owner of the mortgaged property and that the signatures are also CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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forged, then the burden had shifted on account/Rakesh Kumar Vij to examine that lady whom he had used as his guarantor. It has been urged by accused/Rakesh Kumar Vij (A□5) that since PW□8 has admitted about filing of recovery application with Debt Recovery Tribunal (DRT) and a petition for attachment before judgment (ABJ) for attaching the said mortgaged property was also filed, therefore, the prosecution can not be permitted to allege that the title deed deposited by the mortgagor to create an equitable mortgage to secure the loan advanced by the Bank to him was forged or that the guarantor was not the real Shanti Devi who was wife of recorded owner of the

property. It suffice to observe that mere filing of recovery application or an ABJ petition by the Bank in respect of the said property purportedly mortgaged by a lady by name of Shanti Devi who impersonated as wife of actual owner, can not lead to any inference that the property documents or the lady depositing the same are genuine.

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7.3.5

It is a common knowledge that the guarantee

involves a liability which is co-extensive with that of the principal borrower and hence nobody shall become guarantor and agree to mortgage his property just like that, without any consideration, friendship, relationship or at least good acquaintance. Accused/Rakesh Kumar Vij (A⁵) failed to discharge burden of proof which had shifted on him. Sh.Raman Verma (PW⁸) has proved page no.41 of inspection register as Ex.PW⁸/A¹ to the effect that when he visited the borrower it was found that he was not available and address was also not available as per report of Sh.S K Gupta.

7.3.6 PW⁶/Sh.Rajesh Kumar Khandelwal has deposed that he owns a residential floor at A³/314, 2nd Floor, Paschim Vihar, New Delhi which was let out by him to accused/V K Syal (A²). It was accused/V K Syal (A²) who CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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had withdrew large amounts vide self drawn cheques issued by Rakesh Kumar Vij (A⁵) from his loan account in question which are Ex.PW²⁴/D¹ for Rs.5.00 lacs, Ex.PW²⁴/D² for Rs.5.00 lacs, Ex.PW²⁴/D³ for Rs.2.00 lacs, Ex.PW²⁴/D⁴ for Rs.5.00 lacs and Ex.PW²⁴/D⁵ for Rs. 5.00 lacs (D⁷⁶). The signatures of accused/V K Syal (A²) on back side of these cheques have not not been disputed. Thus, it again proves the nexus between accused/V K Syal (A²) and accused/Rakesh Kumar Vij (A⁵) vis-à-vis accused/S K Chawla (A¹) in cheating the Bank by using fabricated/forged documents.

7.3.7 Another fact which shows nexus between accused/V K Syal and Rakesh Kumar Vij, is the account opening form of M/s Davis Cornet Fashions Pvt Ltd, Ex.PW²⁴/D⁵ (D⁶⁴) bearing date of account opening as 16.09.05 which shows the address of Ms.Rashmi Syal, one of the directors of the said company and wife of accused/V K CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Syal (A²) as A²/185, Paschim Vihar, New Delhi, which is also mentioned as residential address of accused/Rakesh Kumar Vij (A⁵) as per the loan application cum appraisal form of M/s Ess Vee Exports, Ex.PW⁸/F (D⁶⁶). 7.3.8 It is seen from the statement of account of M/s Ess Vee Exports, Ex.PW⁹/X⁵ (D⁸³) that on the date of opening of account by accused/Rakesh Kumar

Vij (A□5) i.e. 23.04.05, he was permitted to withdraw cash of Rs.5.00 lacs and thereafter Rs.10.00 lacs on 25.04.05, Rs.2.00 lacs on 02.05.05 and Rs.5.00 lacs on 05.05.05 so the debit balance on 05.05.05 was Rs.22,15,591/□ Then on 05.05.05 accused/Rakesh Kumar Vij submitted a foreign bill of US \$ 26,880/□ which was purchased by accused/S K Chawla, thereby crediting Rs.10.00 lacs in the account on 05.05.05 and then Rs.5.50 lacs was withdrawn on 06.05.05 and Rs. 1.60 lacs on 07.05.05 in cash and Rs.8.00 lacs were transferred on 07.05.05 by clearing to the account of M/s CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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Globel International vide cheque, Ex.PW□24/D□6 which is dated 05.05.05 received for clearing through Lord Krishna Bank Limited. So despite discounting of foreign bill for Rs. 10.00 lacs, the debit balance in the account reached Rs. 27.50 lacs on 07.05.05. The said foreign bill subsequently returned unpaid and accordingly an amount of Rs.11,72,506/□ was debited in the account of M/s Ess Vee Exports on 22.09.05 as reflected in statement of account, Ex.PW□9/X□7 (D□84) and debit balance in the account reached Rs.37.75 lacs. This shows how the financial powers were abused by accused/S K Chawla (A□) without there being any real business by the firm of accused/Rakesh Kumar Vij (A□5). Ex.PW□3/A (D□4) shows that as against the sanctioned cash credit limit of Rs.25 lacs, outstanding in this account was Rs. 37.75 lacs as on 19.02.06 i.e the period when fraud was detected in the account, thus, it was highly overdrawn which was permitted by accused/S K Chawla (A□) as Chief Manager of the branch.

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7.3.9 Thus, it is proved beyond a reasonable doubt that

there was no actual business carried out by accused/Rakesh Kumar Vij (A□5) and even the business premises declared by him in the loan application was a fictitious address given by him but all the reports were prepared and the loan application was processed/appraised and financial limits sanctioned by accused/S K Chawla (A□) in order to facilitate accused/Rakesh Kumar Vij (A□5) to siphon of the funds by frequently withdrawing the money in cash from the account and by account payee cheque in the name of another company. This implies the full knowledge on the part of accused/S K Chawla (A□), V K Syal (A□2) and Rakesh Kumar Vij (A□5) that the public money is being siphoned of and cheated without there being any real business or any guarantor like Smt.Shanti Devi or any collateral security actually being mortgaged to the bank to secure the loan.

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8.1.1 From above findings of facts discussed in

detail, it has been proved beyond reasonable doubt that accused/Sri Kant Chawla (A□), Virender Kumar Syal (A□) and Rakesh Kumar Vij (A□) entered into a criminal conspiracy to do an illegal act of cheating the State Bank of Bikaner and Jaipur, Nangal Raya Branch, Delhi in furtherance whereof accused/V. K. Syal (A□) and accused/Rakesh Kumar Vij (A□) got sanctioned credit facilities by offering bogus/false sureties and securities, submitting false audit reports, dishonestly submitting bills for purchase by the bank which remained unpaid, dishonestly introducing account in the name of Gurdayal Prasad (a dead man) by using photograph of Raj Bal Tyagi (A□) and then withdrawing an amount of Rs.13,96,306/□ from the said account of Gurdayal Prasad and then repaying the same on fraud being detected. Accused/Sri Kant Chawla being Chief Manager of State Bank of Bikaner and Jaipur, Nangal Raya Branch sanctioned and disbursed those credit facilities by CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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accepting bogus sureties/guarantors, bogus property documents, audit reports, rent agreements, etc. and even allowed over□drawings in those accounts beyond sanctioned limits and his powers and thereby abusing his official position as a public servant to obtain pecuniary advantage for co□ accused/V K Syal (A□) and Rakesh Kumar Vij (A□) by processing and sanctioning the credit facilities on the basis of fake/false and fictitious documents, bogus sureties and securities allowing overdrawings/adjustments by the said borrowers beyond his discretionary financial powers and dishonestly not intimating the overdrawing to competent authority.

8.1.2 It is necessary to mention that while framing charge, the Id.predecessor had charged accused/V K Syal (A□) and Rakesh Kumar Vij (A□) under section 465 IPC instead of Section 468 IPC and section 471 r/w 465 IPC instead of section 471 r/w section 468 IPC whereas the CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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offence which has been proved against these accused persons is not simple forgery which is punishable under section 465 IPC but is aggravated form of forgery i.e forgery for the purpose of cheating which is made punishable under section 468 IPC as they used forged audit reports, forged title documents of the properties for mortgage, forged guarantee deeds and forged rent agreement, etc. for the purpose of cheating the bank in obtaining loans/credit facilities. Hence by virtue of provisions of section 221(2) Cr.PC, I proceed to convict accused persons u/s 468 and section 471 r/w 468 IPC instead of section 465 and section 471 r/w 465 IPC.

8.1.3 In view of my findings, as discussed above, I hold that the prosecution has successfully proved commission of offence by accused/Sri Kant Chawla (A□), V K Syal (A□) and Rakesh Kumar Vij (A□) punishable under section 120B r/w 419, 420, 468, 471 r/w 468 IPC and 13(2) CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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r/w 13(1)(d) of PC Act, 1988, besides commission of substantive offences punishable u/s 420 IPC and u/s 13(2) r/w Section 13(1)(d) of PC Act by accused/Sri Kant Chawla (A□) and u/s 420 and Section 471 r/w 468 IPC by accused/V K Syal (A□2) and Rakesh Kumar Vij (A□5) individually. I hold them guilty for the same and convict accordingly. 8.1.4 Accused/Raj Bal Tyagi (A□3), Dhiraj Prasad (A□4) and Bhupinder Pal Singh Bakshi (A□6) are afforded benefit of doubt and hence acquitted of the offences charged against them.

Announced in the open
Court on 16.04.2014

(R P PANDEY)
Spl.Judge (CBI)-01
Rohini Court, Delhi

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IN THE COURT OF SH.R.P.PANDEY, SPECIAL JUDGE□61 (PC ACT) CBI : ROHINI COURTS :
DELHI CBI CASE NO.25/2010 & CBI Case No.15/2011 CENTRAL BUREAU OF INVESTIGATION
(CBI) VS.

1.Sri Kant Chawla (A.1) s/o Sh.Keemat Rai Chawla Ex□Chief Manager, State Bank of Bikaner &
Jaipur, Nangal Raya branch, Jail Road, New Delhi R/o Plot No.4, Road No.1, Bhopal Pura,Udai
Pur□313001 (Rajasthan)

2.Virender Kumar Syal (A.2) (Absconding) s/o Sh.K.B.Rai, Director M/s Davis Corenet Fashions
Pvt. Ltd.

M□355, Guru Har Kishan Nagar, Paschim Vihar New Delhi□63 r/o M□355, Guru Har Kishan Nagar
Paschim Vihar, New Delhi□63

3.Raj Bal Tyagi (A.3) (Acquitted) s/o Sh.Jagan Nath Prasad r/o H.No.114, Govind Puri,
Kankarkhera, Meerut, UP CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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4.Dhiraj Prasad (A.4) (Acquitted) s/o Sh.Subodh Prasad r/o H.No.9/5, East Patel Nagar, New Delhi.

5.Rakesh Kumar Vij (A.5) s/o Sh.Om Prakash Vij Prop. M/s Ess Vee Exports, 9□A, Kaliamal Street,
K.K.Puddur, Coimbatore□38 (TN) R/o 26, Balaji Park, Ist Cross Road, K.K.Puddur, Coimbatore□38
(TN)

6.Bhupinder Pal Singh Bakshi, (A.6) (Acquitted) s/o Sh.Jagmahar Bakshi Director M/s Pavi
Overseas Pvt. Ltd.

J2/22, Rajouri Garden, opposite IDBI Bank New Delhi R/o A2/268, Janak Puri, New Delhi FIR NO.RC 4E/2006/CBI/EOW, NEW DELHI U/S 120B/420/467/468/471IPC & 13 (2)/13 (1)(d) PC ACT, 1988 Date of filing charge sheet : 21.05.2008 Date of Judgment : 16.04.2014 Date of hearing on sentence : 21.04.2014 Date of order on sentence : 22.04.2014 CASE ID No. 02404R000622008 CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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ORDER ON SENTENCE:

1. Vide a judgment dated 16.04.14, accused persons have been convicted for offences punishable u/s 120B r/w section 419, 420, 468, 471 r/w 468 IPC & Section 13 (2) r/w Section 13 (1)(d) of PC Act, 1988. They have also been found guilty and convicted for substantive offences punishable as under: S.K.Chawla (A.1) : U/s 420 IPC and u/s 13(2) r/w Sec.13(1)

(d) of PC Act.

V. K. Syal (A.2): U/s 420 and 471 r/w 468 IPC Rakesh Kumar Vij (A.5): U/s 420 and 471 r/w 468 IPC

2. The offence of cheating u/s 420 IPC is punishable with an imprisonment extendable upto 7 years and CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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fine; the offence of using as genuine a forged document u/s 471 IPC r/w 468 IPC is punishable in the same manner as an offence u/s 468 IPC i.e. with an imprisonment extendable upto 7 years and fine and the offence of criminal misconduct by a public servant u/s 13(1)(d) of PC Act, 1988 is punishable with a minimum imprisonment of one year extendable upto 7 years and fine. The punishment for offence u/s 120B IPC for commission of offences u/s 419, 420, 468 and 471 r/w 468 IPC and 13(1)(d) r/w 13(2) of PC Act is extendable upto the maximum punishment provided for those individual offences, like abetment.

3. I have heard Ms.Shashi Vishwakarma, Ld.Public Prosecutor for CBI and Sh.Tarun Gehlot, ld.counsel for convict no.1 and Sh.Murari Kumar, ld.counsel for convict no.5 besides CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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giving personal hearings to the convicts.

4. It has been urged by ld.Public Prosecutor that the convicts have cheated the public money and, therefore, liable to be punished most severely. She has also submitted that convict/Sri Kant Chawla has already been convicted in three other cases and hence exemplary punishment is required to be

inflicted on him.

5. Ld.counsel for A□ has submitted that convict/Sri Kant Chawla (A□) has not obtained any wrongful gain for himself and that the three cases in which he has already been convicted by Id.Spl.Judge (CBI), Dwarka Courts, Delhi had also arisen from the same FIR in respect of which four separate charge sheets CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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were filed by CBI. He has submitted that he is aged about 65 years, having 85 years old mother, he is having a son aged about 33 years who is crippled due to a failed surgery of his spine and he himself is suffering from hypertension. He also submitted that he served the State Bank of Bikaner & Jaipur (SBBJ) for 33 years without there being any charge of any kind prior to the present case. As regards convict/Rakesh Kumar Vij (A□5), his ld.counsel has submitted that he is aged about 61 years and is sole earning member of his family having no previous history of his conviction or involvement in any other offence.

6. They have also submitted that convicts have undergone rigors of investigation and trial for about 7 years. They have, therefore, submitted that a lenient view may be taken CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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and that convicts may be punished with minimum sentence prescribed under the law.

7. The convicts have cheated the State Bank of Bikaner & Jaipur (a public sector bank) by using forged documents, bogus surety and forged title deeds. Convict/Sri Kant Chawla abused his financial powers to extend undue pecuniary advantage to remaining convicts at the cost of public money and convict/Rakesh Kumar Vij reaped the benefits of the fraud to the extent that his loan account was overdrawn by Rs.37.75 lacs without there being any actual business carried on by him.

8. After considering the rival contentions and keeping in mind the mitigating and aggravating circumstances, as CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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discussed above, I sentence the convicts as under:□Sri Kant Chawla (A□) is sentenced to undergo rigorous imprisonment (RI) for a period of 4 years with fine of Rs. 1,00,000/□for offence committed by him u/s 420 IPC and in case of default in payment of fine, to further undergo simple imprisonment (SI) for three months and RI for a period of 4 years with fine of Rs.1,00,000/□for offence committed by him u/s 13(2) r/w 13(1)(d) and in case of default in payment of fine to further undergo SI for three months.

Rakesh Kumar Vij (A☐5) is sentenced to undergo rigorous imprisonment (RI) for a period of 4 years with fine of Rs. 3,00,000/☐for offence committed by him u/s 420 IPC and in case CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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of default in payment of fine to further undergo SI for three months; RI for a period of 3 years with fine of Rs.1,00,000/☐for offence committed by him u/s 471 r/w 468 IPC and in case of default in payment of fine to further undergo SI for three months.

9. Both the convicts are sentenced to undergo RI for a period of 4 years with fine of Rs.1,00,000/☐ each for offence of criminal conspiracy u/s120B r/w 419, 420, 468, 471 r/w 468 IPC and 13(2) r/w 13(1)(d) of PC Act, 1988 and in case of default in payment of fine to further undergo SI for three months each.

10. All the sentences shall run concurrently.

11. The convicts shall be entitled to the benefit of CBI Case No.25/10 CBI Vs. S K Chawla & Ors.

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provisions of Section 428 Cr.PC.

12. Convict/Sri Kant Chawla (A☐1) has already been taken into custody on 16.04.14. Convict/Rakesh Kumar Vij (A☐5) is also taken into custody and his bail bond stands discharged.

13. A copy of this order be supplied to the convicts free of cost.

14. File be consigned to the record room.

Announced in the open
nd
Court on 22 April, 2014

(R.P.PANDEY)
SPECIAL JUDGE (CBI)-01
ROHINI COURTS:DELHI

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