

State By vs Nissar Pasha on 26 March, 2022

BEFORE THE LXVI ADDL.CITY CIVIL & SESSIONS
JUDGE, BENGALURU CITY.
(CCH-67)

DATED: This the 26th day of March, 2022

PRESENT

Smt. K.KATHYAYANI, B.Com., L.L.M.,
LXVI Addl.City Civil & Sessions Judge,
Bengaluru.
SC.No.398 of 2017

COMPLAINANT : State by:
RB Nagar Police Station,
Bengaluru.
(By Public Prosecutor)
/Vs/

ACCUSED: Nissar Pasha,
S/o R.Rasool Khan,
Aged about 62 years,
R/at No.2/2, 1st Cross,
1st Main Road, Thaba Layout,
Sarayi Palya, Thanisandra Post,
Bengaluru 560 045.
(By Sri.Mohammed Wazar, Advocate.)

DATE OF:

Occurrence of offence	: 10.07.2016
Commencement of trial	: 09.01.2019
Closing of trial	: 28.12.2021
Name of the complainant	: Sri.Mohammed Irfan
Offence alleged :	Under Sections 436 and 427 of IPC.

Opinion of the judge : Charges leveled
against accused are
not proved.

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SC.No.398/2017

Sentence or order : Acquittal.

JUDGMENT

The RT Nagar police have filed the present charge sheet against the accused in Crime No.98/2016 for the offences punishable under Sections 436 and 427 of IPC.

2. The brief facts of the prosecution case are that;

a) The complainant/CW-1 Sri.Mohammed Irfan is running foot ware business under the name and style Heba Group Heba Trading Pvt. Ltd. at Building No.2, 80 feet road, PET Colony, RT Nagar 2nd Block within the jurisdiction of RT Nagar police station.

b) The accused was working as a dispatcher at the shop of CW-1 and son of the accused was also working in the company of CW-1 at Sulthanpete Branch.

c) When the accused and his son were working at the company of CW-1, they have committed loss of Rs.15,30,480/- and the son of accused had agreed to repay the same in installments.

d) Keeping the said matter in mind, the accused had developed animosity and with an intention to cause loss to the CW-1, on 10.07.2016, at about 10:30 p.m., accused went to the 4th floor of the company of CW-1 and set fire with match stick to the foot wear carton boxes which were kept in 4th floor and caused damages of Rs.10,000/- to CW-1. Accordingly, the complaint was filed.

3. After investigation, the charge sheet was filed against the accused.

4. On going through the charge sheet, the jurisdictional Magistrate has taken cognizance against the accused for the offences alleged and the accused was enlarged on bail.

5. Since the offences are exclusively triable by the Sessions Court, the trial Court has committed the case against the accused to the Sessions Court.

6. On committal, the case was made over to this Court for disposal in accordance with law.

7. In response to the service of summons by this Court, the accused appeared before this Court and was enlarged on committal bail.

8. After hearing both the sides on framing charges, charges framed and plea of accused was recorded for the offences punishable under Sections 436 and 427 of IPC for which, he pleaded not guilty and claimed to be tried by this Court. Hence, the case was posted for trial.

9. In the course of trial, the prosecution in all got examined 8 witnesses i.e., CWS-1, 3, 4, 7, 5, 9, 10 and 11 as PWs-1 to 8. Got exhibited 32 documents at Ex.P-1 to

32. Got marked 4 material objects at MO-1 to 4.

10. The statement of accused under Section 313 of Cr.P.C. was recorded wherein he has denied all the incriminating evidence against him and he neither produced nor adduced any evidence on his defence.

11. Heard arguments of both the sides on merits of the case.

a) In support of her oral arguments, the counsel for the accused has furnished the photo copies of the Judgments in;

(i) CrI.A.No.1154/2018 of Hon'ble Supreme Court of India in Parubai Vs State of Maharashtra dated 10.08.2021.

(ii) CrI.A.No.1500/2010 of Hon'ble Supreme Court of India in Kishan Singh (D) through LRs Vs Gurpal Singh and Others dated 12.08.2010.

(iii) Marudanal Augusti Vs State of Kerala dated 29.03.1979 of Hon'ble Supreme Court of India.

b) This Court has carefully gone through the above said case laws and perused the records.

12. Out of above said facts and circumstances of the case, the points that arose for the due consideration of this Court are;

1. Whether the prosecution proves beyond all the reasonable doubt that on 10.7.2016 at about 10.30 p.m. at Heba Trading Pvt. Ltd., of CW-1 situated at 4th floor of the building bearing No.2, 80 feet road, P & T Colony, 2nd Block, RT Nagar, accused set fire to the footwear carton boxes and thereby committed the offence punishable under Section 436 of IPC?

2. Whether the prosecution further proves beyond all the reasonable doubt that the accused on the afore said date, time and place, caused monetary loss of Rs.10,000/- to CW-1 and thereby committed the offence punishable under Section 427 of IPC?

3. What Order?

13. The answer of this Court to the above points are;

1. Points Nos.1 and 2 : In Negative.

2. Point No.3 : As per the final order for the following reasons.

REASONS

14. POINTS Nos.1 AND 2:- As these points require common discussions, to avoid repetitions and for the sake of convenience, they are taken together for consideration.

15. As noted above, in this case, the complainant police have filed charge sheet against accused for the offences punishable under Sections 436 and 427 of IPC and after hearing before charge, charges were framed against accused for the said offences.

16. So, it is the burden on the prosecution to prove the guilt against the accused beyond all the reasonable doubts with the material, supportive and corroborative evidence for the offences under

Sections 436 and 427 of IPC.

17. Before venturing into the discussions on the evidence let in by the prosecution, let this Court first to go through the relevant provisions i.e., Sections 436 and 427 of IPC to know the ingredients that attract the offences alleged for the better appreciation of the evidence on record.

"436. Mischief by fire or explosive substance with intent to destroy house, etc.,- Whoever commits mischief by fire or any explosive substance, intending to cause or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either description of a term which may extend to ten years, and shall also be liable to fine."

18. The next offence is Section 427 of IPC which reads;

427. Mischief causing damage to the amount of fifty rupees .-

Whoever, commits mischief and thereby cause loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

19. In the present case on hand, as noted above, it is the allegation of the prosecution that on the alleged date, time and place, with an intention of committing crime, accused came near Heba Trading Pvt. Ltd. of CW-1 situated at 4th floor of the building bearing No.2, 80 feet road, P & T Colony, 2 nd Block, RT Nagar, the accused set fire to the footwear carton boxes and caused damages of Rs.10,000/- to CW-1 and thereby committed the offences alleged.

20. So, the above allegations clearly attract the ingredients of the offences alleged noted above.

21. As noted above, to prove its allegations, during the course of trial, in support of its case, the prosecution in all got examined 8 witnesses i.e., CWs-1, 3, 4, 7, 5, 9, 10 and 11 as PWs-1 to 8. Got exhibited 32 documents at Ex.P- 1 to 32. Got marked 4 material objects at MO-1 to 4.

22. It is stated in the charge sheet that CW-1 Sri.Mohammed Irfan is the complainant. He is examined as PW-1 and has deposed that;

a) He is a distributor of Paragon footwear; the accused was working as dispatcher in their company godown and his son Tousif Ahmed was also working in their company at Sulthanpet Branch.

b) The said Tousif while working at Sulthanpet branch, caused loss around Rs.15,30,480/- to their company and accepting his guilt, the said Tousif agreed to repay the amount in installments, but till date, did not pay any amount.

c) The said Tousif agreed to pay partial amount on 10.07.2016. They have a godown of their company at RT Nagar. The accused and others were working in the said godown.

d) On 10.07.2016, around 8:00 to 9:00 p.m., by breaking down the CC camera installed to the godown, the accused lit fire to the footwear carton box with match stick. The other workers when went up, learnt about the accused litting fire. In the CC camera, the act of the accused breaking down the camera and litting fire is recorded.

e) The local staffs after setting of the fire, intimated his brother who is in the office and his brother called him over phone and intimated.

f) On the next day, on verifying the stocks and finding the facts, lodged the complaint on 12.07.2016 as per Ex.P-

1.

23. At this stage, let this Court to go through the complaint at Ex.P-1 which demonstrates that;

a) The accused had been working in their organization since February-2013 as a dispatcher of footwear products and was drawing the gross salary of Rs.9,500/-.

b) On 10th July 2016, in the night, the accused went to the godown at 4th floor with an intention to set fire to the footwear cartons, the accused broke the CC TV camera and set fire to one corner of footwear cartons.

c) By that time, the fellow workers entered the godown and noticed the fire at the cartons. All the employees working at the premises have taken immediate action by stopping the spreading of fire, by that time, few footwear cartons and footwear have been burnt.

d) If there was delay of 10-15 minutes, the whole footwear cartons stored in the premises would have been burnt which was worth of Rs.1,50,00,000/- and several employees were working during the incident.

e) There is a commercial restaurant adjacent to the building which could have been burnt and they would have been incurred huge monitory and human loss.

f) The motive behind the incident is that, the son of the accused Thousif who is also working in their organization as store manager at their Sulthanpet branch, employed on the recommendation of the accused from November-2014 had stolen footwear products of Rs.15,30,480/- and agreed to pay the amount in installments.

g) When the son of the accused failed to make the partial payment on 12.07.2016, the accused decided to burn the whole premises to divert their attention to the huge damages to their organization and the loss incurred approximately due to the incident is Rs.10,000/- and prayed for

action.

24. So, the above noted oral evidence of CW-1 is in support of the complaint averments at Ex.P-1.

25. CW-1 has also deposed that;

a) On receipt of the complaint, the police came to the spot; conducted the inspection and drawn the mahazar as per Ex.P-2 and by then, they seized the footwear sample and carton box ash in his presence.

b) He has also identified the burnt paragon footwear, carton box ash and scar over the wall due to the incident, collected at the time of mahazar respectively at MOs-1 to 3 as well as the photos of the spot at Ex.P-3 to 6.

26. At this stage, let this Court to go through the spot mahazar at Ex.P-2 which demonstrates that the spot mahazar was conducted on 14.07.2016 in between 4:00 p.m. and 5:00 p.m. in the 4th Floor of the shop of CW-1 situated at No.2, Heba Group Heba Trading Pvt. Co. Ltd., 80 feet Road, P & T Colony, RT Nagar, Bengaluru in the presence of Sri.Abdulla/CW-2, Sri.Suresh Singh/CW-3 and by that time, MOs-1 to 3 were seized which were kept in separate cotton covers, duly packed and sealed, affixed with labels having signatures of panchas and the IO.

27. The photos at Ex.P-3 and P-4 are the printouts/photos of the CC TV footages dated 10.07.2016 of the timings 22:30:48 and 22:30:56 respectively wherein the accused is appearing near the lift door and returning back from the lift door respectively.

28. Ex.P-5 and 6 are the colour photos of the footwear carton boxes appear to be subjected to the fire incident. So, the above noted evidence of CW-1 is in supported by the spot mahazar at Ex.P-2 and the photos at Ex.P-3 to 6.

29. On going through the CD at MO-4 over the laptop played in the open Court, CW-1 has also stated that the person seen in the video/footage is the accused, who came to the spot and after that, he thrown footwear box to the CC TV camera.

30. The plain perusal of the CD at MO-4 is in support of the above oral evidence of CW-1.

31. It is in the cross examination of CW-1 that;

a) He can read and write Kannada.

b) To the question as to, whether he put his signature at Ex.P-2(a) in the police station, he has answered that the police came to his office and inspected, thereafter he put the signature.

c) To the next question that he put the signature at Ex.P-1(a) in the police station, he has answered that he prepared the complaint and submitted in the police station.

d) He cannot say the designations of the police came to his office to conduct the mahazar, but the mahazar was written by the police and it was RT Nagar Police, but he does not know the designation of the official who wrote the mahazar and there were around 2 to 3 police officials and he does not remember exactly the numbers. His office staffs were also present. They were Sri.Abdulla, Sri.Saddam and others.

e) The police have collected sample slippers, ash and etc.

32. So, there is nothing elicited from the mouth of CW-1 which helps the accused in respect of his lodging the complaint at Ex.P-1, the recitals therein, the police visiting the spot i.e., the godown of CW-1, conducting the mahazar at Ex.P-2 and seizing MOs-1 to 3 at the time of Ex.P-2.

33. Though CW-1, in his cross examination for the accused has denied that he gave the complaint as per the instructions of the police, he has admitted that the son of the accused Tousif Ahamad was working in their Sulthanpete branch and in his complaint, he has mentioned that the said Tousif cheated them for an amount of Rs.15,30,480/- which is in support of the recitals in the complaint at Ex.P-1.

34. CW-1 in his cross examination, to the question that can he say how he/Tousif has cheated, he has answered that they handed over the stock which was computerized; after few months, when they checked, the stock was less and it was found that Tousif Ahmed sold the stock without bills.

35. He has also deposed that Tousif Ahmed was the Manager of Sulthanpete Retail Shop and he has admitted that the accountant regularly check the stock. At this stage, he has voluntarily stated that it is based on the information given by the concerned shops and the physical check is annual check.

36. To the question that did he lodge the complaint against the Tousif Ahmed, CW-1 has answered that it was settled as his mother paid Rs.2,00,000/- in cash and on the advice of local political leaders, as they assured to make payment. There is due of Rs.30,00,000/- even now.

37. He has also deposed that there is no document in respect of the alleged payment of Rs.2,00,000/- by the mother of Tousif Ahmed. A day before the present complaint, she paid Rs.2,00,000/-. He has not taken any steps against Tousif Ahmed for the balance. At this stage, he has voluntarily stated that the local politicians got committed him by assuring that after selling the site, they will make the payment.

38. But, there is no mention in respect of the above evidence of CW-1 in the complaint at Ex.P-1 i.e., the details of the alleged loss caused by Thousif who is admittedly the son of the accused; the settlement by the intervention of the local politicians; non initiating the legal action against the said Thousif and the reason for the same; as well as the alleged payment of Rs.2,00,000/- by the wife of the accused a day before lodging the complaint.

39. It is also in the cross examination of CW-1 that;

a) The CC TV cameras are installed in all the floors. He does not know the exact numbers and he has admitted that Ex.P-3 and 4 are of the place where the lifts situate. Those lifts are back side service lifts. Since the stock are appearing in the photos, he can say that the photos are of the 4th floor.

b) He cannot say specifically who took the photos at Ex.P-5 and 6. At this stage, he has voluntarily deposed that by that time, police taken the photos and the photos are in his mobile also. The said photos were taken when the police came for mahazar.

c) To the question that no fire is appearing in the photos at Ex.P-3 and 4, he has answered that it is on the opposite side to the spot where the fire was lit to the stocks.

d) It may be correct to suggest that the accused is aged around 67 to 68 years, but has denied that the accused never came for work in the night hours. At this stage, he has voluntarily stated that whenever there were works, the accused did OT.

40. The CD at MO-4 and the photos at Ex.P-3 and 4 which are the printouts of the CC TV footages clearly demonstrate that the person appearing therein is the accused. Thus, the above suggestion that the accused never come for work in the night hours cannot be accepted as Ex.P-3 and 4 as well as MO-4 clearly demonstrate the timings as 22:30:48 and 22:30:56 respectively.

41. CW-1 in his cross examination has denied that;

a) The accused was never present in the office on the alleged date of incident and to recover the amount due by Tousif Ahmed by pressurizing the accused, by creating the present story, he lodged the false complaint.

b) By pressurizing the accused, his wife and Tousif Ahmed by saying that he is going to file the complaint, forcibly he received Rs.2,00,000/- by the wife of the accused.

c) They threatened the accused and his family to make the payment in one day and thereafter, in collusion with the police, he filed this false complaint.

42. But, as noted above, prima facie the person appearing in the photos at Ex.P-3 and 4 as well as MO-4 is the accused. Hence, the defence that the accused was not present in the place of incident at the time of the alleged incident cannot be believed.

43. However, so for the defence in respect of the receipt of Rs.2,00,000/- from the wife of the accused by threatening them to file the complaint and the demand for payment in a day and thereafter, filing of this complaint, it is pertinent to note that it is also in the cross examination of CW-1 that he did not claim insurance and at this stage, he has voluntarily stated that he does not have any insurance coverage, since it is against to their religious belief.

44. So, a doubt arises in the mind of a reasonably prudent man that there was no need for him to file the present complaint to claim the insurance coverage as there was no insurance at all.

45. So, it appears to the mind of a reasonably prudent man that when CW-1 as per his evidence itself, did not file a complaint against the son of the accused that too for causing loss of Rs.15,30,480/- (which is a considerable quantum of amount) that too by misappropriation of the stock by using his position as the manager of Sultanpet branch, how should CW-1 file the complaint against the accused only for causing loss of Rs.10,000/-.

46. Of course, it is the reason given by CW-1 for not lodging the complaint against the son of the accused for the above misappropriation is that, the local political leaders intervened and they assured that the said amount will be paid on sale of the site.

47. So, if the above evidence of CW-1 is believed, then, prima facie it appears to be mind of a reasonably prudent man that the said evidence shows that the accused and his family are having the support of the local political leaders that too for repayment of such a considerable amount, then how should they the local political leaders allow, CW-1 to file this complaint against the accused for causing loss of only Rs.10,000/-.

48. That apart, it is the reason stated by CW-1 for the accused committing the alleged crime is that, to divert their attention by causing heavy loss to them, the accused tried to put fire to the stock in the godown.

49. But, the stocks appearing in the 4 th floor which are covered in the photos at Ex.P-5 and 6 are taken into consideration, it appears that the stock in the 4th floor would not be more than the alleged due by the son of the accused i.e., Rs.15,30,480/- as the alleged loss assessed is only Rs.10,000/- and the footwear carton boxes appear in he said photos are not more than maximum 100.

50. Of course, as noted above, CW-1 has stated that if the spreading of fire was not stopped he would have incurred more material and human loss. So for the said alleged "more material loss", the CW-1 has not stated even the approximate loss. Hence, in this background, the above defence raised on behalf of the accused holds some force.

51. It is also in the cross examination of CW-1 that;

a) At the time of alleged incident, he was in the house at Shanthi Nagar. Around 10:00 p.m. to 10:30 p.m., he received information over phone from his brother Mohammed Imran who is in charge of the said branch.

b) To the question that had he no impediment to check the information immediately, he has answered that immediately, he went to the spot and checked it.

c) To the next question he had no impediment to lodge the complaint immediately, he has answered that in the night after checking and verifying the CC TV footages, in the morning, he lodged the complaint.

52. But, as per the complaint at Ex.P-1, the incident was taken on 10.07.2016 at 8:30 p.m., and the complaint is dated 12.07.2016 but, it was lodged on 13.07.2016 at 5:00 p.m. and there is no explanation in the complaint about the delay. Thus, the evidence of CW-1 that he lodged the complaint on the next day is contrary to the recitals in the complaint at Ex.P-1.

53. Of course in the cross examination, CW-1 has denied that the complaint was lodged on the next day, since the accused and the family members did not pay the amount.

54. However, as noted above the complaint was lodged on the 3rd day of the incident and without assigning any reason for the delay. Thus, it appears that there is some force in the above defence that this complaint was lodged when the accused and his family members did not pay the amount as admittedly, it is aversion of the complainant that a day before lodging this complaint, the wife of the accused to paid Rs.2,00,000/- to him.

55. The next witness examined is CW-3 Sri.Suresh Sing one of the panchas to the spot mahazar at Ex.P-3. He is examined as PW-2 and has deposed that;

a) He has been working as accountant in Heba Company, Rajajinagara, Bengaluru since 4 years. He knows the accused and the accused was working in the godown of the above company.

b) Around 2 years back, the accused lit fire in the 4th floor of their company. In that regard, RT Nagar Police came to their company office and conducted the mahazar.

c) By that time, he was present in the spot and put his signature to the mahazar which is Ex.P-2, wherein his signature is Ex.P-2(b).

d) By that time, RT Nagar Police seized a burnt paragon slipper, the burnt footwear carton box and collected the burnt scars over the wall in a plastic container.

e) He has identified the above properties at MOs-1 to 3 respectively.

56. He has also deposed that;

a) By that time, their owner CW-1 was also present. Because of the fire mischief committed by the accused, the company incurred loss around Rs.20,000/- to 25,000/-.

b) The incident took place in the 4 th floor wherein CC TV camera was also fixed.

57. In his cross examination for the accused, he has admitted that he put his signature to Ex.P-2 in the police station; since he does not know Kannada language, he does not know what is written in Ex.P-2.

58. So, apart from signing the mahazar in the police station which is contrary to the prosecution aversion, CW-3 has deposed supporting the prosecution in respect of police visiting the spot,

conducting the mahazar at Ex.P-2 and seizing MOs-1 to 3 as well as the presence of CW-1 by that time.

59. So for his identifying the accused, there is no dispute in respect of the fact that the accused was working in the godown of CW-1 and CW-3 is the co- worker of the accused. Moreover, the identification of the accused is not all dispute in this case.

60. With regard to the alleged incident, the only evidence given by CW-3 is that in respect of the fire mischief committed by the accused, police visited the spot and he has not stated about the details of the incident and narrated the act of the accused if any in the alleged fire mischief.

61. So for the alleged loss, as per the complaint averments and the evidence of CW-1 noted above, it is Rs.10,000/-, but CW-3 has stated that it is Rs.20,000/- to Rs.25,000/-.

62. Hence, in a nutshell the evidence of CW-3 can be relied on in respect of the police visiting the spot, conducting mahazar and seizing MOs-1 to 3. But, in respect of taking the signature of CW-3 in the spot, his evidence is contrary to the case of the prosecution.

63. The next witness examined is CW-4 Sri.Mohammad Wasiq, the eye witness. He is examined as PW-3 and has deposed that;

a) He knows CW-1 who is his ex-employer and owner of Heba Group Trading Private Limited. He also knows the accused who was his co-worker in the shop of CW-1.

b) He, the accused, CWs-2, 5 and 6 were doing helping work i.e., sending the items to the retail shops.

c) On 10.07.2016, around 10:30 p.m., he was working in the ground floor. Since, he required some items, he went to the 3rd floor and found some flame/smoke due to some fire in the footwear box. So, he called the other co-workers and watered the fire.

d) Thereafter, they informed CW-1 who came to the shop; checked in the CC TV camera and found the accused lighting fire to the footwear boxes. Because of which, CW-1 suffered loss of Rs.10,000/-. He saw the CC TV footages which revealed the accused lighting the fire to the footwear boxes.

e) It was also seen in the CC TV footages that before lighting the fire, the accused tried to break the CC TV camera; because of which, it came down. The police enquired him and he gave statement.

64. In his cross examination for the accused, he has admitted that CW-1 sent him and other workers to the Court on that date, but has denied that CW-1 instructed them to give evidence. At this stage, he has voluntarily stated that he left the job around 3 years back.

65. He has also admitted that in CC TV camera, there is no scene appearing wherein accused lighting fire and the accused was working in 3rd floor.

66. To the question that because of the financial dispute between CW-1 and the son of the accused, CW-1 lodged this false complaint against the accused, he has answered that since, the time was over to return the amount, to save his son, the accused put the fire.

67. However, he has admitted that he does not know to read and write Kannada; he gave statement before the police; he does not know name and designation of the said police before whom he gave statement and the statement was written by the police.

68. He has also deposed that around 3 to 4 boxes having footwear were burnt. He does not know the number of pairs of slippers, but they were costly items and thus, the loss was may be around Rs.10,000/-. However, he has admitted that he does not know the exact quantum and the said loss is an approximate valuation.

69. He has also deposed that their work timings was 10:00 a.m., to 8:00 p.m. and has denied that to help CW-1 who was his ex-employer, he gave false evidence.

70. So, the sum and substance of the evidence of CW-4 in respect of the incident is that he found some smoke when he came to the 3 rd floor to take some items and with the help of other workers, he stopped the spreading of fire and when CW-1 checked in CC TV, they found the accused litting fire. But, as noted above, the CD of the CC TV footage at MO-4 and the relevant printouts/the photos of the CC TV footages at Ex.P-3 and 4 do not demonstrate the accused litting fire, on the other hand they only reveal the accused near the lift door and going back.

71. Therefore, as per the above evidence of CW-4, he came to know the involvement of the accused only on seeing the CC TV footages which do not reflect the accused litting fire. Thus, his evidence that the accused lit fire cannot be accepted.

72. In respect of identification of the accused by CW-4, there is no dispute as he was admittedly the co worker of the accused.

73. So for the loss, it is his evidence that only 3 to 4 boxes were burnt and since they are costly items, he stated that the loss is around Rs.10,000/- but, no details in respect of the loss is on record.

74. The one more eye witness examined is CW-5 Sri.Ahad Pasha who is examined as PW-5 and he has deposed that;

a) He knows CW-1 who is his employer and a dealer of Paragon footwear. He has been working under CW-1 since 5 years.

b) He also knows the accused who was also working under CW-1 in the godown.

c) In July-2016, as he remembers, it appears that on 10th, around 9:30 p.m., when he was checking the items, he heard some sound in the lift. Since, it was manual lift, he went and checked in each floor.

d) Then, he observed some smoke in the 4th floor. So, he rushed to pour the water. Sri.Wasiq/CW-4 and Sri.Saddam/CW-6 who were in the shop assisted him to pour the water. But, by then, all the curtains and most of the footwears were burnt.

d) So, he made a call to CW-1 and intimated. Within half an hour, CW-1 was in the shop. It may be around 10:30 p.m.

e) CW-1 enquired with the employees. All of them pleaded their ignorance. Hence, CW-1 checked in the CC TV and found the accused throwing a footwear box to the CC TV camera; because of which, the camera changed its position, the accused came and took the footwear box he thrown.

f) It is also found that the accused got confirmed, whether the boy to whom he sent up to see after hearing the sound, has gone or not.

g) To avoid the payment due by his son who was working in another shop of CW-1, thinking that if heavy loss is caused, the attention of CW-1 would be deviated, the accused has committed this mischief.

h) The son of the accused is in due of Rs.15,00,000/- to CW-1.

i) The police enquired him and he gave statement about the incident. MO-1 is the burnt paragon footwear.

75. In his cross examination for the accused, he has deposed that;

a) Now, he is residing at Kolar and at the relevant period of time, he was residing at RT Nagar, Bengaluru. His duty hours start from 9:00 a.m. At this stage he has voluntarily stated that others come at 10:00 a.m. In the season, they do OT, normally 8 hours is the working hours.

b) When he heard the sound, he was in the 2nd floor. He did not go to the 4th floor. At this stage, he voluntarily stated that Sri.Wasiq went and saw.

c) He has denied that he does not know anything, but to help his employer, he gave the evidence as tutored by his employer. However, he has admitted that he did not see the accused litting fire.

d) At the time of incident, he, CWs-4, 6 and some Nepali boys/workers were present.

76. So, the sum and substance of the evidence of CW-5 about the incident is that after hearing some sound, he went to 4th floor and found smoke; with the help of CWs-4, 6 and other workers, they stopped spreading of fire and intimated CW-1 who came and checked in CC TV; found the accused throwing the footwear box to the CC TV camera; because of which, the CC TV camera changed its position; thereafter, the accused took back the footwear box and observed the boy he sent to see after hearing the sound as to, whether the said boy has gone back or not.

77. But, as in his cross examination, CW-5 has clearly admitted that he did not see the accused lighting fire, his evidence in respect of the involvement of accused in the alleged incident is only his/accused presence at 4th floor and throwing footwear box to the CC TV camera and observing the boy as to, whether he went back or not which creates some suspicion over the accused.

78. With regard to the motive, his evidence is in corroboration with the oral evidence of CW-1 that to avoid the due of his son to CW-1 by deviating his attention by causing heavy loss, the accused lit fire to the stock.

79. The next witness examined is CW-7 Sri.Thirthappa, the then HC who brought the accused and produced before the IO/CW-10. He is examined as PW-4 and has deposed that;

a) He has been working as head constable in RT Nagar police station and on 14.07.2016, he reported to the duty at 8:00 a.m. The then PSI Sri.Kallappa/CW- 10 deputed him and CW-8 in search of the accused in this case by name Nissar Pasha.

b) Accordingly, both of them contacted CW-1; got information about the accused and went near BDA Complex, RT Nagar, Bengaluru; found a person and the enquiry with him revealed that he is Nissar Pasha S/o Late Rasool Khan.

c) So, they brought the said person to the station and produced before CW-10 along with his report at Ex.P-7, wherein his signature is Ex.P-7(a). He identified the accused in the open Court.

80. CW-7, in his cross examination for the accused has stated that;

a) Within 5 minutes, they took the details of the accused from CW-1. By that time, CW-8 was with him. They called CW-1 over phone to the station and collected the information. CW-1 was in the house when they called. At this stage, he has voluntarily stated that CW-1 was outside the house.

b) He does not know the residential address of CW-1. CW-1 gave information to go to the BDA complex to get the accused. The distance between their station and the BDA complex may around $\frac{3}{4}$ KM. He and CW-8 went on bike.

c) CW-1 narrated the physical features of the accused. Based on which, they identified the accused.

81. CW-7 has denied that;

a) On 14.07.2016, the accused was in house and not near BDA complex; they did not take the accused into their custody as he has stated and despite of that, he gave false evidence convenient to the case.

82. So, the sum and substance of the evidence of CW-7 is in support of the case of the prosecution with regard to his bringing the accused and producing before the IO/CW-10 as he stood on his chief evidence even in the cross examination for the accused.

83. Moreover, the accused has not disputed the fact of CW-7 bringing him and producing before the IO/CW-10, the only defence he has raised is in respect of the place from which he was brought and produced before the IO/CW-10 which is not that much of importance in the circumstances of the case observed above.

84. The next witness examined is CW-9 Sri.Chikkanna the then police constable who submitted the properties before FSL for examination. He is examined as PW-6 and has deposed that;

a) He was working as PC-6562 in RT Nagar police station since 2014 to 2017 and on 02.08.2016, the then PSI Sri.Kallappa S.B./CW-10 deputed him to produce totally 3 articles seized in this crime before FSL, Madivala.

b) Accordingly, he produced 3 articles mentioned in PF.No.70A/2016 before FSL, Madivala and brought the endorsement as well as produced the same before CW-10 along with his report at Ex.P-8, wherein his signature is Ex.P-8(a).

c) Ex.P-19 is the true copy of the passport issued to him and the acknowledgement he submitted with his report is Ex.P-10.

85. It is in his cross examination for the accused that;

a) The articles were sent along with the covering letter.

b) To the question that did he furnish with the written order, he has answered that the passport was issued.

c) He has denied that he did not produce any articles before FSL, Madivala and despite of that, on the instance of his higher officers, he gave false evidence convenient to the case.

86. So, CW-9 also deposed supporting the prosecution in respect of his part in the investigation i.e., submitting the article before FSL, Madivala for examination and submitting the endorsement in that regard before the IO/CW-10 as he stood on his chief evidence even during his cross examination.

87. The next witness examined is CW-10 Sri.Kallappa the IO who is examined as PW-7 and he has deposed that;

a) He was working as PSI in RT Nagar police station since July-2014 to October-2016 and on 13.07.2016 at 5:00 p.m., when he was in charge of SHO, Sri.Mohammed Irfan/CW-1 came to the station and gave a written complaint in the letter head, which is the complaint at Ex.P-1, wherein his signature is Ex.P-1(b).

b) It is stated in the complaint that CW-1 is the owner of Heba Group dealing in footwear business and on 10.07.2016, one of their workers by name Nisar Pasha lit the fire to their footwear godown and in the incident, they suffered loss of Rs.10,000/-.

c) Based on Ex.P-1, he registered the case in Crime No.181/2016 for the offences under Sections 436 and 427 of IPC and prepared the FIR at Ex.P-9, wherein his signature is Ex.P-9(a).

d) He send the FIR at Ex.P-9 to the jurisdictional Magistrate and the copies thereof to his higher officers.

88. The above portion of the evidence of CW-10 in respect of his part of investigation is supported by the oral evidence of CW-1, the complaint at Ex.P-1 and the FIR at Ex.P-9.

89. CW-10 has also deposed that he deputed the then HC-6296 Sri.Threetappa/CW-7 and PC-4378 Sri.Lingadevaru/CW-8 in search of the accused who on 14.07.2016 around 9:00 a.m., produced the accused Nisar Pasha before him with the report of CW- 7 at Ex.P-7, wherein his signature is Ex.P-7(b) and it is stated in Ex.P-7 that CWs-7 and 8 found the accused near BDA Complex and brought him.

90. The above evidence of CW-10 is supported by the oral evidence of CW-7 and the document at Ex.P-7 as observed above.

91. CW-10 has also further deposed that;

a) He subjected the accused person to the arrest procedure and kept him in safe custody in the station for enquiry.

b) On the same day, after enquiry, he produced the accused before the jurisdictional Magistrate under remand warrant and he identified the accused before the Court.

c) On the same day, he visited the spot to conduct the mahazar at Ex.P-2. CW-1 shown him the spot. Accordingly, he conducted the spot mahazar in between 4:00 p.m. and 5:00 p.m. in the presence of panchas by name Sri.Abdulla/CW-2 and Sri.Suresh Singh/CW-3.

d) In Ex.P-2, his signature is Ex.P-2(c). The signatures of CWs-1 and 2 are Ex.P-2(a) and 2(b) respectively and he identify them. The signature of CW-3 is Ex.P-2(d).

e) At the time of spot mahazar, he seized a grey colour half burnt paragon company stimulars named slipper and the ashes of the burnt carton box and the black stains over the wall due to the fire incident in a plastic cover.

f) He put all the above properties in separate cotton covers, duly packed and sealed the same with the letters "MPS", affixed the labels having the details of the properties and also affixed with the signatures of himself and the panchas to the said labels.

g) He identified the above properties at MOs-1 to 3; the lables at MOs-1(a) to 3(a); his signatures at MOs-1(b) to 3(b); the signatures of CW-2 at MOs-1(c) to 3(c) and the signatures of CW-3 at MOs-1(d) to 3(d).

h) He read over the contents of the mahazar at Ex.P-2 and thereafter, took the signatures of the panchas and the complainant.

92. The above noted evidence of CW-10 is supported by the oral evidence of CWs-1 and 3, the document at Ex.P-2 and the material objects at MOs-1 to 3 apart from the contradiction in the evidence of CW-3 that he signed the mahazar in the police station.

93. CW-10 has also deposed that on return to the station, he mentioned the above properties to the PF.No.70A/2016 at Ex.P-10, wherein his signature is Ex.P-10(a).

94. Ex.P-10 is in support of the above oral evidence of CW-10.

95. He has further deposed that on 21.07.2016, he secured the presence of Sri.Mohammed Wasiq/CW- 4, Sri.Ahad Pasha/CW-5 and Sri.Saddam/CW-6 in the station and enquired them about the incident, who gave statement before him in respect of the incident.

96. The above evidence of CW-10 is supported by the oral evidence of CWs-4 and 5 as observed above.

97. It is also in the evidence of CW-10 that on the same day, CW-1 produced the documents pertain to the building/the godown wherein the incident was taken place. The said documents are the self attested copies of;

a) Rental agreement at Ex.P-11, wherein his signature is Ex.P-11(a).

b) The Registration Certificate of the Firm in Form No.C at Ex.P-12.

c) The Tax Paid Receipt at Ex.P-13.

d) The Appointment Order at Ex.P-14.

e) The Cash Vouchers (4 in numbers) at Ex.P-15 to 18.

98. There is no defence raised on behalf of the accused disputing the above documents. For that matter, as noted above, there is no dispute with regard to the fact that the CW-1 is having the footwear godown in the said building wherein the accused was working as a helper under CW-1.

99. CW-10 has further deposed that CW-1 has also produced the photos of the CC TV footages and the burnt carton boxes in the godown along with the CD, which are the photos at Ex.P-3 to 6 and MO-4 respectively.

100. The above evidence is supported by the oral evidence of CW-1 and in respect of Ex.P-3 to 6 and MO-4, the evidence of CW-10 is supported by the oral evidence of CWs-1, 4 and 5 as well as the photos at Ex.P-3 to 6 and the CD at MO-4.

101. It is also in the chief evidence of CW-10 that on 02.08.2016, he deputed CW-9 to produce the 3 articles mentioned in PF.No.70A/2016 ie., MOs-1 to 3 before FSL, Madivala who produced the articles before the said FSL and brought the acknowledgement at Ex.P-20 as well as produced the same before him with his/CW-9's report at Ex.P-8, wherein his signature is Ex.P-8(b). The passport issued to CW-9 is Ex.P-19.

102. The above evidence of CW-10 is supported by the oral evidence of CW-9 and the documents at Ex.P-8, 19 and 20 as noted above.

103. CW-10 has further deposed in his chief evidence that;

a) Awaiting the FSL report, he submitted the charge sheet on 07.08.2016 as there were prima facie materials against the accused for the offences alleged.

b) The person appearing at the door of the lift i.e., in the footage at MO-4 dated 10.07.2016 at the timings 22:30:50 (CH7) is the accused. The photos at Ex.P-3 and 4 are of the said footages.

104. As noted above, there is no dispute in respect of the identification of the accused and the above evidence of CW-10 that the person appearing in the photos at Ex.P-3 and 4 as well as the CD at MO-4 is the accused is supported by the oral evidence of CW- 1 and 3 to 5 as well as the photos at Ex.P-3, 4 and the CD at MO-4.

105. It is in the cross examination of CW-10 for the accused that;

a) To the question that on which shift, he was on 13.07.2016, he has answered that normally, he would be on duty from 8:30 a.m. to 10:30 p.m.

b) He does not remember at what time on 13.07.2016, he came to the station and took the charge of SHO.

c) He does not remember who was in charge of SHO before he took charge on that day. At this stage, he has voluntarily stated that without going through the station dairy, he cannot answer.

d) He mentioned the details of the work done on that day in station house dairy. He has not produced the copy of the said dairy. He has no impediment to produce the copy.

106. But, it is important to note that the accused has not taken any steps to get summoned the station house diary to establish his defence if any in respect of the timings in which CW-10 was in charge of the SHO.

107. It is also in the cross examination of CW-10 that he does not remember who were else with the CW- 1 when he came to lodge the complaint. But, no defence was taken in respect of the persons accompanied or not with CW-1 while lodging the complaint.

108. Though CW-10 has denied that the CC TV footages and the letter i.e., the Resume of the accused were also furnished with the complaint and to the question that in complaint at Ex.P-1, it is mentioned that the CC TV footages, photos and photos/videos are also furnished with the complaint, CW-10 has answered that they were given on 21.07.2016.

109. But, the above answer of CW-10 is contrary to the recitals in the complaint at Ex.P-1 wherein it is clearly mentioned that the resume of the accused, CC TV footage, photos, videos, repayment letter of the son of accused Thousif Ahamed for Rs.15,30,480/- were attached to the complaint.

110. CW-10, in his cross examination for the accused has further deposed that on that day i.e., on 21.07.2016, CW-1 came along with CWs-4 to 6 the eye witnesses and has denied that before production of CC TV footages and photos, he was not knowing about the person committed the offence, he has voluntarily stated that it was stated in the complaint and he was knowing.

111. The above evidence of CW-10 that he was knowing that the accused has committed the offence as it is stated in the complaint is supported by the complaint averments and also the oral evidence of CW- 1 noted above.

112. CW-10 has admitted that there is delay of 3 days in lodging the complaint and deposed that he did not try to collect any information or to record statement of CW-1 in respect of the delay and he knows that the delay in lodging the complaint needs enquiry. At this stage, he has voluntarily deposed that but CW-1 has stated reason for delay in his complaint.

113. The above evidence of CW-10 in respect of delay of 3 days in lodging the complaint is supported by the complaint averments at Ex.P-1 as noted above.

114. No investigation on the part of CW-10 to collect the information and to record the statement of CW-1 in respect of delay of 3 days, prima facie in the circumstances of the case appears fatal to the prosecution as there is admitted dispute between the parties in respect of the alleged due of a considerable quantum of amount of Rs.15,30,480/- from the son of the accused to CW-1.

115. The evidence of CW-10 that the delay is explained in the complaint is contrary to the complaint averments at Ex.P-1 as observed above as there is no reason assigned in the complaint for the delay of 3 days.

116. It is also in the cross examination of CW-10 for the accused that he did not get subjected the CC TV footages/the CD at MO-4 to the expert's opinion, but has denied that he does not know who took the photographs and who video graphed. At this stage, he has voluntarily stated it was CW-1. He did not record the statement of CW-1 in that regard.

117. The fact that CC TV footages/the CD at MO- 4 was not subjected to the expert's opinion is also one of the material defect in the investigation in the circumstances of the case, as the accused has took up the defence that the CC TV footages are created by CW-1.

118. The non recording of statement of CW-1 in respect of CW-1 taking the photographs/videographs is also a material defect in the investigation in the circumstances of the case in view of the admitted dispute between the parties in respect of the motive for the alleged fire mischief i.e., to divert the attention of CW-1 from the alleged due of considerable quantum of amount by his son to CW-1, the accused committed the alleged fire mischief.

119. In his further cross examination, CW-10 has also admitted that there is no footages reflecting the accused committing crime ie., lighting the fire.

120. The above evidence is as noted above supported by the photos at Ex.P-3 and 4 as well as the CD at MO-4 and the oral evidence of CWs-1, 4 and 5 as well.

121. It is also in the cross examination of CW-10 that Hiba Groups is a private company and he did not enquire about the Directors. He did not collect any documents of the said company. CW-1 is the owner of the company. He did not collect any document to show that the CW-1 is the owner of the company.

122. So, prima facie it appears to the mind of a reasonably prudent man that when the above company is a private company, to get ascertained in respect of the alleged incident and in particular the motive for the accused to commit the alleged offence, the IO was required to examine the other Directors of the Company at least the Directors actively involved in the business of the Company.

123. It is also in the cross examination of CW-10 that;

a) He has not collected any document to substantiate the quantum of alleged loss of Rs.10,000/-.

b) To the question that it is mentioned in the complaint that the approximate loss is Rs.10,000/- caused in the incident, he has answered that it is the statement of the complainant, but the sum and substance of the complaint is that the incident happened because of the accused.

124. But, as noted above, no details in respect of the quantum of loss is on record and the above answer that the substance of the complaint is that the incident happened because of the accused itself reveals that he/CW-10 has not concentrated about the alleged loss due to the incident.

125. It is also in the further cross examination of CW-10 that he did not issue written notice to the panchas. He secured the panchas through his staffs. He does not remember their names specifically. The then station writer wrote the mahazar; it may be correct suggest that there is no mention about the scribe in the mahazar.

126. But, as noted above, the record reveals that the panchas to the mahazar are CWs-2 and 3 who are admittedly the workers of CW-1 at the relevant point of time and thus, prima facie it appears that CW-10 has casually deposed that he secured the presence of the panchas through his staffs as the evidence of CW-3 reveals that he was in the spot on duty when the police came to the spot and conducted the mahazar.

127. In his further cross examination CW-10 has also stated that he served notice on CW-1 and CW-1 brought CWs-4 to 6 to the station. He served notice on 15.07.2016 and the same was mentioned in the station dairy. He has admitted that the said station dairy is not produced before this Court.

128. So, CWs-4 to 6 were brought to the station by CW-1 for the purpose of interrogation and as admittedly by then, CWs-4 to 6 were the employees of CW-1, it appears to the mind of a reasonably prudent man that naturally, CWs-4 to 6 were under the influence of CW-1 who was admittedly then their employer and thus, the possibility of CWs-4 to 6 giving statement favouring CW-1 cannot be thrown outrightly.

129. In his further cross examination, CW-10 has also stated that;

a) The owner of the building is Sri.Mohammed Irfan. He has not recorded the statement of the said Sri.Mohammed Irfan in confirmation of the fact that he is/was owner of the building.

b) He has admitted that he had no impediment to enquire him.

c) He had received the copy of rental agreement at Ex.P-11 and also admitted that there is no signature of owner in Ex.P-11.

130. Though it appears that the statement of the owner of the building is not that much of relevant to establish the fact that he was the owner of the building at the relevant point of time, it appears to the mind of a reasonably prudent man that his statement would be relevant in respect of the alleged incident and the impact of the incident on the building. Thus, prima facie, it appears that non recording of statement of the owner of the building though not a material defect, it is definitely a lacuna in the proper investigation of the case.

131. It is also in the cross examination of CW-10 that he has seen the CC TV footages in the station immediately on receipt of the same. He did not visit the spot, conducted the mahazar for confirmation of the spot on receipt of CC TV footages, photos/video on 21.07.2016.

132. But, the line of cross examination conducted on behalf of the accused to the other witnesses are taken into consideration, it appears that the spot of incident is not disputed and thus, the further mahazar for confirmation of the spot appears was not needed in the facts and circumstances of the case and thus, no fault could be find with the IO in this regard.

133. It is also in the further cross examination of CW-10 that he has not produced the acknowledgement in respect of production of properties before FSL.

134. But, the scientific examiner is examined before the Court as PW-8 and thus, the non production of acknowledgment in respect of production of properties before FSL is not that much of importance. However, as noted above, acknowledgement at Ex.P-20 is on record.

135. In his further cross examination, CW-10 has denied the suggestions denying his evidence in respect of the investigation he has done in the case.

136. The one more witness examined for the prosecution is Dr.Suma, FSL Examiner and she is examined as PW-8 and has deposed that;

a) She has been working as Scientific Officer in FSL Madivala since 2004 and on 02.08.2016, their office has received a request letter at Ex.P-21 from RT Nagar police station along with sample seal, Form No.52, instructions, certificate, invoice, details of articles, true copies of FIR, complaint, spot and seizure mahazar and PF and the articles were intact.

b) The letter of instructions is Ex.P-22. The certificate is Ex.P-23. The invoice is Ex.P-24. The details of the articles sent for FSL examination is the letter at Ex.P-25.

c) The true copies of the said FIR, complaint, spot and seizure mahazar, PF and the sample seal are the documents shown to her at Ex.P-26 to 30 respectively and she identified them.

137. PW-8 has also deposed that;

a) She subjected the 3 articles shown/detailed in Ex.P-24 by 2 methods ie., thin layer chromatography and head space gas chromatography and came to the conclusion that the presence of petrol, kerosene, diesel residues were not detected in all the 3 articles.

b) Accordingly, she prepared her report at Ex.P- 31, wherein her signature is Ex.P-31(a).

c) She sent back all the 3 articles with due pack and seal along with the sample seal at Ex.P-32, wherein her signature is Ex.P-32(a). She has identified the above properties at MOs-1 to 3.

138. In her cross examination to the question that whether there is any acknowledgment in respect of receipt of the articles for examination, she has answered that it was received by their office, not by her personally.

139. She has admitted that after opening the seal put by the concerned SHO, they open the article/container and will take the sample for examination. At this stage, she has voluntarily stated that if there is any space available, they retain the seal and will extract the sample from the available space.

140. To the question that has she affixed her seal and signature if any at the time of sending the articles back to the concerned SHO, she has answered that no seal of FSL and her signature are appearing over the cotton covers in which MOs-1 to 3 are kept.

141. She has denied that on the instance of the police, she gave false evidence in support of this false case.

142. So, the above noted evidence of PW-8 though is in support of the prosecution in respect of her examining MOs-1 to 3 and issuing the examination report at Ex.P-31, in view of her admission that the sample seal at Ex.P-32 she has affixed on MOs-1 to 3 and her signature while sending back MOs-1 to 3 are not appearing over the covers in which MOs-1 to 3 are kept is fatal to the prosecution to establish that the articles examined by PW-8 are the articles at MOs-1 to

3.

143. Thus, from the above evidence let in by the prosecution, though,

a) CW-1 has deposed supporting the prosecution in respect of Ex.P-1 and 2;

b) CW-3 has deposed supporting the prosecution in respect of Ex.P-2;

c) CWs-4 and 5 deposed supporting the prosecution in respect of the alleged incident and thereby the oral evidence of CW-1;

d) CW-7 deposed supporting the prosecution about bringing the accused and producing him before CW-10;

e) CW-9 deposed supporting the prosecution about submission of articles before FSL Madivala for examination;

f) PW-8 deposed supporting the prosecution in support of examination of the articles submitted by the IO for examination and issuing her report at Ex.P-31; and

g) CW-10 deposed supporting the prosecution in respect of his part of investigation in the case, in view of,

(i) The admitted dispute between the parties in respect of the alleged considerable due of Rs.15,30,480/- by the son of accused Thousif to CW-1, which is the prime motive for the alleged fire mischief by the accused;

(ii) The non taking of any legal action against the said Thousif on the alleged intervention of the local politicians and continuing the said Thousif in the service;

(iii) The fact that CWs-2 to 6 are admittedly the then employees of CW-1 and were brought in particular CWs-4 to 6 the alleged eye witnesses were brought by CW-1 to the station for interrogation who were then prima facie under the influence of their employee CW-1 and thus, the possibility of their giving statement in favour of CW-1 can not be thrown out rightly;

(iv) No other independent witnesses apart from the employees of CW-1 either interrogated or cited or examined for the prosecution in support of its allegation against the accused;

(v) the admitted fact that the photos at Ex.P-3, 4 and MO-4 do not reflect the act of accused litting fire;

(vi) Moreover, the admitted non subjecting of the photos at Ex.P-2, 3 and MO-4 i.e., the CC TV footages to the expert's opinion;

(vii) the material defects in the investigation noted above, are against to the reasonable suspicion brought by the prosecution on record in respect of the presence of the accused in the spot at the alleged time; his throwing the footwear box to the CC TV camera; taking it back and observing near the lift door; prima facie reveals that the prosecution has failed to bring home the guilt of the accused beyond all the shadow of doubts for the offence alleged.

144. In support of her oral arguments on merits, the counsel for the accused has relied on the Judgments in;

a) Crl.A.No.1154/2018 between in Parubai Vs State of Maharashtra decided on 10.08.2021 by their Lordships Hemanth Gupta and A.S.Bopanna, J.J., wherein he has drawn the attention of this Court to the observations of the Hon'ble Supreme Court of India that;

"...

13. The position of law is well settled that the links in the chain of circumstances is necessary to be established for conviction on the basis of circumstantial evidence. This has been articulated in one of the early decisions of this Court in the case of Sharad Birdhichand Sarda Vs State of Maharashtra (1984) 4 SCC 116. The relevant paragraphs are as hereunder.

"153. A close analysis of this decision would show that the following condition must be fulfilled before a case against an accused can be said to be fully established.

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved"

and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade Vs State of Maharashtra where the observations were made; (SCC para 19, p. 807 SCC (Cri) p. 1047) Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. (3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude every possible hypothesis except the one to be proved and (5) there consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. Before a false explanation can be used as additional link, the following essential conditions must be satisfied: (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved. (2) the said circumstances points to the guilt of the accused with reasonable definiteness and (3) the circumstance is in proximity to the time and situation.

...

19. That apart, in the case of circumstantial evidence, two views are possible on the case of record, one pointing to the guilt of the accused and the other his innocence. The accused is indeed entitled to have the benefit of one which is favourable to him. All the judicially laid parameters, defining the quality and content of the circumstantial evidence, bring home the guilt of the accused on a criminal charge, we find no difficulty to hold that the prosecution, in the case in hand, has failed to meet the same.

..."

b) Crl.A.No.1500/2010 between Kishan Singh (D) through LRs Vs Gural Singh decided on 12.08.2010 before their Lordships P.Sathasivam and B.S.Chauchan J.J., wherein he has drawn the attention of this Court to the observations of the Hon'ble Supreme Court of India that;

"...

21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case, there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. (vide:

Sahib Singh Vs State of Haryana AIR 1997 SC 3247).

...

22. In cases where there is a delay in lodging a FIR, ... In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the Court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (Vide:

Chandrapal Singh & Ors. Vs Maharaj Singh & Anr. AIR 1982 SC 1238; State of Haryana & Ors. Vs Ch.Bhajan Lal & Ors. AIR 1992 SC 604; G.Sagar Suri & Anr. Vs State of UP & Ors., AIR 2000 SC 754; and Gorige Pentaiah Vs. State of A.P. & Ors. (2008) 12 SCC 531).

...

24. It is to be noted that ... It is evident that the afore said FIR was filed with inordinate delay and there has been no plausible explanation for the same.

The appellants lodged the aforesaid FIR only after meeting their Waterloo in the Civil Court. Thus, it is evident that the FIR was lodged with the sole intention of harassing the respondents and enmeshing them in long and arduous criminal proceedings. We are of the view that such an action on the part of the appellants' father would not be bonafide, and the criminal proceedings initiated by him against the respondents amount to an abuse of the process of law.

..."

c) AIR 1980 SC 638 between Marudanal Augusti Vs State of Kerala decided on 29.03.1979 before their Lordships A.Koshal and S.M.Ali, J.J., wherein he has drawn the attention of this Court to the observations of the Hon'ble Supreme Court of India that;

" ... The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence. ..."

145. In the present case on hand also, as noted above, of course, the prosecution has let in the evidence i.e., the photos at Ex.P-3 and 4 and the CD at M.O.No.4 to suspect the accused for the commission of the alleged offence in view of his presence in the spot at the alleged time.

146. But, in view of the admitted non subjecting the said photos and the CD to the expert opinion and the other material defects in the investigation noted above, in the circumstances of the case, the prosecution has failed to connect the link to prove its allegations against the accused to establish that the accused has committed the alleged fire mischief and thus, the dictum laid down in the first decision above i.e., Purabai's case supra is in support of the accused.

147. In the present case hand also, there is unexplained delay of 3 days in lodging the complaint that too when CW-1 immediately came to the spot, enquired his employees, saw the CC TV footages, but not lodged the complaint immediately or at least on the next day and has failed to explain the delay of 3 days in lodging the complaint and thus, the latter two decisions i.e., Kishan Sing's case and Marudanal Augusti's case supra are also in favour of the accused.

148. Hence, from the above observations, it is clear that the prosecution has failed to bring home the guilt of accused for the offences alleged beyond all the shadow of doubts. Accordingly, these points are answered in negative.

149. POINT No.3:- From the above discussions, this Court proceeds to pass following order.

ORDER Acting under Section 235(1) of Cr.P.C., the accused is hereby acquitted for the offences punishable under Sections 436 and 427 of IPC.

The bail bonds and the surety bonds executed by and on behalf of the accused shall be canceled after lapse of appeal period.

MOs-1 to 4 are ordered to be destroyed as worthless after the appeal period. (Dictated to the Judgment Writer directly on computer, corrected by me and then pronounced in the open Court on this the 26th day of March, 2022).

(K. KATHYAYANI), LXVI Addl.CC & SJ, Bengaluru.

-:ANNEXURE:-

LIST OF WITNESSES PROSECUTION:-	EXAMINED	BY	THE
PW.1	Mohammed Irfan		
PW.2	Suresh Singh		
PW.3	Mohammed Wasiq		
PW.4	Teerthappa		
PW.5	Ahad Pasha		
PW.6	Chikkanna		
PW.7	Kallappa		
PW.8	Dr.Suma		

LIST OF WITNESS EXAMINED FOR DEFENCE :-

- None -

LIST OF DOCUMENTS EXHIBITED FOR PROSECUTION:-

Ex.P-1	Complaint
Ex.P-1(a)	Signature of PW-1
Ex.P-1(b)	Signature of PW-7
Ex.P-2	Spot Mahazar
Ex.P-2(a)	Signature of PW-1
Ex.P-2(b)	Signature of PW-2
Ex.P-2(c)	Signature of PW-7
Ex.P-2(d)	Signature of CW-2
Ex.P-3 to Ex.P-6	Photos
Ex.P-7	Report of PW-4
Ex.P-7(a)	Signature of PW-4
Ex.P-8	Report of PW-6
Ex.P-8(a)	Signature of PW-6
Ex.P-8(b)	Signature of PW-7
Ex.P-9	FIR
Ex.P-9(a)	Signature of PW-7
Ex.P-10	PF Form 70(A)/2016
Ex.P-10(a)	Signature of PW-7
Ex.P-11	Rental Agreement
Ex.P-11(a)	Signature of PW-7
Ex.P-12	Registration Certificate in Form No.C
Ex.P-13	Tax Paid Receipt
Ex.P-14	Appointment Letter
Ex.P-15 to Ex.P-18	Cash Vouchers
Ex.P-19	Pass Port
Ex.P-20	FSL Acknowledgment
Ex.P-21	Request Letter
Ex.P-22	Instruction Letter

Ex.P-23	Certificate
Ex.P-24	Invoice
Ex.P-25	Requisition
Ex.P-26	FIR in Crime No.181/2016
Ex.P-27	Copy of the Complaint
Ex.P-28	Copy of the Spot Mahazar
Ex.P-29	Copy of PF
Ex.P-30	Copy of Sample Seal
Ex.P-31	FSL Report
Ex.P-31(a)	Signature of PW-8
Ex.P-32	Sample Seal
Ex.P-32(a)	Signature of PW-8

LIST OF DOCUMENTS EXHIBITED FOR DEFENCE:-

- Nil -

LIST OF MATERIAL OBJECTS MARKED FOR PROSECUTION:

M0-1	Paragon Company Footwear
M0-2	Carton Box Ash
M0-3	Cotton in which the Scar Marks on Wall is collected.
M0-4	CD

LIST OF MATERIAL OBJECTS MARKED FOR DEFENCE:

- Nil -

(K. KATHYAYANI), LXVI Addl.CC & SJ, Bengaluru.

The accused and his counsel are present.

The Judgment is pronounced in the open Court (vide separate Order).

ORDER Acting under Section 235(1) of Cr.P.C., the accused is hereby acquitted for the offences punishable under Sections 436 and 427 of IPC.

The bail bonds and the surety bonds executed by and on behalf of the accused shall be canceled after lapse of appeal period.

MOs-1 to 4 are ordered to be destroyed as worthless after the appeal period.

LXVI Addl.CC & SJ, Bengaluru