

Cbi vs Vivek Sinha & Ors. on 19 January, 2015

IN THE COURT OF SH. GURVINDER PAL SINGH,
SPECIAL JUDGE (PC ACT) (CBI)-6,
PATIALA HOUSE COURT, NEW DELHI

CC No. 03/2012

RC No. 219/2011/E0003/E0-I/New Delhi

U/s 120B IPC r/w Section 420 IPC & 13 (2) r/w Section 13(1)(d) of PC Act, 1988

CBI vs. Vivek Sinha & Others

Unique ID No.: 02403R0026572012

Central Bureau of Investigation

VS

1. Vivek Sinha (A-1) S/o Sh. Hari Mohan Prasad Sinha
R/o 14, Pavlocak Court, Edison, New Jersey, USA-08820;
Office address: 111, Durham Avenue, Metuchen, New Jersey,
USA-08840

Previously R/o (1) 212, Durham Avenue Suite 111, Bldg #4,
Metuchen, NJ 08840.

(2) 655, Amboy Avenue, Suite B, Woodbridge NJ 07095, USA

2. Ajit R. Kyal (A-2) S/o Sh Ram Prakash Kyal
R/o D.P. Lane, Bakharabad, Cuttack, Odisha.

3. A.K Chaturvedi (A-3) S/o Late Sh. Madhusudan Chaturvedi
R/o H. No. 1213, Sector-09-A, Gurgaon, Haryana
Previously resident of 589, 2nd Floor, Sector-15, Part-I,
Gurgaon, Haryana

4. Kamaljeet Singh (A-4) S/o Late Sh Harnam Singh
R/o B-1/211, Paschim Vihar, New Delhi-60

5. M/s Esoft Informatics Private Limited (A-5)
through A-1 Vivek Sinha being Managing Director, so
Authorized Representative
Office address: 370/37, Pace City-II, Sector-37, Gurgaon, Haryana

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6. M/s Nexus Remedies Private Limited (A-6)
through A-1 Vivek Sinha being Managing Director, so
Authorized Representative
Office address: 847/1, Ground Floor, Mata Chowk Vasant
Kunj Road, Mahipal Pur, Delhi-110037

Date of FIR	:	31/0
Date of filing of Charge-sheet	:	12/0
Case received by transfer on	:	02/0
Arguments concluded on	:	01/1
Date of Judgment	:	19/0
Appearances		
For prosecution	:	Sh P.K Dogra, Ld. Senior Public Prosecutor for
For accused	:	Sh Ajay Burman and Sh Karan Burman, Ld. Counsel for A-1, A-5 and A-6. Sh Arunav Patnaik and Sh D.B Ray, Ld. Counsels for A-2. Sh V.N Chaturvedi, Ld. Counsel for A-3. Sh Tanveer Ahmed Mir, Ld. Counsel for A-4.

JUDGMENT

RC No. 219/2011/E0003/EO□/New Delhi Ex PW8/A (D□) was registered by CBI on 31/03/2011 on the complaint Ex PW1/A (D□) of Sh Suresh Kumar Arora (PW1), Chief Manager, Bank of India, Malai Mandir Branch, New Delhi. In the complaint it was alleged that Vivek Sinha (A□), Proprietor of M/s Esoft Informatics (A□) and Director of M/s Esoft Informatics Pvt Ltd (A□), Gurgaon and Director of M/s Nexus Remedies Pvt Ltd (A□), Gurgaon; Deepak Kumar, Director of A□ and Ajit R. Kyal (A□), Proprietor of M/s Jian Pharmaceuticals Cuttack Orrisa and Director of A□ engaged in the business of different type of computer job work at Gurgaon were granted following different credit RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 2/94 CBI vs Vivek Sinha & Ors.

limits by the bank to enable them to meet various requirements for funds for their business:

Sr. Name of Borrower Nature of Amount of Date of Present o/s No Credit Limit
Credit Limit Documents (Rs.) 1 M/s. E.Soft Informatics Term Loan for 4,68,000/□
03.10.2008 290506/□ (Prop. Sh. Vivek Sinha) purchase of A/c
No.602573310000001 Generator Set 2 □□□□ Vehicle loan 5,00,000/□18.11.2008
318741/□A/c No.602560610000009 3 □□□□ Cash Credit 25,00,000/□05.03.2009
1375037/82 A/c No.602530110000019 Limit 4 M/s. E.Soft Informatics P.Ltd Cash
Credit 20,00,000/□21.07.2009 2717151/□A/c No.602530110000025 Limit 5 □□□□
Term Loan for 30,00,000/□21.07.2009 3108053/□A/c No.602565210000002
purchase of computers 6 □□□□ Overdraft due to 28,72,679/□□□□2605203/40 A/c
No.602520110000181 Dishonour of Cheques Purchased 7 M/s.Nexus Remedies P.
Ltd □□□□1,55,03,975/□□□□15504440/□A/c No.602520110000219 Total
Outstanding Rs 25919132/22p

2. Allegedly, in addition to the aforesaid credit limits, at the request of the accused persons, the Bank of India purchased 7 cheques worth Rs 182.65 lakhs issued in favour of A□ and A□ without any regular cheque purchase/discounting limit being sanctioned, in the account of A□ and A□ companies by the bank, also even when the cheques earlier purchased/discounted beyond the discretionary powers had returned unpaid to enable the borrowers to meet their urgent business RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 3/94 CBI vs Vivek Sinha & Ors.

commitments. Following were aforesaid cheques worth Rs 182.65 lakhs so purchased by the Bank of India:

Sr.	Date of Cheque	Purchased Amount	Drawn by	Drawee	Return No.	Purchase No.	in Account (Rs)	Bank Memo of dated/	Remarks
1	01.09.09	004150	E	Soft	US\$18000				
2	18.09.09	017252							
3	24.09.09	168678	Nexus	25	lacs				
4	24.09.09	168677		25	lacs				
5	03.10.09	168676		25	lacs				
6	09.10.09	168679		33	lacs				
7	12.10.09	168680		39	lacs				

3. The aforesaid cheques purchased/discounted by the bank RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 4/94 CBI vs Vivek Sinha & Ors.

were returned unpaid. All the accounts of the accused became 'Non Performing Assets' (NPA). Allegedly, the financial data and stock/book debts statements submitted by the accused to the bank were false and bogus while no stocks and other assets financed by the Bank were available. Consequently, the bank suffered losses to the tune of Rs 2,59,19,132/□

4. Allegedly, the Term loans and working capital facilities were misappropriated and were not utilized for the sanctioned purposes; with fraudulent intention accused submitted false information with the bank. Even after the cheques purchased/discounted by the bank in their accounts were returned unpaid, the accused persons did not arrange for repayment of the substantial dues to the bank. Allegedly, the cheques detailed in table above were discounted/purchased by accused bank officials A□3 and A□4 dishonestly and fraudulently in criminal conspiracy with other co accused persons for which A□3 and A□4 had no discretionary powers. On completion of investigation charge sheet was filed against the arraigned accused for offences punishable under Section 120B IPC read with Section 420 IPC and Section 13(2) read with Section 13 (1)(d) of The Prevention of Corruption Act and substantive offences thereof. Charge sheet inter alia embodied that since A□3 and A□4 were dismissed from service as on date of filing of charge sheet, so there being no need for obtaining sanction under Section 19 (1)(c) of The Prevention of Corruption Act, 1988 for their prosecution, the sanction RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 5/94 CBI vs Vivek Sinha & Ors.

was not obtained accordingly.

5. Charge sheet was filed on 12/04/2012. Cognizance of offences was taken on 02/07/2012. Arraigned accused were summoned. On their appearance, A□2, A□3 and A□4 were enlarged on bail. Summons of A□ were initially received back with remarks, "Attempted Not Known" and "returned to sender". On the prayer of Ld. PP for CBI, NBWs of A□ were issued. On 20/02/2013 Ld. Counsel

for A□ filed copy of order dated 06/02/2013 of Hon'ble Mr. Justice Sunil Gaur, in Criminal MA No. 1524/2013 and Bail Application No. 201/2013 embodying that till 07/05/2013 no coercive steps be taken against A□. On 13/05/2013 order dated 07/05/2013 of Hon'ble High Court in aforesaid Bail Application No. 201/2013 was filed by Ld. Counsel for A□ wherein it was ordered that in the event of his arrest, A□ was to be released on bail on furnishing bail bond in the sum of Rs 50,000/□with one local surety to the like amount. A□ was enlarged on bail in terms of the orders of the Hon'ble High Court. A□ also appeared for A□5 and A□6 Companies being their Managing Director and gave statement to that effect on 04/06/2013.

6. Requirements of Section 207 Cr.P.C had been complied with.

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CHARGE

7. In terms of order of charge dated 06/06/2013, charges for offences (1) under Section 120B IPC read with Section 420 IPC and Section 13(1)(d) read with Section 13(2) of The Prevention of Corruption Act, 1988 and (2) under Section 420 IPC read with Section 120B of IPC was framed against all accused. Also for offence under Section 13(1)(d) read with Section 13(2) of The Prevention of Corruption Act, 1988, charge was framed against A□3 and A□4. All accused persons pleaded not guilty and claimed trial.

PROSECUTION EVIDENCE

8. To connect arraigned accused with the offences charged, prosecution has examined in all 9 witnesses namely Sh Suresh Kumar Arora (PW1); Sh Akshay Sharma (PW2); Smt Manisha Ramola (PW3); Sh C.P Sharma (PW4); Sh Gautam Kumar Banerjee (PW5); Sh Ram Prasad Mishra (PW6); Sh S.S Saroha (PW7A); Sh Abhilash Chander Arya (PW7) and Inspector Ashok Kumar (PW8).

STATEMENT OF ACCUSED

9. Thereafter all accused were examined under Section 313 Cr. P.C. All incriminating material in evidence was put to the accused persons. All accused persons pleaded innocence and false implication.

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10. In statement under Section 313 Cr.P.C, A□ for himself and for A□5 and A□6 companies, as authorized representative, stated that complaint Ex PW1/A (D□) was a false complaint and not based upon the facts, as per record of the bank. A□ stated that Inquiry Officer made a false complaint having grudges against his colleagues and caused an investigation which was not required and was a simple case of non payment due to losses in business and other reasons, even knowing fully well that companies i.e., A□5 and A□6 and he (A□) were making repayments and did not have any dishonest intention. A□ stated that infact he being a citizen of USA, after mismanagement by

other Directors in India, suffered losses and losses due to fire at work place, A□ went to USA to generate loans, money etc to refund/repay the bank's money and remained in constant touch with PW1 as well as other bank officials and had been sending money to the bank and instead PW1 had lodged this false complaint against him (A□). A□ stated that he did not knew about the procedures of the bank or the power of different officers in the bank; infact their account being a good account and considering the financial condition of the account holder, the bank always gives and tries to give a service to its good customer which happens in a business as happened in the present case. A□ stated that he had no knowledge about any specific bank officer, however, documents were submitted to the bank from time to time. A□ stated that he had no knowledge about the internal bank records and procedures. A□ stated that he mostly used to stay out of India i.e. in the USA, the Directors and employees of the RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 8/94 CBI vs Vivek Sinha & Ors.

company used to get bank papers signed by him for use in bank. A□ stated that the request letters for purchase of cheques had his signatures but he had not made any request for purchase of cheques and the said request letters were not in his writings. A□ stated that the sum of \$ 18,000 was repaid to the bank. A□ stated that he was trying to arrange loans/money and funds in the USA and was sending money to the bank for repayment as and when it was available to him. A□ stated that PW3 has not seen him (A□) signing or writing on any document. A□ stated that cheques Ex. PW5/B□9 (D□20); Ex. PW5/B□10 (D□21); Ex. PW5/B□11 (D□22) and Ex. PW5/B□13 (D□24) bear his signatures but all the cheques in question did not bear his handwriting; in fact, the cheques were used to be signed by him in blank and kept with the other Directors for employees to use them in his absence for the purposes of running the business of the company. A□ stated that credit voucher Ex PW5/B□18 (D□29) was in his writing and bears his signatures. A□ stated that cheque Ex PW5/B□21 (D□32) was in his handwriting and bears his signatures but the same was a bearer cheque; the cash from the bank had been received by one employee namely Mr. Bhardwaj, whose signatures were on the back of the cheque and he had not visited the bank for the purposes of encashment of D□32. A□ stated that cheque Ex PW5/B□23 (D□34) bears his signatures. A□ stated that cheques Ex PW5/B□25 (D□36) and Ex PW5/B□26 (D□37) bear his signatures but the same were not in his writing. A□ stated that letter Ex PW5/B□27 (D□38) bears his signatures; the same depicts the salaries to be paid to the employees and the RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 9/94 CBI vs Vivek Sinha & Ors.

payments to be made in their respective bank accounts; the employees had opened the accounts in the Bank of India. A□ stated that cheques Ex PW5/E□4 (D□23), Ex PW5/E□5 (D□24) and Ex PW5/E□8 (D□27) bear his signatures; the said amounts were towards the salary of employees to be credited in their respective bank accounts in the Bank of India. A□ stated that cheques Ex PW5/E□17 (D□36) and Ex PW15/E□9 (D□38) bear his signatures but the writings in the cheques were not of A□; cheque D□38 was a bearer cheque and A□ had not withdrawn the amount nor he had gone to the bank to withdraw it. A□ stated that cheque Ex PW5/E□27 (D□46) bears his signatures but writing on this cheque was not of A□. A□ stated that cheque Ex PW5/E□28 (D□47) bears his signatures but he had not withdrawn the cash through this bearer cheque and the same was also not in his writing; the signatures of Chandra Kashyap were at the back of the cheque i.e. the person who received the cash against the amount of the cheque. A□ stated that cheque Ex PW5/E□30 (D□49)

and Ex PW5/E□32 (D□51) bear his signatures but writing was not of A□; the writing on the front as well as on the back of the cheques were of one Sh. Gaurav Kumar, employee of their company. A□ 1 stated that cheques Ex PW5/E□35 (D□55), Ex PW5/E□36 (D□56), Ex PW5/E□38 (D□57), Ex PW5/E□39 (D□58), Ex PW5/E□40 (D□59), Ex PW5/E□41 (D□60), Ex PW5/E□42 (D□61) and Ex PW5/E□43 (D□62) bear his signatures but writings in them were not of A□; the writings in these cheques were of one Sh. Priya Bandhu Bhardwaj, employee of their company, who was handling the bank RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 10/94 CBI vs Vivek Sinha & Ors.

accounts of the company at that time. A□ stated that cheque Ex PW5/E□44 (D□63) bears his signatures and handwriting but the amount had been withdrawn by employee of the company namely Mr. Bhardwaj whose signatures appeared on back of the cheque. A□ stated that debit voucher Ex PW5/D□3 (D□91) bears his signatures at portion C. A□ stated that Ex PW5/D□5 (D□93) and Ex PW5/D□6 (D□94) bear his signatures. A□ stated that cheque Ex PW5/D□5 (D□03) bears his signatures but the same was not in his writing. A□ stated that cheques Ex PW5/D□6 (D□04) and Ex PW5/D□7 (D□05) bear his signatures and handwriting; the amounts of the cheques were withdrawn by Sh. Priya Bandhu Bhardwaj, employee of their company. As per A□, cheque Ex PW5/D□9 (D□07) bears his signatures at portion A as well as overleaf of the cheque; the cheque was used for the issue of Pay Order in favour of Sh. Satpal Aggarwal, one of the landlords of office premises of their company. A□ admitted that his signatures appeared on Ex. PW5/D□21 (D□09) and stated that Rajendra Prakash gave this cheque for loan repayment towards company expenses through Priya Bandhu Bhardwaj. A□ admitted that Ex. PW5/D□23 (D□

111) bears his signatures and stated that it was given towards payment of bank overdraft from A□5 to Proprietorship account in the name of A□5. A□ admitted that Ex. PW5/D□25 (D□13) bears his signatures and stated that it was given towards payment to Logic Infocom Pvt. Ltd. for the purpose of purchases of computers for use in companies office. A□ stated that cheque Ex. PW5/D□27 (D□115) bears his signature and stated that it was given towards payment of bank overdraft from A□5 to RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 11/94 CBI vs Vivek Sinha & Ors.

Proprietorship account in the name of A□5. A□ stated that pay□n□slip Ex. PW5/D□28 (D□16) and cheque Ex PW5/D□29 (D□17) bear his signature and stated that these were towards loan repayment. A□ stated that cheque Ex PW5/D□30 (D□18) bears his signatures but was not in his writing. A□ stated that cheque Ex. PW5/C□2 (D□85) bears his signature but it was not in his writing; the said cheque was given towards salary payment to Asha Thakur, who was the employee of the company. A□ stated that he was looking for a vendor to supply computers and he (A□) was introduced by the bank officer with PW4, Director of Logic Infocom Private Limited on telephone, further to that employees of his company were dealing with PW4. A□ stated that the computers were bought by A□5 and the orders were placed with consent of A□. A□ admitted that in the period from January 2009 to November 2009, about 100 computers or may be 150 computers were supplied by company of PW4 to A□5. A□ stated that Rs.10 lakhs advance for supply of computers was given by the company, but it was not handled by him personally and was handled by the staff/employees of his company. A□ admitted that in the period from 01/07/2009 to 10/10/2009, company of PW4 had supplied computers and peripherals to Esoft Company from their company for

aggregate sum of Rs. 41 lakhs; advance of Rs. 10 lakhs in cash was taken from Esoft company by company of PW4 in year 2009; advance of Rs. 10 lakhs in cheque was taken from Esoft company by company of PW4 in year 2008; bills and account of company of PW4 in the bank reflect transactions of their company with Esoft company in the year 2008 as RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 12/94 CBI vs Vivek Sinha & Ors.

Logic Infocom Pvt Ltd. used to regularly supply computers. A□ stated that A□2 was running Jian Pharmaceuticals and approached him for the joint venture between A□6 and Jian Pharmaceuticals and in August 2009, it was agreed that A□2 be introduced as Director in A□6 and to infuse funds for aforesaid purpose, the cheque Ex. PW□2/D [(D□o) (5)] dated 24/09/2009 bearing no. 168678 for Rs.25,00,000/□(Rupees Twenty Five Lacs); the cheque Ex. PW□2/C [(D□o) (6)] dated 24/09/2009 bearing no. 168677 for Rs.25,00,000/□(Rupees Twenty Five Lacs) as well as the cheque Ex. PW□2/F [(D□o) (7)] dated 24/09/2009 bearing no. 168676 for Rs.25,00,000/□(Rupees Twenty Five Lacs) were given in favour of A□6 and the same were later on dishonored. A□ stated that he had no knowledge about the limits and powers of various officers of the bank; however, unsecured and secured loans for running company and purchase of computers was sanctioned by the bank. A□ for himself and A□5 and A□6 companies stated that all the allegations that companies were not being run had been found to be false; it had been found during investigation that employees of the companies were having bank accounts in the same bank, through which the salaries were paid; generator, car and computers were purchased for which loans were taken; the rent of place of business were being paid to landlords. A□ for himself and A□5 and A□6 companies stated that the fire took place in the office building and report was lodged and bank also notified the incident to Zonal Office. A□ for himself and A□5 and A□6 companies also stated that bank's staff other than A□4 and A□3, used to visit the office to open RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 13/94 CBI vs Vivek Sinha & Ors.

accounts of various employees; initially business was running properly but due to the slowdown in US economy, the payments started getting delayed and work orders kept going down as a result companies suffered losses and ultimately due to fire, suffered further losses and led to non□ execution of existing work orders; there was no intention of cheating or to lie in conspiracy with any person or amongst persons/bank officials. A□ for himself and A□5 and A□6 companies stated that even after going through critical situation in the business, A□ for himself and A□5 and A□6 companies stated that he was constantly in touch with bank and was paying dues of the bank as and when he was able to do so along with his other liabilities which were not related to the bank; even though A□ went through serious health problem still A□ cleaned his liabilities with the bank as per the terms and conditions put by the objection for quashing of present proceedings and as such compounded the offences against him. A□ for himself and A□5 and A□6 companies stated that bank officials were biased and prejudiced against A□, A□5 and A□6 companies by putting false allegations, during internal inquiries and though he was in constant touch with Mr. S.K. Arora (PW1) and Bank of India, New York Branch as instructed to him (A□) and talked even on March 29, 2011, but instead surreptitiously filed an FIR without even informing A□1 and he (A□) kept on sending or transferring money to the bank.

11. In his statement under Section 313 Cr.P.C, A□ stated that he had signed the account opening form Ex. PW2/B (D□9/1) for A□6; this he RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 14/94 CBI vs Vivek Sinha & Ors.

had done on the instructions of A□ after they had decided to merge the business of M/s Jian Pharmaceuticals in the company of A□ i.e., A□6; the account opening form was done under a Company Resolution Ex PW2/DA/A□2 [D□9(3)] and they were only opening a basic bank account and had not applied for any credit facilities. A□2 stated that he had given six blank cheques on the existing account of his erstwhile sole proprietorship firm M/s Jian Pharmaceuticals as a gesture of trust and security to A□ at the time of merging his business of the above firm with company of A□ i.e., A□6. A□2 stated that it appears that A□ had misused the said cheques behind his back and without his knowledge. A□2 further stated that at the time of its incorporation, the only shareholders/subscribers and first directors of A□6 were A□ and Mr. Deepak Kumar; A□2 had no concern with the company then and became Director of the Company on 04/08/2009 [Form 32 part of D□9(3)]; the pharmaceuticals business of A□2, under the banner of M/s Jian Pharmaceuticals, which A□2 was doing in Ahmedabad had run into financial difficulties and he was in need of funds; it was these circumstances he (A□2) came in contact with A□ who represented to A□2 that he had done extensive and successful business outside India and was now setting up his business operations in India and would be able to help A□2 with funds; however, in return A□ would take a stake in business of A□2; an MoU was also negotiated and signed; the signed MoU was with A□; at the time of such negotiation, A□ had asked A□2 for 6 blank cheques as security; A□2 gave the blank cheques on the existing account RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 15/94 CBI vs Vivek Sinha & Ors.

of his sole proprietorship firm M/s Jian Pharmaceuticals; the cheques were given as A□ had insisted for them as security and A□2 had given them as a gesture of trust; the signed MoU between A□2 and A□ was kept by A□ and A□2 had not been given a copy of it at the time of signing; A□2 only had a draft unsigned soft copy of the same which he had mailed to his Chartered Accountant friend to seek views on it; A□2 had given 6 cheques in blank as security cheques to A□ at the time of entering into an MoU dated 10/8/2009; the 6 cheques were drawn on behalf of M/s Jian Pharmaceuticals, proprietorship concern of A□2, and bears signatures of A□2; after the signing of the MoU in August, 2009 in accordance with the understanding under the MoU, A□2 issued a Merger Letter dated 09/09/2009 informing all connected with business of A□2 that A□2 had merged Jian Pharmaceuticals with A□6; in the said merger letter A□2 highlighted the advantages of such merger and the future course of action that A□2 had in mind under the new brand/entity named A□6; the said merger letter was communicated as an attachment through letters and Emails in September and October, 2009. A□2 stated that he also started designing the logo for the new company. A□2 stated that around mid September 2009, he was told by A□ that a new bank account would have to be opened; as such A□2 signed on the account opening form dated 23/09/2009 Ex PW2/B; in the Company Resolution of A□6 for opening of accounts of the company annexed with form [D□9(3): Ex. PW 2/B: Ex. PW 2/DA/A□2] there was a clear requirement of signatures of either all or any two of the three Directors for operation of accounts RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 16/94 CBI vs Vivek Sinha & Ors.

and giving of instructions on behalf of the company; the Board Resolution was correct but had a typo error on the date 20 th March, 2009; A□2 became a Director only on 04/08/2009. A□2 stated that he had no role whatsoever in the discounting/purchase of 5 of the said 6 cheques by the Bank of India, neither did he had any knowledge of the use of the cheques for the purposes of discounting/purchase with the bank for the grant of credit; A□1 purchased the cheques behind his back, without his knowledge; A□2 had not fraudulently represented or deceived the bank or had any intention of causing any loss to the bank. A□2 stated that he was neither intimidated nor were any inquiries made from him before the blank security cheques were discounted by the Bank of India, Malai Mandir Branch, New Delhi. A□2 stated that he had no knowledge to what use the proceeds of such credit taken from the Bank of India been put to nor had A□2 been a beneficiary of the same; each of the cheque purchase requests bear signatures of only A□1 and no other person; the cheque purchasing had been done contrary to the above Resolution and without proper authority and definitely without his consent and knowledge. A□2 stated that 3 of the 5 discounted cheques had been exhibited as Ex. PW2/C, Ex. PW 2/D and Ex. PW2/F; during this time A□2 was completely unaware of the transactions of A□1 with the Bank regarding purchasing/ discounting of the blank cheques given by A□2. A□2 stated that he gradually noticed that A□1 had stopped taking interest in the business and refused to infuse any funds into the business and A□1 also stopped taking any phone calls from A□2 or allowed A□2 to meet him (A□1); on not RC No. 219/2011/E0003/EO□ I/New Delhi CC No. 03/12 17/94 CBI vs Vivek Sinha & Ors.

receiving any response from A□1, A□2 decided to continue his business under his erstwhile proprietorship concern, M/s Uma Enterprises in Orissa, and for all practical purposes the business association between A□1 and A□2 had ceased. A□2 stated that after December□January, 2010 there was no communication whatsoever between A□1 and A□2 and no business was conducted by A□2 in the name of A□6. A□2 stated that it came as a complete shock to him when on 01/04/2011 certain CBI officials raided and searched his house after showing him a search warrant and informed him that an FIR had been registered against him; there were allegations of defaults in the nature of purchasing/discounting of cheques and so on; it was then A□2 realized that the security cheques that he had given to A□1 under the MoU had been misused by A□1 by illegally presenting them for purchasing.

12. In his statement under Section 313 Cr.P.C, A□3 stated that he had not signed Branch Credit Voucher of Rs 33 lakhs dated 09/10/2009 Ex PW2/A [D□o(8)]. A□3 stated that fact regarding dishonour of purchased cheques was brought to his knowledge by PW3 only after all cheques were dishonoured and not before that, whereas entries were not reflected in the main accounts of the party. A□3 stated that after coming to know of dishonour of purchased cheques, A□3 started following the matter to recover the outstanding loan amount. A□3 stated that the outstanding position of the cheque purchased were written after getting his sanction on (1) Ex PW2/K [D□o(6)] and (2) Ex PW2/G RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 18/94 CBI vs Vivek Sinha & Ors.

[D□o(7)(2)]. A□3 stated that only Head Office/Zonal Office mails were received by him. A□3 stated that A□4 advised him that he had talked to the link branch i.e., Safdarjung Branch and told A□3 that they have permitted the branch to give advance against the request of customer regarding purchase

of cheque no. 000415 dated 01/09/09 for US \$ 18000. A□3 stated that there was no permission required for reversal entry since bank standing instructions/guidelines to debit the main account sooner the cheques come unpaid; if single entry would have been done of dishonour of cheque by PW3, no further cheque should be purchased after receiving information of dishonour of cheque, which was never brought to knowledge of A□3, before the last cheque was purchased. A□3 stated that PW3 never contacted or approached him for verifying reversal entry. A□3 denied that PW3 ever approached to him before last cheque was purchased. A□3 stated that he did not know whether PW3 informed regarding dishonour of purchased cheques to A□4 or not but PW3 informed him only after last cheque was purchased and after that A□3 sincerely made efforts to recover the dues from the party. A□3 stated that when first time credit department sent him a proposal for purchase of a cheque, it was informed and convinced by the Credit Department that delegated power of Chief Manager (to scale of A□3) to purchase a cheque was as Rs. 50 lakhs as mentioned at page no. 10 of D□168 under the head purchase of cheques under "iii" and at that time branch was in firm view that the delegated power to purchase the cheque was Rs. 50 lakhs for Scale IV Officer (Chief Manager); accordingly, he RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 19/94 CBI vs Vivek Sinha & Ors.

(A□3) sanctioned the purchase cheque bonafidely during discharge of his duties in the interest of bank. A□3 stated that before first cheque purchased by A□3 already two cheques were purchased by the branch beyond Rs. 6 lakhs, as per delegatory power. A□3 admitted that PW7A knew him as he (PW7A) had worked under him (A□3) in Malai Mandir Branch of Bank of India when A□3 was Chief Manager of the branch in year 2009; A□4 was also in Malai Mandir Branch as Senior Manager (Credit). A□3 stated that he construed his delegation of power for the limit for secured loan against hypothecation of computers so it was not a unsecured loan. A□3 stated that Branch/Credit Department had construed it as a limit within branch delegation and as such it was not required to be sent to Zonal Office for sanction/approval and hence, A□3 presumed that for this Credit Process Audit (CPA) was not required. A□3 stated that since party A□6, A□ were rated of high value, so for the sake of business growth and as an exceptional case, cheque may be purchased after opening the account. A□3 stated that till purchase of last cheque there was no single entry or remark or adverse entry which was forwarded to him (A□3) in the main account or from the Credit Department against the party of which cheque was purchased or sanctioned by him (A□3). A□3 stated that he had completed his 37 year of service; at the verge of retirement he was posted at Malai Mandir Branch; he (A□3) never worked in Credit Department and he had also very little knowledge of Information and Technology (Computers) and during his service A□3 was rated very high with excellent ratings. A□3 stated that he was awarded RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 20/94 CBI vs Vivek Sinha & Ors.

best Deputy Zonal Manager (Marketing) in the country for year 2006□7; A□3 got performance employee motivation, Incentive for Senior Manager IV Officers in year 2007□8 and good career during service when he was posted in Malai Mandir Branch. A□3 stated that A□ was introduced to A□3 by Credit Department and outgoing Chief Manager as a potential customer of the branch as he (A□3) earlier said that when he (A□3) joined the Malai Mandir Bank Branch was in firm view that delegatory power of Scale IV Officer was Rs. 50 lakhs; A□3 had not received any proposal from Credit Department to forward either to Zonal Manager or Head Office. A□3 stated that during his

absence two cheques of Rs. 25 lakhs each were also purchased by Credit Department without sanction of A□3. A□3 stated that branch purchased total 9 cheques of the same party and out of which only five cheques were sanctioned by A□3; during the period i.e. approximately one month no information was received from the Credit Department, neither it was shown in the Daily Print Out Statements nor reverse entry were showing in main accounts so that A□3 could have come to know that any cheques were dishonored; whatever A□3 did, A□3 did bonafidely during discharge of his official duties for the development of branch business. A□3 stated that during last 25 years of his posting, he worked 17 years 05 months in Administrative Office and only 7 years 07 months as Branch Head (but not headed Credit Department). A□3 stated that during his entire service there was not a single departmental action/inquiry against him. A□3 stated that he was the victim of circumstances.

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13. In his statement under Section 313 Cr.P.C, A□4 stated that he was working under Chief Manager in the department as a Manager and had followed the instructions of his Chief Manager of the branch; all charges framed against Senior Manager (Credit) which was affected w.e.f 26/10/2009 and he was not Senior Manager (Credit) at that time. A□4 stated that bank had initiated enquiry against him and in that enquiry, A□4 had produced many documents to the bank and bank had not accepted bank's own documents; bank had dismissed A□4 from the service by taking their biased view of the produced documents. A□4 stated that bank had not initiated any recovery efforts immediately by the Chief Manager on charge; A□4 had left the country after one and half year and bank had not confiscated computers, generators, TATA Winger (vehicle) and Mercedes Benz and it seems bank had given him time to dispose off the bank's financed vehicles and other items; bank was busy to Email A□4 and A□4 was giving reply to bank; A□4 was continuously in touch with bank and A□4 never said not to pay off the dues of the bank. A□4 stated that PW1, General Manager (Zonal Manager), even head office was in touch with A□4 by regular correspondence with bank. A□4 stated that as per instructions from A□3, A□4 was asked to take DP note, letter of lien and set off, letter of continuing security to obtain from the party and sent for sanction and he was not the delegated authority. A□4 stated that at the relevant time he was not the Senior Manager (Credit). A□4 stated that memorandum for loan of generator set dated 03/10/2009 Ex. PW1/J [D□4 RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 22/94 CBI vs Vivek Sinha & Ors.

(1) (MR No. 106/2011)] bears his signatures and the term loan of Rs 4,68,000/□for generator set was sanctioned by A□3. A□4 stated that proposal dated 18/11/2008 Ex. PW1/O [D□5(1) (MR 125/11)] for vehicle loan for Esoft Informatic was processed by him bearing his signatures and said proposal was sanctioned for Rs 5 lakhs by A□3. A□4 stated that proposal dated 05/03/2009 Ex. PW1/P [D□6(1) (MR 136/11)] for M/s Esoft Informatics was processed by him and said proposal was sanctioned for cash credit limit of Rs 25 lakhs by A□3. A□4 stated that CBD 23 was verified as per previous loans CBD 23. A□4 stated that credit vouchers Ex. PW1/U, Ex PW1/W, Ex PW1/FF, Ex PW1/KK, Ex PW1/XX bear his initials. A□4 also stated that debit vouchers Ex PW1/V, Ex PW1/X, Ex PW1/Z, Ex PW1/BB, Ex PW1/EE, Ex PW1/GG, Ex PW1/HH, Ex PW1/LL, Ex PW1/WW bear his initials. A□4 stated that pay□n□lips Ex PW1/Y, Ex PW1/AA, Ex PW1/CC, Ex PW1/DD, Ex PW1/VV bear his initials. A□4 admitted that his signatures were at (1) portion X on Branch Credit Voucher

Ex. PW2/A [D□0(8)]; (2) portion A of debit voucher (IBP) Ex. PW1/BB (D□54); (3) at portion A on credit voucher Ex PW1/CC (D□55); (4) at portion A on account opening form Ex PW2/B (D□9/1). A□4 stated that account no. 602520110000219 of A□6 was opened by him and authorized by Senior Manager (Administration) after verifying the KYC Norms. A□4 stated that he followed instructions of his senior to carry out the purchase of cheques. A□4 admitted that after receiving the instructions, PW3 used to enter the cheque to be purchased, in the system through the Menu available for such purchase, BM i.e. Bill RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 23/94 CBI vs Vivek Sinha & Ors.

Management; thereafter PW3 used to make a physical entry of the cheque in the Jet Clearing Register and also enter the cheque in the system again for Jet Clearing clearance and thereafter PW3 used to send the entire set of purchased instrument to him (A□4) for verification; whenever PW3 used to enter the cheque to be purchased, she (PW3) simply followed the instructions given to PW3 by him (A□4) in good faith and PW3 did not at that time verify whether sanction for purchase of cheque was granted or not. A□4 admitted that all the incoming mails were received either at Manager's table or Deputy Manager (Administration), thereafter, they used to open the envelopes and mark the letters to respective departments and accordingly they were sent to the Department Heads; normally, on receipt of dishonoured cheques, the purchase entry was reversed and parties account was debited for the amount of the cheque purchased; but PW3 never received any such instructions in case of cheques purchased. A□4 admitted that (1) credit voucher Ex. PW5/B□6 (D□17); (2) debit voucher Ex. PW5/B□7 (D□18); (3) pay□n□slip Ex. PW5/B□8 (D□19); (4) pay□n□slip Ex. PW5/B□4 (D□

25); (5) pay□n□slip Ex. PW5/B□9 (D□30) bear his signatures. A□4 admitted that (1) application Ex. PW5/B□24 (D□35); (2) pay□n□slip Ex. PW1/U (D□47) were bearing his writings. A□4 also admitted that his signatures/initials were on (1) debit voucher Ex. PW1/V (D□48); (2) pay□in□slip Ex. PW1/W (D□49); (3) debit voucher Ex PW1/X (D□50); (4) credit voucher Ex. PW1/Y (D□51); (5) debit voucher Ex. PW1/Z (D□52); (6) credit voucher Ex. PW1/AA (D□53); (7) debit voucher Ex. PW1/BB RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 24/94 CBI vs Vivek Sinha & Ors.

(D□54); (8) credit voucher Ex. PW1/CC (D□55); (9) credit voucher Ex. PW1/DD (D□56); (10) debit voucher Ex. PW1/EE (D□57); (11) credit voucher Ex. PW1/FF (D□58); (12) debit voucher Ex. PW1/GG (D□59); (13) debit voucher Ex. PW1/HH (D□60); (14) credit voucher Ex. PW1/KK (D□62); (15) debit voucher Ex. PW1/LL (D□63); (16) credit voucher Ex. PW5/E□6 (D□25); (17) debit voucher Ex. PW5/E□7 (D□

126); (18) debit voucher Ex. PW5/E□0 (D□29); (19) credit voucher Ex. PW5/E□2 (D□31); (20) debit voucher Ex. PW5/E□3 (D□32); (21) credit voucher Ex. PW5/E□4 (D□33); (22) debit voucher Ex. PW5/E□15 (D□34); (23) credit voucher Ex. PW5/E□21 (D□40); (24) credit voucher Ex. PW5/E□22 (D□41); (25) credit voucher Ex. PW5/E□23 (D□

142); (26) debit voucher Ex. PW5/E□24 (D□43); (27) debit voucher Ex. PW5/E□33 (D□53); (28) pay□n□slip Ex. PW5/D□2 (D□90); (29) debit voucher Ex. PW5/D□3 (D□91); (30) debit voucher Ex. PW5/D□4 (D□92); (31) pay□n□slip Ex. PW1/VV (D□84); which aforesaid documents were so

signed/initialed by him for verifying and authorizing the entries in the system. A□4 admitted that (1) debit voucher Ex. PW5/D□7 (D□95); (2) credit voucher Ex. PW5/D□8 (D□96); (3) credit voucher Ex. PW5/D□9 (D□

97); (4) credit voucher Ex. PW5/D□0 (D□98); (5) debit voucher Ex. PW5/D□1 (D□99); (6) credit voucher Ex. PW5/D□2 (D□00); (6) credit voucher Ex. PW5/D□3 (D□01); (7) credit voucher Ex. PW5/D□4 (D□

102) were filled up in his handwriting and bear his signatures for verifying and authorizing the entry in the system. A□4 admitted that (1) debit voucher Ex. PW1/WW (D□86); (2) credit voucher Ex. PW1/XX (D□RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 25/94 CBI vs Vivek Sinha & Ors.

87) were in his writings and bear his signatures and also bears endorsement of PW3 regarding transaction number for making entry in the computer system. A□4 admitted that in case of purchase cheques, the Credit Department also used to keep a track of the instruments purchased and sent outstation for clearance. A□4 admitted that vide sanction Ex PW1/O dated 18/11/2008 the vehicle loan of Rs. 5 lakhs was sanctioned by A□3 against hypothecation of the vehicle and the said loan was a secured loan. A□4 admitted that letter/Memorandum Ex PW7A/D (D□

174) dated 19/10/2009 was an inter office memorandum signed by A□3 which was addressed to the Zonal Manager, New Delhi Zone C&IC Department intimating gutting of unit of A□5 on 16/10/2009 due to fire. A□4 admitted that the procedure in vogue was that in case the regular limit was previously sanctioned, then necessary vouchers were passed for crediting the account of the party on purchase of cheque and in case no regular limit was previously sanctioned, then on the purchase request of cheque, a noting was done by the competent authority as per delegation of powers for the purchase of cheque; Incharge of the Credit Department of Malai Mandir Branch of Bank of India was the concerned person to whom the cheque purchase request was to be initially put up and processed; the proposal for purchase of cheque was processed in the credit department of Malai Mandir Branch of Bank of India and it was determined there as to whom the proposal for purchase of cheque is to be forwarded and who is the authority competent for sanction for purchase of cheque, as per Head Office Guidelines; sanctioning authority at branch RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 26/94 CBI vs Vivek Sinha & Ors.

level had to ensure that cheque purchase limit which was sanctioned was within his delegated authority. A□4 admitted that from July 27, 2009 onwards A□3 was the Chief Manager in Malai Mandir Branch and in November 2009 PW1 took over charge of Chief Manager, Malai Mandir Branch. A□4 admitted that (1) proposal dated 18/11/2008 for vehicle loan Ex PW1/O [D□5(1)] and (2) proposal dated 05/03/2009 of M/s Esoft Informatics for cash credit limit of Rs 25 lakhs, Ex PW1/P [D□6(1)] were recommended for sanction and signed by him. A□4 admitted that Ex PW5/A□34 [D□6(15)] i.e., stamp paper of Rs 50/□for Hypothecation Cum Loan Agreement was bearing his writings. A□4 admitted that proposal dated 21/07/2009 of A□5 for cash credit limit of Rs 20 lakhs and term loan of Rs 30 lakhs for purchase of computers, Ex PW1/B [D□7(1)] was recommended for sanction under his signatures and was sanctioned by A□3. A□4 admitted that Borrower's Profile Ex

PW1/D [D7(3)] of A1 was bearing his signatures at page no. 3 after assessing worth of A1 as of Rs 200 lakhs. A4 admitted that text in Stamp Paper of Rs 50/ i.e., page 1 of Ex. PW7/A (colly) (D80), documents executed by A1 as authorized signatory of A6, pertaining to cheque purchased of Rs. 33 lakhs dated 09/10/2009 by Bank of India from A6, was in his writing, though signed by A1 as authorized signatory of A6. A4 admitted that text in Stamp Paper of Rs 50/ i.e., page 1 of Ex. PW7/B (colly) (D81), documents executed by A1 as authorized signatory of A6, pertaining to cheque purchased of Rs. 39 lakhs dated 12/10/2009 by Bank of India RC No. 219/2011/E0003/EO1 I/New Delhi CC No. 03/12 27/94 CBI vs Vivek Sinha & Ors.

from A6, was in his writing, though signed by A1 as authorized signatory of A6.

A4 stated that he put his 30 years of service in the bank without any blot and worked honestly; at Malai Mandir Branch of Bank of India, he (A4) had followed the instructions of his Chief Manager honestly; he (A4) had worked in various departments of Bank of India except Credit Department; he (A4) was new to the department to learn the working of credit department; till the posting of Chief Manager, he (A4) had worked as an Audit Followup of the department and he (A4) had not dealt with the present case.

DEFENCE EVIDENCE

14. Accused persons entered into their defence. A4 examined Sh. Vas Dev Arya (DW1) in defence evidence. A1, A5 and A6 examined Sh Virendra Pal Singh (DW2); Sh Balasubramanian Jagannath (DW3); Sh Prem Prakash Gangwal (DW4) and Mrs Poonam Jain (DW6) in defence evidence. A2 examined Sh Deepak Jain (DW5) in defence evidence.

ARGUMENTS

15. I have heard the arguments of Sh P.K Dogra, Ld. Senior Public Prosecutor for CBI; Sh Ajay Burman and Sh Karan Burman, Ld. Counsels for A1, A5 and A6; Sh Arunav Patnaik and Sh D.B Ray, Ld. RC No. 219/2011/E0003/EO1/New Delhi CC No. 03/12 28/94 CBI vs Vivek Sinha & Ors.

Counsels for A2; Sh V.N Chaturvedi, Ld. Counsel for A3 and Sh Tanveer Ahmed Mir, Ld. Counsel for A4.; accused persons and have perused the record including the evidence led and given my thoughts to the rival contentions put forth.

16. Ld. Senior PP for CBI had argued that by the documentary evidence and the deposition of prosecution witnesses, the prosecution has been able to prove that the arraigned accused persons entered into a criminal conspiracy with each other for purchase/discounting of the cheques in question, which were recommended for sanction by A4 and sanctioned for purchase by A3 beyond his discretionary powers per contra to Bank Norms laid; also the term loans and working capital facilities in question were misappropriated, not utilized for sanction purposes; with fraudulent intention in conspiracy the accused put the Bank of India to wrongful loss for their correspondingly wrongful gain. It was also argued that the credit limits were sanctioned by A3 on recommendation of A4 without any record being available with the bank as regard to assets and

liabilities of the Directors of accused companies A□5 and A□6. Also was argued that without placing on record the collateral securities, cash credit limit was sanctioned by terming it as secured loan, which was not permissible. Also was argued that even no proposal was sent by A□3 and A□4 to Zonal Office of Bank of India for sanction of CC Limit of Rs 20 lakhs and term loan of Rs 30 lakhs to A□5 company as was required as per prescribed norms but only after fire RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 29/94 CBI vs Vivek Sinha & Ors.

broke out on 16/10/2009 in the premises of A□5, the proposal was sent to Zonal Office of Bank of India on 05/11/2009. Also was argued that by the acts of A□3 and A□4 which were corrupt and were by illegal means, the complainant bank was put to wrongful loss and arraigned accused persons were put to pecuniary advantage without any public interest. Ld. Senior Public Prosecutor for CBI has prayed for conviction of the arraigned accused persons for offences charged accordingly, relying upon the following precedents, submitting prosecution has proved its case beyond reasonable doubt:

- (1) E.K Chandrasenan vs State of Kerala, (1995) 2 SCC 99 = 1995 Cri.L.J 2060; (2) Ghulam Din Buch etc vs State of J&K, AIR 1996 SC1568; (3) Smt Rumi Dhar vs State of West Bengal, AIR 2009 SC 2195; (4) Bhajju @ Karan Singh vs State of M.P, 2012 (2) RCR (Cri.) 539; (5) Gulzar Ali vs State of H.P, 1998 SCC (Cri.) 605.

17. Ld. Counsel for A□, A□5 and A□6 argued that since inception A□, a citizen of USA, never had any bad intention nor had mens rea to commit offence of cheating; nor A□ made any misrepresentation; instead A□ made several payments, but as a matter of fact whatever A□ brought in India for business was looted away and the people incharge of his business mismanaged it whereas despite suffering huge losses in business, premises of the company having burnt in fire, the conduct of A□ reflected that he was never having any dishonest or fraudulent intention and A□ even brought money in India again and paid not only his liabilities but dues of other persons as well in the payment of compromised amount to the aggrieved bank, which infact resulted in RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 30/94 CBI vs Vivek Sinha & Ors.

compounding of the offence of cheating borne out of Ex DW2/B. Ld. Counsel for A□ argued that for departmental lapses of the bank officials, no criminal act of A□ could be carved out from the evidence on record and the prosecution has failed to prove any act committed by A□, A□5 and A□6 towards or in furtherance of criminal conspiracy. Ld. Counsel for A□, A□5 and A□6 has argued for acquittal of A□, A□5 and A□6.

18. Ld. Counsel for A□2 argued that no ingredients of criminal conspiracy including meeting of minds of A□2 on one part and other accused on the other part could be carved out from the evidence led by the prosecution and no active or passive role can be attributed to A□2 for either criminal conspiracy or cheating and only role attributed to A□2 was use of cheques of A□2 for discounting but A□2 had no knowledge of use of his cheques for purposes of discounting/purchase with the bank for the grant of credit. Also was argued that A□6 company did not avail any general cheque purchase facility while from time to time only applications were made for discounting/purchase of specific cheques under signatures of A□ only per contra to the clear requirements of signatures of either all

or any two directors for operation of bank account with the Bank of India in the Resolution for opening of accounts of A□6 as is borne out in Ex PW2/B [part of D□9 (3)], Ex PW2/DA/A□2. It was also argued that infact A□2 had issued to A□ the blank cheques Ex PW2/C [D□o(6)], Ex PW2/D [D□o (6)] and Ex PW2/F [D□o (7)] besides other two cheques which were discounted, which all five cheques RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 31/94 CBI vs Vivek Sinha & Ors.

pertained to M/s Jian Pharmaceuticals and contained only signatures of A□2 while writings in said cheque are not of A□2 as have been proved by Private Handwriting & Forensic Expert DW5, vide his report Ex DW5/A (colly). It was argued that infact aforesaid five cheques were misused by A□ for discounting/purchase request and even A□2 was not informed by the Bank of India before discounting/purchase of the aforesaid five cheques and A□2 only learnt about the discounting of said cheques on 01/04/2011 when his houses was raided by CBI officials and A□2 then told the investigating officer about Memorandum of Understanding (MoU) between A□ and A□2, copy of which was retained by A□ only. It was argued that any act of negligence on the part of bank officials in performance of their duties would not make A□2 liable to face its consequences as there is no principle of vicarious liability under criminal law. It was also argued that Mr Deepak Kumar, other Director of A□6 as well as Mr. Partha Sen Gupta, proprietor of M/s Elpee Consultants, who issued one of the seven cheques in question, were not arraigned as accused. It has been argued that prosecution has failed to establish the complicity of A□2 in commission of the offences charged and A□2 being innocent, his acquittal has been prayed for relying upon K.R Purushotaman vs State of Kerala, MANU/SC/1518/2005 = AIR 2006 SC 35.

19. Ld. Counsel for A□3 argued that the evidence of the prosecution does not make out any act of misconduct on the part of A□3 RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 32/94 CBI vs Vivek Sinha & Ors.

while on the verge of retirement, A□3 had taken over the charge of Credit Department for the first time but the Credit Manager and other bank officials gave wrong feed back to A□3 for sanction of limits and discounting of cheques, which resulted in misinterpretation of delegatory powers on the part of A□3 and A□3 became victim of irregularity in procedure though he had no dishonest intention at any moment of time. It was also argued that it was the job of the Credit Department to see about powers regarding sanction of limits and discounting of cheques and A□3 being Chief Manager was not to see said facet of the matter while borrower was supposed to go initially to Credit Department, give application there which was to be scrutinized by Credit Department and if in order, it was to be either sanctioned if power vested with them or else to refer to authority have power. It was also argued that in the banking procedure nothing is done verbally/orally but for every act in the bank, there is some writing in the form of vouchers, notes for sanction, other purposes; so the version of PW3 with regards to having told to A□3 about dishonor of purchased/discounted cheques at any moment of time, is nothing else but a bundle of lies. It was argued that infact neither PW3 nor A□4 nor any other official of Credit Department or any other department ever brought to the notice of A□3 about dishonor of any of the purchased/discounted cheques at any moment of time. It was also argued that those who had complicity in crime including PW3, auditor, Sh G.K Banerjee, Sh A.C Arya were left off the hook, not even suspected, what to say of arraigning them as

accused despite lapses on RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 33/94 CBI vs Vivek Sinha & Ors.

their part made vivid in the investigation report Ex PW7A/DA, wherein the explanation of A□3 was not in order. Also was argued that infact took aforesaid investigation report of bank and simply copied it to conclude in terms thereof while the investigation was a farce on face of it. Also was argued that A□3 had not taken any financial benefit from the transaction in question and was not a wrongful gainer. Ld. Counsel for A□3 has prayed for acquittal of A□3, submitting prosecution has failed to prove its case against A□3 for any of the offences charged.

20. Ld. Counsels for A□4 argued that the alleged omission on the part of A□4 were blown out of proportion but from the evidence of prosecution no mens rea for dishonest intention on the part of A□4 is borne out from record. Also was argued that nothing was recovered from A□4. It was also argued that A□4 was not sanctioning authority for discounting/purchase of cheques but had simply received the cheques with purchase request letters for discounting/purchase and had forwarded them to sanctioning authority in the bank. Also was argued that A□4 had not monetarily gained from the transaction in question nor had any intention to cheat nor was there any evidence of any act done by A□4 in furtherance of criminal conspiracy. It was also argued that the procedural lapses have been blown out of proportions while there is no evidence any prior meeting of minds amongst A□4 with arraigned co□accused nor from any proved acts any inference of A□4 to be co□conspirator of the conspiracy can be inferred. Also was argued that neither A□4 had any RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 34/94 CBI vs Vivek Sinha & Ors.

delegated authority to sanction purchase of cheques nor any recommendation of A□4 for purchase of cheques had a binding force on any of his superiors including A□3. It was also argued that even for the sake of arguments if it is admitted that A□4 was negligent in any manner in the course of his duties but even it cannot be construed that any of such acts of A□4 could come in the ambit of criminal misconduct since mere forwarding of the requests for purchase of cheques or grant of cash credit facilities cannot make out complicity of A□4 for the offences charged since sanctioning authorities were not bound by recommendations of A□4 but had to themselves check their delegated powers before according sanction. It was also argued that even DW1, an officer of bank, testified that it was not the duty of credit department to write a note to sanctioning authority for having power to purchase cheques or otherwise. Also was argued that A□4 did not had any authority for reversal entries of dishonored purchased cheques, which authority vested with the sanctioning authority. It was also argued that at no moment of time A□4 was informed of dishonor of any of the purchased cheques, before purchase of the last cheque in question. Also was argued that even PW3 did not specify the date as to when did she inform A□4 about dishonor of the purchased cheques. Also was argued that in cross examination PW2 deposed that power of reversal entries vested with Chief Manager A□3. Also was argued that PW5 was responsible to make entries in the Jet Clearing Register; lapses of PW5 are borne out in the report Ex PW7A/DA of PW7A but he was left scot free. Also was argued RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 35/94 CBI vs Vivek Sinha & Ors.

that PW3 in the course of her cross examination stated that all inward mails were received by PW3 or Deputy Manager (Administration) whereas A4 had no access to inward mails nor A4 had any role in reversal entries nor knowledge of dishonor cheques before dishonor of last purchased cheque. It was argued that A4 considered A1 as a valued customer of the bank as A1 provided business to bank whereas A1 was in direct touch with Chief Manager A3 and it was A3 who took A1 to Zonal Office; so, A4 had no complicity in the offences charged. It was also argued that to garner business for profits of bank, being in credit department, A4 forwarded the cheques presented with purchase requests, since facilities of cheque purchases are instantaneous, in a bonafide manner. Ld. Counsel for A4 has prayed for acquittal of the accused, submitting prosecution has failed to prove its case against A4 for offences charged and relying the following precedents:

(1) Anil Kumar Bose vs State of Bihar, (1974) 4 SCC 616; (2) S.V.L Murthy vs State, (2009) 6 SCC 77; (3) Abdulla Mohmmmed Pagarkar vs State, (1980) 3 SCC 110; (4) C. Chenga Reddy & Ors vs State of A.P, (1996) 10 SCC 193;

(5) State vs Nalini, (1999) 5 SCC 253.

21. To constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of the conspiracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators RC No. 219/2011/E0003/EO1/New Delhi CC No. 03/12 36/94 CBI vs Vivek Sinha & Ors.

can be inferred by necessary implication. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy. Criminal conspiracy is an independent offence in the Penal Code. The unlawful agreement is sine qua non for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express or partly implied. So was also held in the case of K.R Purushotaman (supra) relying upon the law laid in the case of Nalini (supra) and State (NCT of Delhi) vs. Navjot Sandhu, AIR 2005 SC 3820. Even Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the act done by one is admissible against the co-conspirators.

22. In Shivanarayan v. State of Maharashtra, AIR 1980 Supreme Court 439, it was held that "It is manifest that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the inferences drawn from acts or illegal omission committed by the conspirators in pursuance of a common design."

23. While speaking for the Bench it is held by Hon'ble Mr. RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 37/94 CBI vs Vivek Sinha & Ors.

Justice P.Venkatarama Reddi in State (NCT of Delhi) vs. Navjot Sandhu, AIR 2005 SC 3820 as follows:

"We do not think that the theory of agency can be extended thus far, that is to say, to find all the conspirators guilty of the actual offences committed in execution of the common design even if such offences were ultimately committed by some of them, without the participation of others. We are of the view that those who committed the offences pursuant to the conspiracy by indulging in various overt acts will be individually liable for those offences in addition to being liable for criminal conspiracy; but, the non participant conspirators cannot be found guilty of the offence or offences committed by the other conspirators. There is hardly any scope for the application of the principle of agency in order to find the conspirators guilty of a substantive offence not committed by them. Criminal offences and punishments therefor are governed by the statute. The offender will be liable only if he comes within the plain terms of the penal statute. Criminal liability for an offence cannot be fastened by way of analogy or by extension of a common law principle."

24. Section 420 deals with cheating and dishonestly inducing delivery of property. The offence of cheating is made of two ingredients. Deception of any person and fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property.

25. It had been held in the case of Ram Narain Poply Vs. CBI, AIR 2003 SC 2748 that deception of any person and fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property, need not be by express words, but it may be by conduct or implied in the nature of the RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 38/94 CBI vs Vivek Sinha & Ors.

transactions itself.

26. The word, "dishonestly" as defined in Section 24 of IPC implies a deliberate intention to cause wrongful gain, or wrongful loss and when this is coupled with cheating and delivery of property, the offence is punishable under Section 420 of IPC. In the case of Tulsi Ram Vs. State of UP, AIR 1963 SC 666, it was held that there are two facets of the definition, "dishonestly", namely the intention of causing wrongful gain to one person or wrongful loss to another, and it is enough to establish the existence of one of them; the law does not require that both should be established.

27. The essential ingredients of Section 13 (1)(d) of The Prevention of Corruption Act are (i) the person should be a public servant; (ii) he should have used corrupt or illegal means or otherwise abused his position as such public servant and (iii) he should have obtained valuable thing(s) or pecuniary advantage for himself or for any other person.

28. In Section 13(1)(d) of The Prevention of Corruption Act, the word used is 'obtained'. The Apex Court in the case of C.K. Damodaran Nair vs Govt. of India [(1997) 9 SCC 477] had the occasion to consider the word 'obtained' used in Section 5 of The Prevention of Corruption RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 39/94 CBI vs Vivek Sinha & Ors.

Act, 1947, which is now Section 13(1)(d) of The Prevention of Corruption Act of 1988. It was held in para 12 thus:

"12. The position will, however, be different so far as an offence under Section 5 (1)(d) read with Section 5(2) of the Act is concerned. For such an offence prosecution has to prove that the accused 'obtained' the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without the aid of the statutory presumption under Section 4(1) of the Act as it is available only in respect of offences under Section 5(1)(a) and (b) □and not under Section 5(1)(c), (d) or (e) of the Act. 'Obtain' means to secure or gain (something) as the result of request or effort (Shorter Oxford Dictionary). In case of obtainment the initiative vests in the person who receives and in that context a demand or request from him will be a primary requisite for an offence under Section 5(1) (d) of the Act unlike an offence under Section 161 IPC, which, as noticed above, can be established by proof of either 'acceptance' □or 'obtainment'"

29. In Criminal Appeal Nos. 482/02, 509/02 & 536/02 titled Runu Ghosh vs C.B.I.; P. Rama Rao vs C.B.I; Sukh Ram vs C.B.I, it was held by Hon'ble Mr Justice S Ravindra Bhat and Hon'ble Mr Justice G P Mittal on 21/12/2011 that "A new offence (or sub□species, of the existing offence) has been carved out, in Section 13 (1) (d) (iii) which criminalizes, as "criminal misconduct" the act of a public servant, holding office, which results in someone else ("any person") benefiting by getting a valuable thing or pecuniary advantage, □without any public interest." There is no doubt that Parliament created this new offence of criminal misconduct, where abuse of office, or use of corrupt or illegal means by a public officer, is inessential to prove the crime. What the prosecution has to establish, in accordance with law, is that the public officer, obtained for someone else - not necessarily by abusing his office, or using corrupt or illegal means

- pecuniary advantage or a valuable thing - without public RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 40/94 CBI vs Vivek Sinha & Ors.

interest."

Also was held that "161. This Appeal was received upon a reference to the Division Bench, as regards the true interpretation of Section 13 (1) (d) (iii). We have indicated the test applicable, □i.e. when the decision or an act of a public servant, (which results in another obtaining pecuniary advantage or valuable thing) be without public interest, namely, if that action of the public servant is the consequence of her or his manifest failure to observe those reasonable safeguards against detriment to the public interest, which having regard to all circumstances, it was his or her duty to have adopted."

The test applicable was indicated as "However, the test always in such cases is whether the decision was such as someone acting reasonably, on the basis of the materials available, would have taken. The test of public interest is paramount; if it appears that the decision is taken without public interest in mind, and unreasonably or manifest disregard to the consequence that such act would be severe undermining of public interest, and that such decision would result in a third party obtaining pecuniary advantage, without public interest, the decision maker has to take responsibility for the consequences."

30. In the case of E.K Chandrasenan (supra), it was held that there can be no direct evidence of the offence of conspiracy since conspiracies are secretly planned and are not hatched in open, so lack of direct evidence of said offence is not significant and said offence can be proved by circumstantial evidence.

31. In the case of Ghulam Din Buch (supra), wherein was a RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 41/94 CBI vs Vivek Sinha & Ors.

conspiracy involving officers of Power Department to cause wrongful loss to the State by causing gain to the contractors and themselves in a contract for transportation of about 10,000 bamboo poles as against need of about 4700 besides which the contract was given on per kilometer per pole basis which was earlier adopted for carrying materials to short distances and notice inviting tender itself specified this number about 6000 and no efforts were made to get government vehicles; rates agreed to be paid to the contractors for carrying poles were found to be unreasonable and notice inviting tenders was issued as per pre□arranged plan to the firms of the co accused who were not engaged in the business of transport and ultimately accepting their tender; in the circumstances of the case it was held that the accused Executive Engineers and Assistant Engineers were rightly convicted by the Courts below since clause (d) of Section 5(1) of The Prevention of Corruption Act, 1947 speaks not only about "corrupt or illegal" means but also obtaining any pecuniary advantage "otherwise" as well.

32. In the case of Bhajju @ Karan Singh (supra), it was held that "It is a settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of accused upon such testimony, if corroborated by other reliable evidence."

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33. In the case of Gulzar Ali (supra), relying upon the law laid in the case of Ram Chandra vs State of UP, AIR 1957 SC 381, Supreme Court held that in order to prove identity of handwriting of a person concerned in terms of the Section 67 of The Indian Evidence Act, any mode not forbidden by law can be resorted to and the expert evidence regarding handwriting is not the only mode by which genuineness of a document can be established.

34. In the case of Anil Kumar Bose (supra), it was held that mere failure on part of an employee to perform duty or to observe the rules of procedures laid in proper manner may be an administrative lapse and/or at best an error of judgment or breach of performance of duties which per se cannot be equated with dishonest intention. Mens rea is one of the essential ingredients of the offence of cheating under Section 420 of IPC.

35. In the case of S.V.L Murthy (supra), it was held that for proving conspiracy between bank officials and other accused it was necessary for the prosecution to establish that there had been a meeting of mind on the part of the accused persons at the time when the facility had been granted. Also was held that for the purpose of constituting an offence of cheating, accused had fraudulent or dishonest intention at the RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 43/94 CBI vs Vivek Sinha & Ors.

time of making promise or representation.

36. In the case of Abdulla Mohammed Pagarkar (supra), it was held that mere disregard of relevant provisions of General Financial Rules as well as ordinary norms of procedural behavior of government officials and contractors, in absence of a showing beyond reasonable doubt about the guilt, may raise strong suspicion against the accused but would not constitute offence of Section 5 (2) read with Section 5 (1) (d) of The Prevention of Corruption Act, 1947; since suspicion, however strong cannot be a substitute for proof.

37. In the case of C. Chenga Reddy (supra), it was held that though the prosecution has established that the accused have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter of allotment of work of jungle clearance on nomination basis and have committed departmental lapse yet no dishonest intention on their part could be shown and none of the circumstances relied upon by the prosecution could be construed as incriminating or were of any conclusive nature and all the circumstances put together do not lead to the irresistible conclusion that the said circumstances are compatible only with the hypotheses of the guilt of the appellants and wholly incompatible with their innocence.

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38. The core question that needs to be seen is as to whether there is sufficient legal evidence on record for prosecution to prove the case against the arraigned accused within the ambit of Sections 120 B; 420 of IPC and Section 13 (1)(d) read with Section 13(2) of The Prevention of Corruption Act.

39. The Master Circular in respect of delegation of powers for Indian Branches of Bank of India bearing no. 95/87 dated 03/10/2001 has been proved by PW7A as Ex PW7A/A (colly) (D□68). The said delegation of powers prescribed the monetary ceilings and every delegatee while exercising powers had to ensure compliance with Banks Manual of Instructions, prudential norms, policies including credit policies, schemes and other guidelines issued by Head Office, etc. As per the scheme of delegation, the powers were "Scale Specific" and were to be exercised only by the "Designated

Officers" in the concerned functional area. It was obligatory on the part of delegatee to ensure that the instructions in force were meticulously adhered to and delegates were not to exceed their delegated powers and if under any situation, they happen to exceed such powers, the same should be reported to the appropriate authority immediately seeking confirmation. As per said circular, modification/interchangeability of limits within over all sanction could be permitted by delegates in Scale IV and above for a maximum period of 90 days for meeting of any urgent need of the customer but the same was to be reported to the original sanctioning RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 45/94 CBI vs Vivek Sinha & Ors.

authority within a week; such modifications/interchangeability could be permitted only in case of standard assets while interchangeability from secured to unsecured could be permitted by the sanctioning authority only. In terms of said circular, branches were to exercise caution while taking large exposure on small banks/private banks and were to seek guidance from their Zonal Offices in case of doubt/any reservation. Table-1 (A) of Master Circular Ex PW7A/A (colly) (D□68) embodied inter alia that delegated power of Scale□V Officer was upto Rs 15 lakhs as per residuary Clause 2 (ii) (b) in respect of sanctioning of Cash Credit Limit which was partly secured or unsecured for business purposes under the head of Working Capital Limits. Table-1 (B) of Master Circular Ex PW7A/A (colly) (D□68) embodied inter alia that discretionary power of Scale□V Officer for purchase of cheque was Rs 6 lakhs, as per Clause 8 of the delegation of powers specified therein.

40. For Cash Credit Limit of Rs 25 lakhs for M/s E□soft Informatics, Proprietor A□, the application Ex PW5/A□26 [D□6(3)] dated 04/03/2009 for financial assistance was signed by A□ as proprietor of M/s E□soft Informatics and addressed to Manager, Bank of India, Malai Mandir Branch, New Delhi. The proposal Ex PW1/P [D□6(1)] dated 05/03/2009 incorporated recommendation of A□4 as Manager (Credit), Bank of India, Malai Mandir Branch, New Delhi for sanction of cash credit limit of Rs 25 lakhs stating worth of A□ as Rs 43 lakhs which proposal also bears sanction of A□3 as Chief Manager, Bank of India, RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 46/94 CBI vs Vivek Sinha & Ors.

Malai Mandir Branch, New Delhi on 05/03/2009, without any documents of security but against hypothecation of book debts under CGTMSE Scheme. In Borrower's Profile Ex PW1/T [D□6(12)], A□4 assessed the worth of borrower A□ worth Rs 43 lakhs as per market report and details provided by the proponent but no such market report is annexed with said assessment of worth of borrower/A□ nor any copies or originals of title deeds in name of borrower in respect of claimed immovable assets were annexed nor any copies or originals of registration certificates of the vehicles claimed to be in the name of borrower were annexed nor in respect of other movable properties any other authentic documents in favour of borrower were annexed. In Guarantor's Profile Ex PW1/Q [D□6(4)], A□4 assessed the worth of guarantor Sh Deepak Kumar worth Rs 25 lakhs as per market report and details provided by the proponent but no such market report is annexed with said assessment of worth of guarantor nor any copies or originals of title deeds in name of guarantor in respect of claimed immovable assets were annexed nor any copies or originals of registration certificates of the vehicles claimed to be in the name of guarantor were annexed nor in respect of other movable properties any other authentic documents in favour of guarantor were annexed. Pre□ sanction Inspection Report Ex PW1/R [D□6(5)] bears signatures of A□4 with his positive

comments/recommendations of having done the inspection in the office of M/s Esoft Informatics at Gurgaon and having found A4 as a man of high net worth. Rating Sheet Ex PW1/S [D6(6)] of date 04/03/2009 bears signatures of A4 as RC No. 219/2011/E0003/EO/New Delhi CC No. 03/12 47/94 CBI vs Vivek Sinha & Ors.

Manager (Credit), Bank of India, Malai Mandir Branch, New Delhi wherein A4 gave 34 marks out of 50 maximum marks to the borrower A1 (Esoft Informatics) including 5 marks out of 5 maximum marks for being in the business for above 5 years period. With the application for financial assistance or before sanction of cash credit limit of Rs 25 lakhs, no copies of final accounts of borrowers for preceding years had been annexed nor analysed for sanction of the cash credit limit nor was it seen that the borrower had sufficient / sound book debts to be hypothecated. Instead projected balance sheet Ex PW5/A28 [D6(8)] for financial years ending 31/03/2010, 31/03/2011 and 31/03/2012; projected income calculations Ex PW5/A29 [D6(9)] for financial years ending 31/03/2010, 31/03/2011 and 31/03/2012; projected Cash Flow Statement Ex PW5/A30 [D6(10)] for financial years ending 31/03/2010, 31/03/2011 and 31/03/2012 was placed on record by the aforesaid borrower and considered for sanction by A4 and A3. On sanction of the financial assistance of cash credit limit of Rs 25 lakhs, the documents namely Demand Note Ex PW5/A32 [D6(13)], Draft Declaration Ex PW5/A33 [D6(14)], Hypothecation cum Loan Agreement Ex PW5/A35 [D6(16)] with signed Stamp Paper Ex PW5/A34 [D6(15)], Letter Ex PW5/A36 [D6(17)], Letter Ex PW5/A37 [D6(18)] were executed by A1 as proprietor of Esoft Informatics for availing the aforesaid sanctioned cash credit limit.

41. Application Ex PW5/A41 [D7(9)] dated 21/07/2009 for RC No. 219/2011/E0003/EO/New Delhi CC No. 03/12 48/94 CBI vs Vivek Sinha & Ors.

total financial assistance of Rs 50 lakhs was signed by A1 as Director of A5 and addressed to Manager, Bank of India, Malai Mandir Branch, New Delhi. The proposal Ex PW1/B [D7(1)] dated 21/07/2009 incorporated recommendation dated 21/07/2009 of A4 as Senior Manager (Credit), Bank of India, Malai Mandir Branch, New Delhi for sanction of cash credit limit of Rs 20 lakhs and term loan for Rs 30 lakhs stating worth of A1 as Rs 200 lakhs which proposal also bears sanction of A3 as Chief Manager, Bank of India, Malai Mandir Branch, New Delhi on 21/07/2009. Ex PW1/B also finds mention that A5 company had been newly floated to take care of computer job work and only the estimates of future profits, prospective sales, etc were taken into account and the main security for proposed cash credit limit was hypothecation of stock/furniture fixtures while main security for proposed term loan was hypothecation of computers. In Borrower's Profile Ex PW1/D [D7(3)], A4 assessed the worth of proponent/A1 worth Rs 200 lakhs as per market report and details provided by the proponent but no such market report is annexed with said assessment of worth of proponent/A1 nor any copies or originals of title deeds in name of A1 in respect of claimed immovable properties were annexed nor in respect of other movable properties any other authentic documents in favour of borrower were annexed. In Guarantor's Profile Ex PW1/E [D7(4)], A4 assessed the worth of guarantor Sh Deepak Kumar worth Rs 150 lakhs as per market report and details provided by the proponent but no such market report is annexed with said assessment of worth of guarantor nor any copies or RC No. 219/2011/E0003/EO/New Delhi CC No. 03/12 49/94 CBI vs Vivek Sinha & Ors.

originals of title deeds in name of guarantor in respect of claimed immovable assets were annexed nor any copies or originals of registration certificates of the vehicles claimed to be in the name of guarantor were annexed nor in respect of other movable properties any other authentic documents in favour of guarantor were annexed. Pre-sanction Inspection Report Ex PW1/G [D7(6)] bears signatures of A4 with his positive comments/recommendations of having done the inspection in the office of M/s E-Soft Informatics Private Limited, Gurgaon for the purpose of term loan for purchase of computers and working capital limit but finds no mention of any furniture articles, fixtures or stocks existing there. With the application for financial assistance or before sanction of term loan for purchase of computers of Rs 30 lakhs, no copies of final accounts of borrower for preceding years had been annexed nor analysed for sanction of term loan. Post Sanction Inspection Report Ex PW1/F [D7(5)] bears signatures of A4 for his visit and inspection of Gurgaon premises of A5 on 18/08/2009 finding mention of A5 having installed 60 computers but therein also there is no mention of any furniture articles, fixtures or stocks existing there. With the application Ex PW5/A41 [D7(9)] dated 21/07/2009 for financial assistance or before sanction of cash credit limit of Rs 20 lakhs or for availing term loan of Rs 30 lakhs for purchase of computers, no analysis of furniture/fixture/stock of A5 which was to be hypothecated for cash credit limit of Rs 20 lakhs, was done nor was it seen that the borrower had sufficient furniture/fixture/stock to be hypothecated. On sanction of RC No. 219/2011/E0003/EO/New Delhi CC No. 03/12 50/94 CBI vs Vivek Sinha & Ors.

the financial assistance of cash credit limit of Rs 20 lakhs and of term loan of Rs 30 lakhs for purchase of computers, the documents namely Demand Promissory Note Ex PW5/A42 [D7(10)] dated 21/07/2009, Agreement Ex PW5/A44 [D7(12)] dated 21/07/2009, Hypothecation cum Loan Agreement Ex PW5/A43 [D7(11)], Demand Note Ex PW5/A45 [D7(13)] dated 21/07/2009 for Rs 30 lakhs, Agreement of Term Loan and Hypothecation of Movable Assets/Goods/Property/Plant and Machinery Ex PW5/A46 [D7(14)] dated 21/07/2009, Agreement of Hypothecation to Secure Demand Loan/Cash Credit Ex PW5/A47 [D7(15)] dated 21/07/2009 were executed by A4 as Director of A5 on 21/07/2009 for availing the aforesaid sanctioned cash credit limit of Rs 20 lakhs and term loan of Rs 30 lakhs for purchase of computers. Hypthecation Cum Loan Agreement Ex PW5/A43 [D7(11)] contained Schedule II found mention of Computer, CPU, Monitors, Key Pads and Mouses to be the only goods hypothecated but no mention of any articles of furniture or fixture in respect of cash credit limit of Rs 20 lakhs whereas the aforesaid articles namely Computer, CPU, Monitors, Key Pads and Mouses described in Schedule II as hypothecated goods were in respect of the term loan of Rs 30 lakhs for purchase of computers and these very articles were mentioned in the Schedule 'A' of Agreement Ex PW5/A46 [D7(14)] to be the goods hypothecated for availing term loan of Rs 30 lakhs for purchase of computers, meaning thereby that for both cash credit limit of Rs 20 lakhs and term loan of Rs 30 lakhs for purchase of computers, the same articles viz. Computer, CPU, Monitors, Key Pads RC No. 219/2011/E0003/EO/New Delhi CC No. 03/12 51/94 CBI vs Vivek Sinha & Ors.

and Mouses were being hypothecated and these very articles were those prospective articles which were to be purchased from the sanctioned term loan of Rs 30 lakhs, aforesaid.

42. Foreign cheque Ex PW2/M [D□10(2)] bearing number 000415 of US \$ 18000 dated 01/09/2009 bearing signatures of A□ was purchased on 01/09/2009 by A□3 as Chief Manager of Malai Mandir Branch of Bank of India. Said cheque was from the account of A□ in Commerce Bank, NA of USA. Regarding said cheque, the credit voucher Ex. PW1/KK (D□62) dated 01/09/2009 was filled by PW3 in her writing and said credit voucher was signed by A□4. For aforesaid cheque, debit voucher Ex. PW1/LL (D□63) dated 01/09/2009 was filled by PW3 in her writing and bears signatures of A□4. Sum of Rs 8,65,000/□on purchase of aforesaid foreign cheque was credited in account number 602530110000025 of A□5 on 01/09/2009 in terms of the statement of said account with certificate under Section 2A of Banker's Books of Evidence Act, collectively Ex PW2/U (colly) (D□44). Said cheque Ex PW2/M [D□10(2)] on presentation was dishonored vide return notice Ex PW2/O [D□10(1)] dated 22/10/2009 for the reason of insufficiency of funds.

43. Cheque D□1(5), part of Ex PW2/N (colly) bearing number 017252 dated 18/09/2009 of Rs 27 lakhs issued by ELPEE Consultants through proprietor/authorized signatory in favour of A□5 was presented RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 52/94 CBI vs Vivek Sinha & Ors.

with application D□1(2), part of Ex PW2/N (colly), dated 18/09/2009, bearing signatures of A□ as Director of A□5 containing the request for purchase of said cheque to the Chief Manager, Bank of India, Malai Mandir Branch, New Delhi. PW2 deposed that the aforesaid request letter, part of Ex. PW 2/N (colly) i.e. D□1 (2), was bearing endorsement of sanction by A□3 at portion A. When aforesaid incriminating fact was put to A□3 in his statement under Section 313 Cr.P.C, A□3 claimed shelter behind the plea for not remembering about it. Accordingly, there is implied admission on part of A□3 for according sanction for purchase of cheque D□1 (5), part of Ex PW2/N (colly). PW1 deposed that credit voucher dated 18/09/2009 Ex. PW1/U (D□47) was bearing initials of A□4 and this fact was admitted by A□3 and A□4 in their respective statements under Section 313 Cr.P.C. By virtue of said credit voucher Ex PW1/U (D□47), the sum of Rs 27 lakhs of the sum of cheque D□1 (5), part of Ex PW2/N (colly) was credited in the account number 602520110000181 of A□5 on 18/09/2009 in terms of the statement of said account with certificate under Section 2A of Banker's Books of Evidence Act, collectively Ex PW2/S (colly) (D□42). Said cheque D□1(5), part of Ex PW2/N (colly) on presentation was dishonored vide return memo D□1 (4), part of Ex PW2/N (colly), dated 29/09/2009 for the reason of insufficient funds. PW2 deposed that D□1 (3), part of Ex PW2/N (colly), is the Jet Clearing Schedule Number 850077 with originating date 22/09/2009 along with which the cheque of Rs 27 lakhs aforesaid on dishonor with aforesaid cheque return memo was forwarded through RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 53/94 CBI vs Vivek Sinha & Ors.

New Delhi Service Branch to Malai Mandir Branch of Bank of India. PW5 deposed that vide memo Ex PW5/G, he had handed over Ex PW5/G□4 (colly) [D□75(13)] i.e. statement of account number 60250IBP001 of Inland Bills Purchase with certificate under Section 2A of Banker's Book of Evidence Act from office records and it was bearing his signatures and also that he (PW5) had generated the print out of the said statement from his computer system, which he stated to be true and correct. In terms of the aforesaid statement, sum of Rs 27 lakhs was shown as transaction debit

amount on 18/09/2009 in transaction ID M133563 towards bill number 60250CP09000537.

44. Cheque number 168677 Ex. PW2/C [part of D□0(6)] and number 168678 Ex. PW2/D [part of D□0(5)], both dated 24/09/2009, for Rs. 25 lakhs each, both issued by A□2 as proprietor of Jian Pharmaceuticals in favour of A□6, were presented with application Ex PW2/E [D□0(3)], dated 24/09/2009, bearing signatures of A□ as Director of A□6 containing the request for purchase of said cheques to the Chief Manager (A□3), Bank of India, Malai Mandir Branch, New Delhi. As per PW1, pay□n□slip dated 24/09/2009 Ex. PW1/Y (D□51) was bearing initials of A□4 at point A and it was in respect of the cheque Ex. PW2/C [part of D□0(6)]. As per PW1, credit voucher/pay□n□slip dated 24/09/2009 Ex. PW1/W (D□49) was bearing initials of A□4 at point A and it was in respect of the cheque Ex. PW2/D [part of D□0(5)]. By deposit of aforesaid cheques Ex. PW2/C [part of D□10(6)] and Ex. PW2/D [part RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 54/94 CBI vs Vivek Sinha & Ors.

of D□0(5)] vide said pay□n□slip dated 24/09/2009 Ex. PW1/Y (D□51) and credit voucher/pay□n□slip dated 24/09/2009 Ex. PW1/W (D□49), the sum of Rs 25 lakhs each in respect of each of these two cheques was credited in the account number 602520110000219 of A□6 on 24/09/2009 in terms of the statement of said account with certificate under Section 2A of Banker's Books of Evidence Act, collectively Ex PW2/T (colly) (D□43). In terms of Ex PW5/G□4 (colly) [D□75(13)] i.e. statement of account number 60250IBP001 of Inland Bills Purchase with certificate under Section 2A of Bankers Book of Evidence Act (1) sum of Rs 25 lakhs was shown as transaction debit amount on 24/09/2009 in transaction ID M166850 towards bill number 60250CP09000550; (2) sum of Rs 25 lakhs was shown as transaction debit amount on 24/09/2009 in transaction ID M383756 towards bill number 60250CP09000554. Said cheques Ex. PW2/C [part of D□0(6)] and Ex. PW2/D [part of D□0(5)] on presentation were dishonored vide return memos Ex PW6/A and Ex PW6/B, both part of D□0(4) of dates 24/10/2009 for the reason of insufficient opening balance. PW6 deposed that cheque Ex. PW2/C bears stamp impression overleaf of Bank of India Cuttack Branch at portion X□ and in it is the stamp impression of date 14 October 2009 reflecting the presentation of the cheque in clearing on 14/10/2009; the date 24/10/2009 at portion encircled Z□ on Ex. PW6/A was written wrongly by clerical error and it should have been 14/10/2009 as per the cheque returned; he (PW6) had verified earlier this fact from the Outward Return Register and it was bearing entry of date 14/10/2009 RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 55/94 CBI vs Vivek Sinha & Ors.

for return of cheque Ex. PW2/C. PW2 deposed that Upcountry Schedule Ex. PW2/H [part of D□10(7)] number 856057 dated 24/09/2009 was received in Malai Mandir Branch of Bank of India on 22/10/2009 on return of unpaid cheque numbers 168677 {Ex. PW2/C [part of D□0(6)]} and 168678 {Ex. PW2/D [part of D□0(5)]} each of Rs. 25 lakhs as these were returned unpaid from Cuttak. PW6 deposed that vide letter Ex. PW6/C (D□77) dated 15/02/2012 he had furnished the information detailed therein to IO PW8. Ex PW6/C finds mention inter alia that cheque return date of cheques Ex PW2/C and Ex PW2/D was 14/10/2009 after they were presented in Cuttack Main Branch of Union Bank of India and dishonored. PW6 deposed that vide letter Ex. PW6/D (part of D□78) dated 16/02/2012 he had inter alia furnished the (1) attested copies of the Outward Return Register Ex. PW6/E (colly) (part of D□78) bearing his signatures at portion A with the stamp

impression of the bank; (2) Statement Ex. PW6/F (part of D□78) of Account Number 302001010033098 of M/s Jian Pharmaceuticals of period from 16/02/2007 till 26/03/2011 bearing initials of PW6 at portion A and stamp impression of bank on all sheets with certificate Ex PW6/G (part of D□78) under Section 2A Banker's Book of Evidence Act bearing signatures of PW6 at portion A. As per the aforesaid statement Ex. PW6/F (part of D□78) of account number 302001010033098 of M/s Jian Pharmaceuticals, the credit balance from 30/07/2009 before return of cheques Ex PW2/C and Ex PW2/D on 14/10/2009 remained Rs 4,689/94 p and further that at no point of time the credit balance in RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 56/94 CBI vs Vivek Sinha & Ors.

said account exceeded Rs 50,000/□in year 2009. Attested copies of the Outward Return Register Ex. PW6/E (colly) (part of D□78) depict the return of the cheques Ex PW2/C and Ex PW2/D on 14/10/2009 from Cuttack Main Branch of Union Bank of India.

45. Cheque Ex. PW2/F [part of D□10(7)] dated 24/09/09 bearing number 168676 of Rs. 25,00,000/□issued by A□2 as proprietor of Jian Pharmaceuticals in favour of A□6 was presented with application Ex PW2/G [D□10(7)(2)], dated 03/10/2009, bearing signatures of A□ as Director of A□6 containing the request for purchase of said cheque to the Chief Manager (A□3), Bank of India, Malai Mandir Branch, New Delhi. PW2 deposed that cheque Ex. PW2/F was purchased after cheque purchase request Ex. PW2/G [D□10(7)(2)] dated 03/10/2009, signed by A□, was presented and Ex. PW2/G was sanctioned by A□3 vide endorsement therein at portion B. A□3 admitted aforesaid fact on being put to him in the course of his statement under Section 313 Cr.P.C. PW1 deposed that pay□n□slip Ex. PW1/AA (D□53) dated 03/10/2009 was bearing initials of A□4 at point A. A□4 and A□3 admitted aforesaid fact on being put to them in the course of their statements under Section 313 Cr.P.C. By deposit of aforesaid cheque Ex. PW2/F [part of D□10(7)] vide said pay□n□slip Ex. PW1/AA (D□53) dated 03/10/2009, the sum of Rs 25 lakhs in respect of said cheque was credited in the account number 602520110000219 of A□6 on 03/10/2009 in terms of the statement of said account with certificate under Section 2A of Banker's Books of RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 57/94 CBI vs Vivek Sinha & Ors.

Evidence Act, collectively Ex PW2/T (colly) (D□43). PW2 deposed that Upcountry Schedule Ex. PW2/J [D□10(7)(3)] bearing number 868148 dated 05/10/2009 was received on 22/10/2009 in Malai Mandir Branch of Bank of India on return of cheque Ex. PW2/F [part of D□10(7)] as unpaid from Cuttack. In terms of Ex PW5/G□14 (colly) [D□75(13)] i.e. statement of account number 60250IBP001 of Inland Bills Purchased with certificate under Section 2A of Banker's Book of Evidence Act, sum of Rs 25 lakhs was shown as transaction debit amount on 03/10/2009 in transaction ID M330577 towards bill number 60250CP09000565. Letter Ex. PW6/C (D□77) dated 15/02/2012 finds mention inter alia that cheque return date of cheque Ex PW2/F was 21/10/2009 after it was presented in Cuttack Main Branch of Union Bank of India and dishonored. Attested copies of the Outward Return Register Ex. PW6/E (colly) (part of D□78) depict the return of the cheque Ex PW2/F on 21/10/2009 from Cuttack Main Branch of Union Bank of India.

46. PW2 deposed that request letters (1) Ex. PW2/K dated 08/10/2009 pertaining to cheque number 168679 for Rs. 33 lakhs and (2) Ex. PW2/L dated 09/10/2009 pertaining to cheque number

168680 for Rs. 38 lakhs; both part of D□o(6) were bearing the signatures of A□ as authorized signatory of A□. PW2 further stated that requests Ex. PW2/K and Ex. PW2/L for purchase of cheques were sanctioned by A□ vide his endorsement at point B on each request letter. A□ and A□4 admitted RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 58/94 CBI vs Vivek Sinha & Ors.

aforesaid fact on being put to them in the course of their statements under Section 313 Cr.P.C.

47. PW2 deposed that debit voucher (IBP) Ex. PW1/BB (D□54) dated 09/10/2009 for Rs. 33 lakhs was bearing signatures of PW2 at portion B and signatures of A□4 at portion A and it was prepared for giving credit to account of the said party after purchase of the cheque and was connected with Branch Credit Voucher Ex. PW2/A [D□o(8)] of Rs. 33 lakhs dated 09/10/2009. PW2 further testified that Credit Voucher Ex. PW1/CC (D□55) dated 08□09/10/2009 for Rs. 33 lakhs was a pay□ in□lip filled by A□, for purchase of the cheque number 168679 of Union Bank of India, Cuttack Main Branch and it was bearing signatures of PW2 at portion B and signatures of A□4 at portion A. A□ and A□4 admitted aforesaid facts on being put to them in the course of their statements under Section 313 Cr.P.C.

48. On deposit of aforesaid cheque numbers 168680 and 168679 for Rs. 39 lakhs and Rs. 33 lakhs respectively (1) the sum of Rs 33 lakhs in respect of cheque number 168679 was credited in the account number 602520110000219 of A□ on 09/10/2009 and (2) the sum of Rs 39 lakhs in respect of cheque number 168680 was credited in the account number 602520110000219 of A□ on 12/10/2009 in terms of the statement of said account with certificate under Section 2A of Banker's Books of Evidence Act, collectively Ex PW2/T (colly) (D□43).

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49. PW1 deposed that letter Ex. PW1/H [D□o(10) (MR No. 186/2011)] dated 16/12/2009 addressed to New Delhi Service Branch regarding fate of cheque numbers 168680 and 168679 for Rs. 39 lakhs and Rs. 33 lakhs respectively bears the signatures of Sh. Gautam Banerjee (PW5), the then Officer of the Branch. In terms of Ex. PW1/H, till 16/12/2009 neither the proceeds of the aforesaid two cheque numbers 168680 and 168679 for Rs. 39 lakhs and Rs. 33 lakhs respectively were received in Malai Mandir Branch of Bank of India nor the fate of cheques were known to Malai Mandir Branch officials.

50. PW1 deposed that vide his letter Ex. PW1/MM (D□64) dated 02/05/2011 addressed to IO PW8, he (PW1) had submitted the documents including the certified copies of Clearing Cheques Register Ex. PW1/NN (D□65) after certifying them as true copies of original from the bank records maintained in the routine course of the banking business. PW3 deposed that the two pages of Clearing Cheque Register (Jet Clearing Register) Ex. PW1/NN (D□65) were in her writing.

51. PW3 deposed that after receiving the instructions, she used to enter the cheque to be purchased, in the system through the Menu available for such purchase, BM i.e. Bill Management. PW3 further stated that thereafter, she used to make a physical entry of the cheque in the Jet Clearing Register

and also enter the cheque in the system again RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 60/94 CBI vs Vivek Sinha & Ors.

for Jet Clearing clearance and thereafter, she (PW3) used to send the entire set of purchased instrument to A□4 for verification. PW3 stated that whenever she used to enter the cheque to be purchased, she simply followed the instructions given to her by A□4 in good faith and she did not at that time verified whether sanction for purchase of cheque was granted or not.

52. PW3 deposed that procedure for dispatch of out station cheque was as follows. The cheque purchase entry as well as the jet clearing entry was verified by A□4 and sent to PW3 for preparing jet clearing schedule to be attached to the cheque. PW3 used to take out the jet clearing schedule, attach to the cheque and send it to the officer for signing. The schedule was then signed by the officer and was put into the dispatch box. The party used to get the benefit of the funds immediately on verification of the cheque purchase entry.

53. PW3 deposed that the cheques were sent for clearance to Bank of India itself in the City, from where the cheque was drawn; Bank of India in that City presented the cheque in local clearing of that City and made the entry in Sundep on dishonouring of cheque. PW3 deposed that there was a simultaneous credit and debit entry to show that the cheque was presented in clearing and was later dishonoured; the entry was made on the date of the clearing and they at Malai Mandir Branch of Bank of India could see the entry on the same day itself on their RC No. 219/2011/E0003/EO□ I/New Delhi CC No. 03/12 61/94 CBI vs Vivek Sinha & Ors.

computer system on Intranet, though, the physical cheque came to them only after a few days by Speed Post, Courier, etc. PW3 deposed that the cheque on return was attached with the return memo from the Drawee Bank.

54. As per PW3, it was the duty of Manager (Credit) A□4 to check the returns of any cheque purchased items; however, sometimes she also used to go through the Sundep to keep such check and in case she found any dishonoured cheque entry, she used to bring it to the notice of A□4; thereafter, normally she received instructions from A□4 to reverse the entry, which was done by her again only at entry level.

55. PW3 testified that in the course of her duties as Clerk in the Malai Mandir Branch, Bank of India, she had dealt with the cheque purchase entries regarding the cheques purchased by their Branch from A□, which were five or six in numbers. PW3 further stated that upon dishonor of afore elicited cheques purchased from A□, as like in routine manner, she brought the facts in the notice of A□4, upon which A□4 said "Kartey hai Mam" for which she understood that the same was in respect of reverse entry. PW3 elicited in the cross examination that when she had seen the entry of dishonoured cheque of A□ in the system, initially she told then and there from her seat to A□4 on that day itself. PW3 stated that she waited for four or five days for the instructions for reversal from A□4 but when she did not receive such instructions for reversal entry RC No. 219/2011/E0003/EO□ I/New Delhi CC No. 03/12 62/94 CBI vs Vivek Sinha & Ors.

from A□4, she brought the said facts to the notice of A□3, the Branch Manager, upon which A□3 assured her (PW3) that he (A□3) was trying to have talks with A□ for arrangement of funds; A□3 further assured PW3 that the entries would be reversed once the funds came into the accounts of A□1.

56. PW3 deposed that after the instruments/cheques viz. Ex PW2/M [D□o(2)]; Ex PW2/D [D□10(5)]; Ex PW2/C [D□o(6)]; Ex PW2/F [D□o(7)] were dishonoured, she did not make any entries in their computer system since after the dishonour of such instruments the requisite entries were to be made in Sundep by the Branch of Bank of India of the other City, which had presented the instrument in the local clearing and to whom the instrument was sent by their Branch.

57. PW3 deposed that since she had initially told A□4 and later A□3 and waited for their instructions, which were not given to her later, thereafter on return of subsequent dishonoured instruments of A□, she did not again tell further to A□4 or A□3. PW3 also stated that no dishonoured cheques purchased from A□ on return were brought physically to her for making any reverse entry in the computer system. As per PW3, normally, on receipt of dishonoured cheques, the purchase entry was reversed and parties account was debited for the amount of the cheque purchased but she never received any such instructions in case of cheques purchased in question. PW3 stated that she had seen A□ in the RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 63/94 CBI vs Vivek Sinha & Ors.

bank for 3 or 4 times but was not aware of A□ being a citizen of USA. In her cross examination by Ld. Counsel for A□3, PW3 elicited that since she never received any instructions from A□4 or A□3, she had not made debit entry in the account of seller of cheques on dishonor of the cheques. As per PW3, she required permission either from A□4 or A□3 for making reversal entries on receipt of cheque on dishonour since even if she made a reversal entry without their permission, the parties account or the account of the seller would never be debited unless or until either of them verified the entry in the computer system. PW3 stated that print out of entries made in IBP account was not taken daily nor put up before A□3. PW3 also stated that she herself had gone once to A□3 and had told him of dishonour of cheques of A□.

58. PW3 further deposed that End of Day (EoD) reports were generated daily, which was consolidated report consisting of daily general ledger balance, temporary overdrafts/temporary over limits given in the accounts and were sent to the Chief Manager i.e. A□3; but in case of A□, no Temporary Over Draft (TOD) was granted to him (A□); the cheques were purchased and credit for the amount of the cheques were transferred to his account, which were utilized by him and as such his account never showed the TOD.

59. From elicited oral as well as documentary evidence on record, it is proved that as regards, sanction of cash credit limit of Rs 20 RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 64/94 CBI vs Vivek Sinha & Ors.

lakhs and term loan of Rs 30 lakhs for purchase of computers, for total financial assistance of Rs 50 lakhs applied vide application Ex PW5/A□41 [D□7 (9)] dated 21/07/2009 of A□3 through Director

A□, the same was appraised by A□4 in his recommendation dated 21/07/2009 as Senior Manager (Credit) in proposal Ex PW1/B [D□7 (1)] dated 21/07/2009 and sanctioned by A□3 as Chief Manager, Officer of grade Scale IV of Bank of India, on 21/07/2009 beyond discretionary powers of Rs 15 lakhs vested with A□3 in terms of Master Circular Ex PW7A/A (colly) (D□68), it being unsecured advance as A□5 had been recently set up whereas no record was made available to A□4 and A□3 respectively as regards to assets including furniture/fixture/stocks besides liabilities of A□5 as well as its Directors including A□. The term loan was sanctioned for purchase of computers but the related proforma invoices/quotations necessarily required at the time of appraisal/sanction were neither available on record nor were considered in the analysis of the proposal for sanction of said loan. No collateral security was stipulated nor placed on record in respect of aforesaid cash credit limit of Rs 20 lakhs, so said cash credit limit could not be termed as secured loan, as was so termed at the stroke of sanction of said limit. With regard to sanction of aforesaid cash credit limit of Rs 20 lakhs and term loan of Rs 30 lakhs, no proposal/intimation was sent to Zonal Office of Bank of India for Post Sanction Pre Disbursement Scrutiny (PSPDS) as required as per the elicited prescribed norms in Master Circular Ex PW7A/A (colly) (D□

168), but intimation of gutting of unit of A□5 on 16/10/2009 due to fire RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 65/94 CBI vs Vivek Sinha & Ors.

was given vide letter/Memorandum Ex PW7A/D (D□74) dated 19/10/2009 signed by A□3 to the Zonal Office of Bank of India. For the alleged exceeding of the discretionary powers in the matter of recommendation/sanction of the limits, allegedly also a departmental lapse, A□3 as well as A□4 had since been dismissed from service.

60. In record of the bank, there was no application for request for purchase of the foreign cheque Ex PW2/M [D□10(2)] of US \$ 18000 and any recommendation thereon and approval of any bank official. The credit voucher Ex PW1/KK (D□62) dated 01/09/2009 was signed by A□4. Also for aforesaid foreign cheque Ex PW2/M [D□10(2)], debit voucher Ex PW1/LL (D□63) dated 01/09/2009 was signed by A□4. Cheque purchase application Ex PW2/E [D□10(3)] dated 24/09/2009 for purchase of two cheques along with the two cheques (1) Ex PW2/C [part of D□10 (6)] and (2) Ex. PW2/D [part of D□10(5)]; both dated 24/09/2009, for Rs. 25 lakhs each; which both cheques were issued by A□2; was submitted by A□1 to Bank of India. There was no endorsement on the request regarding recommendation and sanction for purchase of the said cheques (1) Ex PW2/C [part of D□10(6)] and (2) Ex. PW2/D [part of D□10(5)] for credit in the account of A□6 though related pay□n□slip Ex PW1/Y (D□51) dated 24/09/2009 and credit voucher/pay□n□slip Ex PW1/W (D□49) dated 24/09/2009 were signed by A□4. Also cheque Ex. PW2/F [part of D□10(7)] dated 24/09/09 bearing number 168676 of Rs. 25,00,000/□ issued by A□2 as proprietor of Jian Pharmaceuticals in favour of A□6 was RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 66/94 CBI vs Vivek Sinha & Ors.

submitted by A□1 in Bank of India with application Ex PW2/G [D□10(7) (2)], dated 03/10/2009 of A□ as Director of A□6 to purchase said cheque and on said application Ex PW2/G [D□10(7)(2)], A□4 initialed at portion encircled X having recommended the same for purchase and it was sanctioned by A□3 vide endorsement at portion B for purchase of said cheque. A□1 also submitted request

letters Ex PW2/K [part of D□o(6)] dated 08/10/2009 and Ex PW2/L [part of D□o (6)] dated 09/10/2009 pertaining to requests for purchase of cheques bearing number (1) 168679 for Rs 33 lakhs and (2) 168680 for Rs 38 lakhs, which both cheques were issued by A□2. These request letters Ex PW2/K [part of D□10(6)] dated 08□09/10/2009 and Ex PW2/L [part of D□o(6)] dated 09/10/2009 did not bear the proper recommendation but were bearing initials of A□4 in the request and were sanctioned by A□3 vide endorsement at portion encircled B on both these request letters.

61. Afore elicited cheques (1) Ex PW2/C [part of D□o(6)] bearing number 168677 dated 24/09/2009 for Rs 25 lakhs ; (2) Ex. PW2/D [part of D□o(5)] bearing number 168678 dated 24/09/2009 for Rs 25 lakhs; (3) Ex. PW2/F [part of D□o(7)] bearing number 168676 dated 24/09/09 for Rs. 25,00,000/□ (4) bearing number 168679 for Rs 33 lakhs; (5) bearing number 168680 for Rs 38 lakhs were issued by A□2 as proprietor of M/s Jian Pharmaceuticals. A□2 was also Director in A□6 company as per Ex PW2/DA/A2 [D□9(3)], the Resolution dated 22/09/2009 preceded by Memorandum & Articles of Association of A□6 RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 67/94 CBI vs Vivek Sinha & Ors.

[D□9(2)]. Ex PW2/DA/A2 [D□9(3)] also embodies the resolve that accounts of A□6 were to be operated upon and cheques thereon be signed and all instructions regarding the accounts were to be given by all/any two amongst A□, Sh Deepak Kumar and A□3, the stated Directors. In any of the applications for purchase of cheques in question or for availing cash credit limit or loan facilities in question, there was no whisper of A□ being a citizen of United States of America whereas profiles of borrower, elicited in preceding paragraphs, simplicitor find mention of Gurgaon addresses of A□ in India and no where in any documents on record it was ever disclosed of A□ being a citizen of United States of America. A□2 was not informed of purchase of any of the cheques in question, elicited herein above. Fact remains that A□2 did not enter upon in the witness box to be examined as his own defence witness on oath under Section 315 Cr.P.C in respect of any Memorandum of Understanding (MoU) entered into between A□2 and A□ or the terms thereof; nor A□2 examined any other witness of said MoU nor A□2 served upon any notice under Section 91 Cr.P.C to A□ for production of said MoU, if it was in the custody of A□, as presented by A□2; nor A□2 moved any application in this Court seeking aid of Court under Section 91 Cr.P.C for directions to A□ for production of said MoU, if it was in the custody of A□. A□2 even did not lead any defence evidence to prove the fact of having given 6 cheques in blank as security to A□ at the time of entering of said MoU on date 10/08/2009, as was alleged by him in the course of his statement under Section 313 Cr.P.C.

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It is admitted case of A□2 that the cheques in question (1) Ex PW2/C, (2) Ex PW2/D, (3) Ex PW2/F, (4) bearing no. 168679 for Rs 33 lakhs and (5) bearing no. 168680 for Rs 38 lakhs were bearing his signatures. No law provides that in case of any negotiable instrument entire body of said negotiable instrument has to be written by maker or drawer only. What is material is the signature of the drawer or maker and not the writing on instrument; hence, question of body writing of the negotiable instrument is almost of no significance. A□2 alleged that these cheques were misused by A□. It was for A□2 to prove such defence in terms of law for which he did not lead any defence

evidence to prove that these cheques were given in security to A□ at the time of entering of said MoU on date 10/08/2009, or these cheques were misused by A□. Nothing of the sort was done by A□ on this count. Such defence of A□ accordingly falls flat on the ground since the report Ex DW5/A (colly) of private handwriting expert DW5 is of no help to A□ as it revolved around the writings of body parts of photographs of cheques Ex PW2/C, Ex PW2/D and Ex PW2/F on comparison with the alleged specimen writings of A□ and for which specimen writings A□ even did not enter into witness box to claim them to be belonging to him. Purchase requests were accepted by A□ and afore elicited cheques (1) Ex PW2/C; (2) Ex PW2/D; (3) Ex PW2/F; (4) bearing no. 168679 for Rs 33 lakhs; (5) bearing no. 168680 for Rs 38 lakhs; (6) Ex PW2/M and (7) cheque D□1 (5), part of Ex PW2/N (colly); were all purchased by A□ beyond his discretionary power of Scale IV Officer for purchase of cheques upto Rs RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 69/94 CBI vs Vivek Sinha & Ors.

6 lakhs, as per Clause 8 of Table□ (B) of Master Circular Ex PW7A/A (colly) (D□68) and in purchase of said cheques, role of A□ is elicited, document wise, in preceding paragraphs. Elicited manner in which the worths of borrowers and guarantors were assessed by A□ in grant of (1) cash credit limit of Rs 25 lakhs vide proposal Ex PW1/P [D□6(1)]; (2) cash credit limit of Rs 20 lakhs and term loan of Rs 30 lakhs for purchase of computers vide proposal Ex PW1/B [D□7(1)]; sanction of said cash credit limits and term loan, as was done by A□, reflects the complicity of A□ and A□ borne out from conduct of these accused persons and deduced from the circumstances of the case, elicited above. As per practice, borrower was required to lodge application for discounting/purchase of cheques and the same was required to be processed. The related elicited debit/credit vouchers of the cheques in question purchased were bearing initials of A□ and sanction for purchase of cheques in question was accorded by A□ on the applications for purchase of cheques, elicited above; all which acts were done by A□, a Scale IV Officer beyond his delegated powers and these proved of the complicity of A□ and A□ for being party in the conspiracy for discounting/purchase of these cheques, without there being any sanctioned limit in the account and beyond discretionary powers of A□. A□ had the knowledge that the account of M/s Jian Pharmaceuticals bearing number 302001010033098 [as per statement Ex PW6/F (part of D□78)] at no point of time in year 2009 had any credit balance exceeding Rs 50,000/□ Yet, cheques (1) Ex PW2/C; (2) Ex PW2/D; (3) RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 70/94 CBI vs Vivek Sinha & Ors.

Ex PW2/F; (4) bearing no. 168679 for Rs 33 lakhs; (5) bearing no. 168680 for Rs 38 lakhs; were issued by A□ and these all cheques were so presented by A□ for purchase before Bank of India, Malai Mandir Branch, New Delhi with or without applications and such purchase requests were acceded by A□ in complicity with A□.

62. DW3 Chief Manager of Bank of India brought on record Ex DW3/PA (colly) containing calculations in terms of bank records detailing Rs 46.89 lakhs to be the total amount of sacrifice containing interest component of Rs 2.14 lakhs and principal sum of Rs 44.75 lakhs in account number 602520110000219 of A□ for compromise approved at Rs 207.26 lakhs. As per DW2, certified copy of reply and affidavit bearing his signatures, collectively DW2/A (colly) was filed in Criminal M.C 1828/2013 in Hon'ble High Court of Delhi. Ex DW2/A (colly) contains the averment

of Bank of India, respondent therein of confirming and acknowledging of receipt of settlement amount of Rs 208.34 lakhs from A□ and respondent bank having agreed to implement the terms and conditions, as per the mutual and agreed settlement. Ex DW2/B, Inter Office Memorandum dated 22/05/2013 of Bank of India from Zonal Manager to the Chief Manager, Malai Mandir Branch contains the terms and conditions of afore elicited settlement inter alia including withdrawal of suit/proceedings initiated against the borrowers/guarantors; bank not to pursue the complaint filed by the bank with the CBI and provide due cooperation to the borrowers in quashing of complaint and for not RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 71/94 CBI vs Vivek Sinha & Ors.

initiating any further action/complaint/claim (civil or criminal), legal or otherwise against borrowers in respect of present dispute besides which of having informed CBI in writing of the subject settlement, as per extant guidelines. It is proved on record that before filing of complaint, during investigation of this matter the complainant Bank of India was at loss in consequence of the facilities granted to borrowers, elicited in earlier part of judgment and only in year 2013 the settlement in form of terms and conditions as laid in Ex DW2/B could be arrived at and further in such settlement the bank had to sacrifice Rs 46.89 lakhs of the public money, due to the elicited deeds of the arraigned accused persons and the ultimate loss was of public exchequer.

63. In the case of Smt Rumi Dhar (supra), it was held that if in connection with obtaining loan, criminal offences committed by persons accused thereof, including officers of bank, criminal proceedings would also indisputably be maintainable and when a settlement is arrived at by and between creditor (bank) and debtor (accused), the offence committed as such does not come to an end since the judgment of Tribunal in civil proceedings and that to when it is rendered on the basis of settlement entered into between the parties, would not be of much relevance in a criminal proceeding having regard to provisions contained in Section 43 of Evidence Act, as judgment in civil proceedings will be admissible in evidence only for a limited purpose. It was also held that, infact, the offence alleged against the accused, being an offence against society and RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 72/94 CBI vs Vivek Sinha & Ors.

the allegations contained in the FIR having been investigated by CBI, the bank could not have entered into any settlement at all whereas CBI had not filed any application for withdrawal of the case and in the matter therein not only charge□sheet had been filed but charges had also been framed.

64. In this matter the arraigned accused persons were charged inter alia with offence under Section 420 of IPC read with Section 120B IPC, as is detailed in para 7 of this judgment, and not simplicitor with offence under Section 420 of IPC. Sub□section (2) of Section 320 of The Code of Criminal Procedure, 1973 mandates the pre□requisite of the permission of the Court, before which any prosecution for such offence is pending, for the compounding of said offence, as is detailed in table therein. In this case no application was moved by anyone, including A□ and complainant/aggrieved bank seeking permission to compound the matter in accordance with sub□section (2) of Section 320 of The Code of Criminal Procedure, 1973. In the fact of the matter, it cannot be said that the offences, for which A□ as well as A□5 and A□6 companies were charged and faced trial, including offence under Section 420 of IPC read with Section 120B IPC, could be deemed to be compounded.

65. Elicited facts and circumstances relied upon and proved by prosecution on record as detailed in this judgment, are incriminating as well as of conclusive nature and when these are put together, they lead to RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 73/94 CBI vs Vivek Sinha & Ors.

the irresistible conclusion that these circumstances are compatible only with the hypothesis of the guilt of the accused persons for the charges framed and wholly incompatible with their innocence. Arraigned accused cannot take shelter behind latches on part of concerned officers of Investigating Agency for non probing of conspiratorial acts/roles of other bank officials including PW3, PW5, PW7, Auditor and/or other persons for commission of crime in question nor the arraigned accused can put forth these latches as their grounds for acquittal. Elicited conspiratorial acts of criminal misconduct of arraigned public servant accused persons i.e., A□3 and A□4, proved beyond doubt that these accused persons acted dishonestly and fraudulently, in abuse/misuse of their office, in the course of their duties in a clear, well designed and planned criminal conspiracy with arraigned private persons accused i.e., A□1, A□2, A□5 and A□6, as borne out from elicited conspiratorial acts of these private persons accused, for putting Bank of India to wrongful loss to the tune of Rs 2,59,19,132/22p, as is also borne out of the statements of accounts Ex PW2/P (colly) (D□39), Ex PW2/Q (colly) (D□40), Ex PW2/R (colly) (D□41), Ex PW2/S (colly) (D□42), Ex PW2/T (colly) (D□43), Ex PW2/U (colly) (D□44) and Ex PW2/V (colly) (D□45), proved on record, whose details are embodied in the table in para 1. Corresponding wrongful gains were caused to others including A□5, A□6 companies and their respective Directors including A□1, A□2.

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66. The prosecution has been successful in proving its case against all the arraigned accused persons in respect of the charges framed, beyond reasonable doubt. For offences [1] under Section 120B IPC read with Section 420 IPC and Section 13(1)(d) read with Section 13 (2) of The Prevention of Corruption Act, 1988 and [2] under Section 420 IPC read with Section 120B of IPC; all accused persons i.e., Vivek Sinha (A□1); Ajit R. Kyal (A□2); A.K Chaturvedi (A□3); Kamaljeet Singh (A□4); M/s Esoft Informatics Private Limited (A□5) and M/s Nexus Remedies Private Limited (A□6) are held guilty and convicted accordingly. Also for offence under Section 13(1)(d) read with Section 13(2) of The Prevention of Corruption Act 1988, the accused persons i.e., A.K Chaturvedi (A□3) and Kamaljeet Singh (A□4) are held guilty and convicted accordingly.

67. Let the accused persons be heard on point of sentence.

(Gurvinder Pal Singh) Announced in open court Special Judge (PC Act)(CBI)□6, today i.e., 19/01/2015 Patiala House Court, New Delhi Deepika RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 75/94 CBI vs Vivek Sinha & Ors.

IN THE COURT OF SH. GURVINDER PAL SINGH, SPECIAL JUDGE (PC ACT) (CBI)□6, PATIALA HOUSE COURT, NEW DELHI RC No. 219/2011/E0003/EO□/New Delhi U/s 120B IPC r/w Section 420 IPC & 13 (2) r/w Section 13(1)(d) of PC Act, 1988 CBI vs. Vivek Sinha & Others Unique ID No.: 02403R0026572012 ORDER ON SENTENCE In re: Central Bureau of Investigation vs

1. Ajit R. Kyal (A²) S/o Sh Ram Prakash Kyal R/o D.P. Lane, Bakharabad, Cuttack, Odisha.
2. A.K Chaturvedi (A³) S/o Late Sh. Madhusudan Chaturvedi R/o H. No. 1213, Sector⁹, Gurgaon, Haryana Previously resident of 589, 2nd Floor, Sector⁵, Part¹, Gurgaon, Haryana
3. Kamaljeet Singh (A⁴) S/o Late Sh Harnam Singh R/o B¹/211, Paschim Vihar, New Delhi⁶⁰ Having convicted (A) all accused A¹ to A⁶ for offences [1] under Section 120B IPC read with Section 420 IPC and Section 13(1)

(d) read with Section 13 (2) of The Prevention of Corruption Act, 1988 and [2] under Section 420 IPC read with Section 120B of IPC; (B) A³ and A⁴ for offence under Section 13(1)(d) read with Section 13(2) of The Prevention of Corruption Act 1988; I have heard the learned Substitute PP for CBI, the learned Defence Counsels for A², A³, RC No. 219/2011/E0003/EO¹/New Delhi CC No. 03/12 76/94 CBI vs Vivek Sinha & Ors.

A⁴ and the convicts namely Ajit R. Kyal (A²); A.K Chaturvedi (A³) and Kamaljeet Singh (A⁴) and have perused the record. Since despite directions, vide orders dated 01/12/2014 and 15/01/2015, accused Vivek Sinha (A¹) had not appeared for himself and M/s Esoft Informatics Private Limited (A⁵) and M/s Nexus Remedies Private Limited (A⁶), companies on 15/01/2015 and 19/01/2015 respectively, the dates fixed for pronouncement of judgment, the exemption applications moved for A¹ by his Counsel were found unjustified, lacking merits and not maintainable, were accordingly dismissed on 15/01/2015 and 19/01/2015 respectively. On 15/01/2015, Ld. Counsel for A¹ was directed to convey to A¹ to positively appear for himself, A⁵ and A⁶ companies, failing which this Court shall be left with no option but to pronounce the judgment in terms of Proviso of sub section (6) of Section 353 of The Code of Criminal Procedure, 1973 in order to avoid undue delay in disposal of this case. Observing the conduct of A¹ regarding non appearance on the dates fixed for pronouncement of judgment in this matter, including the dilatory tactics adopted by him; in terms of proviso to sub section (6) of Section 353 of The Code of Criminal Procedure 1973, its interpretation and ratio¹decisis of Avik Kumar Ghosh and Ors (supra), in order to avoid undue delay in the disposal of the case and also to comply in letter and spirit, the Order of Hon'ble High Court, in respect of my transfer from this Court w.e.f., 24/01/2015, referred in order of this Court dated 19/01/2015, I needed to pronounce the judgment notwithstanding the absence of A¹ for himself and the RC No. 219/2011/E0003/EO¹/New Delhi CC No. 03/12 77/94 CBI vs Vivek Sinha & Ors.

companies A⁵ and A⁶, whom he represented during course of trial as Managing Director; and I proceeded accordingly. Judgment of this matter was pronounced on 19/01/2015 accordingly notwithstanding the absence of A¹ for himself and the companies A⁵ and A⁶. NBWs of A¹ were issued on 19/01/2015 through Ministry of External Affairs (MEA) through SP concerned for his production in custody on 31/01/2015 to submit about quantum of sentence for himself and A⁵, A⁶ companies and consequently hear such sentences.

2. Sh. K.P Singh, learned Substitute Public Prosecutor for CBI has prayed for stern and maximum prison term for convicts A², A³ and A⁴ on the ground that corruption has reached phenomenal

level and interests of society demanded award of deterrent sentence, exemplary punishment to convicts which would serve as eye opener for convicts as well as for others.

3. Sh Arunav Patnaik, Ld. Counsel for A² submitted that the role of A² was peripheral in the business transactions in question, conduct of A² during trial was good, A² had clean antecedents and A² was not facing any other civil or criminal case, A² was main bread earner in his family and was also under duty to take care of his mentally unfit father and prayed for lenient view for him. A² submitted that he is 9th class pass, of age 33 years, married, having 54 years old mentally unfit father, 50 years old mother, housewife and a minor son of age 4 RC No. 219/2011/E0003/EO¹/New Delhi CC No. 03/12 78/94 CBI vs Vivek Sinha & Ors.

years to support being their sole bread earner as his 27 years old younger unmarried brother had recently started assisting him in his proprietorship pharmaceutical wholesale business in Cuttack, Odisha under the name and style of Uma Enterprises while earlier he was doing the business in the name and style of Jian Pharmaceuticals. A² also submitted that he is victim of circumstances and has prayed for lenient view.

4. Sh V.N Chaturvedi, Ld. Counsel for A³ submitted that excepting for this case, A³ had unblemished service record, A³ had even received awards in his service tenure, infact had worked for benefit of the bank to increase the business of the bank and did not commit any act for accrual of any loss to the bank but being victim of circumstances had been dismissed from service in December 2009 by Bank of India and even not given retiral benefits. A³ submitted that his date of birth is 02/02/1950, he is about to attain age of 65 years on 02/02/2015, was Post Graduate in Science, had joined Bank of India on 11/04/1973 and had 59 years aged housewife suffering from thyroid, a married son of age 39 years employed in a private company as Vice President in Noida, a grand daughter of 6 years age, a grand son of 3 years age while his daughter in law is engaged in private service. A³ also submitted that he is diabetic, his health deteriorated since long and has prayed for lenient view. Ld. Counsel for A³ relied upon the case of Gulab Dass & Ors. vs State of M.P, 2012 Cri.L.J 667, praying for lenient view, submitting the bank had received the settled sum from A¹ in the course of trial.

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5. Sh Tanveer Ahmed Mir, Ld. Counsel for A⁴ argued that A⁴ had never been authorized to sanction any term loan, cash credit facility, facility for purchase of any cheques nor had done so in the fact of the matter while the sanctioning authority for grant of term loan, cash credit facility, facility for purchase of cheques in question had to apply its independent mind for grant of such sanctions/purchase of cheques irrespective of any recommendations of A⁴ in favour or otherwise. Also was submitted that A⁴ had been dismissed from service, during course of trial the money stands recovered on settlement of claim with A¹ and no grievance is left with the bank and there was no longer any wrongful loss. Also was submitted that the entire money in the transactions of bank cannot be termed as public money in terms of law laid in the case of G. Udayan Dravid & Ors vs State & Ors, MANU/DE/9739/2006, wherein the Hon'ble High Court had even quashed the FIR and the proceedings therein consequent upon settlement arrived at between the borrowers and the

complainant ICICI Bank Limited. A□4 submitted that he is of 61 years of age, had joined Bank of India on 29/01/1980, was M.A, B. Ed., had wife who is about to be 60 years of age and working as Clerk in State Bank of India besides whom he had two daughters amongst whom elder daughter of age 31 years was married six years ago and was well settled in her matrimonial home whereas his younger daughter of age 28 years was employed in TCS as System Manager, he (A□4) was living in rented accommodation, had otherwise unblemished record in service. A□4 also submitted that prior to his tenure in Bank of RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 80/94 CBI vs Vivek Sinha & Ors.

India as Manager (Credit), he had never earlier done work in the Credit Department and infact he had done his work in the tenure of his service, as per instructions of his superiors. A□4 also submitted that he had clean antecedents, no record of any civil or criminal litigation, was victim of circumstances and prayed for lenient view.

6. In the case of G. Udayan Dravid (supra), it was held by High Court of Delhi that the ICICI Bank Limited was a limited banking company working under the guidelines of the Reserve Bank of India like any other private bank whereas the entire money collected through the transactions in the bank cannot be termed as public money. Therein the parties had compromised, offence under Section 406 IPC was not made out and at best the offence made out was the one punishable under Section 420 IPC, which was a compoundable offence for which the bank was ready and willing to compound and had compromised/settled the dispute with the petitioners. On afore elicited fact of said matter, the FIR and the proceedings pursuant thereto were quashed.

7. In the case of Gulab Dass (supra), it was held by the Supreme Court that the offence which is not compoundable under Section 320 of The Code of Criminal Procedure cannot be allowed to be compounded even if there is any settlement between complainant and accused but if settlement is arrived between parties, it can be taken into consideration for determining quantum of sentence.

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8. In the case of CBI vs Jagjit Singh, (2013) 10 SCC 686, it was inter alia held by Supreme Court that "The offences when committed in relation with Banking activities including offences under Sections 420/471 IPC have harmful effect on the public and threaten the well being of the society. These offences fall under the category of offences involving moral turpitude committed by public servants while working in that capacity. Prima facie, one may state that the bank as the victim in such cases but, in fact, the society in general, including customers of the Bank is the sufferer."

9. In the case of State of Maharashtra through CBI vs. Vikram Anantrai Doshi & Ors, 2014 SCC Online SC 745, it was inter alia held by Supreme Court that "Availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly expositis fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the chargesheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case

having overwhelmingly and predominantly of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skillfully contrived, if the allegations are true, has a serious consequence. A crime of this nature, in our view, would definitely fall in the category of offences which travel far ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its own seriousness, for it creates a concavity in the solemnity that is expected in financial transactions. It is not such a case where one can pay the amount and obtain a "no due certificate" and enjoy the benefit of quashing of the criminal RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 82/94 CBI vs Vivek Sinha & Ors.

proceeding on the hypostasis that nothing more remains to be done."

10. A□ had preferred petition under Section 482 of The Code of Criminal Procedure, 1973 bearing number Criminal M.C No 1828/2013 and Criminal M.A 5652/2013 which was dismissed on 11/11/2013 by Hon'ble Mrs Justice Sunita Gupta, holding that it cannot be said that it would be unfair or contrary to the interest of justice to continue with the criminal proceeding and continuation of the criminal proceedings would tantamount to abuse of process of law. Also was held that, as observed in case of Gian Singh vs State of Punjab & Anr, (2012) 10 SCC 303 by Supreme Court, any compromise between the victim and the offender in relation to offences under special statute like Prevention of Corruption Act cannot provide for any basis for quashing criminal proceedings involving such offences. In the case of Gian Singh (supra), it was inter alia held that any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences.

11. In the case of Smt Rumi Dhar vs State of West Bengal, AIR 2009 SC 2195, it was held that if in connection with obtaining loan, criminal offences committed by persons accused thereof, including RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 83/94 CBI vs Vivek Sinha & Ors.

officers of bank, criminal proceedings would also indisputably be maintainable and when a settlement is arrived at by and between creditor (bank) and debtor (accused), the offence committed as such does not come to an end since the judgment of Tribunal in civil proceedings and that to when it is rendered on the basis of settlement entered into between the parties, would not be of much relevance in a criminal proceeding having regard to provisions contained in Section 43 of Evidence Act, as judgment in civil proceedings will be admissible in evidence only for a limited purpose. It was also held that, infact, the offence alleged against the accused, being an offence against society and the allegations contained in the FIR having been investigated by CBI, the bank could not have entered into any settlement at all whereas CBI had not filed any application for withdrawal of the case and in the matter therein not only charge□sheet had been filed but charges had also been framed.

12. A□ had the knowledge that the account of M/s Jian Pharmaceuticals bearing number 302001010033098 [as per statement Ex PW6/F (part of D□78)] at no point of time in year 2009

had any credit balance exceeding Rs 50,000/□ Yet, cheques (1) Ex PW2/C; (2) Ex PW2/D; (3) Ex PW2/F; (4) bearing no. 168679 for Rs 33 lakhs; (5) bearing no. 168680 for Rs 38 lakhs; were issued by A□2 and these all cheques were so presented by A□1 for purchase before Bank of India, Malai Mandir Branch, New Delhi with or without applications and such RC No. 219/2011/E0003/EO□1/New Delhi CC No. 03/12 84/94 CBI vs Vivek Sinha & Ors.

purchase requests were acceded by A□3 in complicity with A□4. Judgment contains the elicited manner in which the worth of borrowers and guarantors were assessed by A□4 in grant of (1) cash credit limit of Rs 25 lakhs vide proposal Ex PW1/P [D□6(1)]; (2) cash credit limit of Rs 20 lakhs and term loan of Rs 30 lakhs for purchase of computers vide proposal Ex PW1/B [D□7(1)]; sanction of said cash credit limits and term loan, as was done by A□3, in the absence of any accompanying copies of title documents of immovable as well as movable properties/assets of borrowers, guarantors, copies of past final accounts, past profit and loss accounts of borrowers, which in totality reflected the complicity of A□3 and A□4 for the offences charged, borne out from conduct of these accused persons and deduced from the circumstances of the case, elicited above. As per practice, borrower was required to lodge application for discounting/purchase of cheques and the same was required to be processed. The related elicited debit/credit vouchers of the cheques in question purchased were bearing initials of A□4 and sanction for purchase of cheques in question was accorded by A□3 on the applications for purchase of cheques, elicited above; all which acts were done by A□3, a Scale IV Officer beyond his delegated powers with utter disregard to delegation of powers for Indian Branches of Bank of India contained in the Master Circular Ex PW7A/A (colly) (D□68) and these also proved of the complicity of A□3 and A□4 for being party in the conspiracy for discounting/purchase of these cheques, without there being any sanctioned limit in the account and beyond discretionary RC No. 219/2011/E0003/EO□1/New Delhi CC No. 03/12 85/94 CBI vs Vivek Sinha & Ors.

powers of A□3. Conspiratorial acts of criminal misconduct of arraigned public servants, the then bank officers, convicts i.e., Chief Manager A□3 and Manager (Credit) A□4, as elicited in the judgment, proved beyond doubt that these convicts acted dishonestly and fraudulently, in abuse/misuse of their office, in the course of their duties in a clear, well designed and planned criminal conspiracy with arraigned private persons convicts i.e., A□1, A□2, A□5 and A□6, as borne out from elicited conspiratorial acts of these private person convicts, as elicited in the judgment, for putting Bank of India, the nationalized bank, to wrongful loss to the tune of Rs 2,59,19,132/22p, as is also borne out of the statements of accounts Ex PW2/P (colly) (D□39), Ex PW2/Q (colly) (D□

40), Ex PW2/R (colly) (D□41), Ex PW2/S (colly) (D□42), Ex PW2/T (colly) (D□43), Ex PW2/U (colly) (D□44) and Ex PW2/V (colly) (D□45) proved on record, whose details are embodied in the table in para 1 of the judgment. Corresponding wrongful gains were caused to others including A□5, A□6 companies and their respective Directors including A□1, A□2. It is also proved on record that before filing of complaint, also later during investigation of this matter, the complainant Bank of India was at afore elicited loss in consequence of the facilities granted to borrowers, elicited in the judgment and only in year 2013, the settlement in form of terms and conditions as laid in Ex DW2/B could be arrived at between the bank and A□1; further in such settlement, Bank of India, the nationalized bank, had to sacrifice Rs 46.89 lakhs of the public money, due to the elicited deeds of

the arraigned accused persons and the RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 86/94 CBI vs Vivek Sinha & Ors.

ultimate loss was of public exchequer.

13. The benefit of provisions of Probation of Offenders Act cannot be granted to the accused found guilty for the offence under the Prevention of Corruption Act. It is so held by the Hon'ble Supreme Court in the case of "N. Bhargavan Pillai vs. State of Kerala", AIR 2004 SC 2317 and also by Hon'ble Punjab and Haryana High Court in the cases of (1) Gurbachan Singh v. State of Punjab, 1980 Cri.L.J. 417; (2) Gurdial Singh v. State of Punjab, 2003 Cri.L.J. 3312. As such this contention of the convicts cannot be accepted.

14. In the case of "A.Wati A.O. vs. State of Manipur," 1996 Cri. L. J. 403 (SC), it was held that "The fact that the appellant is a senior IAS Officer really requires a serious view of the matter to be taken, instead of soft dealing. The fact that he has a number of dependents and is going to lose his job are irrelevant considerations in as much as in almost every case a person found guilty would have dependents and if he be a public servant, he would lose his job. The present being the first offence is also an irrelevant consideration. Though the delay has some relevance, but as in cases of the present nature, investigation itself takes time and then the trial is prolonged, because of the type of evidence to be adduced and number of the witnesses to be examined, we do not think that the fact of delay of about five years could have been a ground to award the sentence of imprisonment till rising of the Court, which really makes a mockery of the whole exercise."

15. In view of the law laid in the case of A. Wati A.O. (supra), RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 87/94 CBI vs Vivek Sinha & Ors.

in the cases of corruption the age, family, responsibilities, previous records of convict and the loss of job cannot be considered as mitigating circumstances in sentencing of the convict.

16. In the case of State of Andhra Pradesh vs V.Vasudeva Rao, 2004 Cri.LJ 620: MANU/SC/0916/2003 it was inter alia held that "30. When corruption was sought to be eliminated from the polity all possible stringent measures are to be adopted within the bounds of law. One such measure is to provide condign punishment. Parliament measured the parameters for such condign punishment and in that process wanted to fix a minimum sentence of imprisonment for giving deterrent impact on other public servants who are prone to corrupt deals. That was precisely the reason why the sentence was fixed as 7 years and directed that even if the said period of imprisonment need not be given the sentence shall not be less than the imprisonment for one year. Such a legislative insistence is reflection of Parliament's resolve to meet corruption cases with a very strong hand and to give signals of deterrence as the most pivotal feature of sentencing of corrupt public servants. All public servants were warned through such a legislative measure that corrupt public servants have to face very serious consequences. If on the other hand any public servant is given the impression that if he succeeds in protracting the proceedings that would help him to have the advantage of getting a very light sentence even if the case ends in conviction, we are afraid its fallout would afford incentive to public servants who are susceptible to corruption to indulge in such

nefarious practices with immunity. Increasing the fine after reducing the imprisonment to a nominal period can also defeat the purpose as the corrupt public servant could easily raise the fine amount through the same means."

17. In the case of State of M.P. vs Shambhu Dayal Nagar MANU/SC/8623/2006 : (2006) 8 SCC 693 it was held that:

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"32. It is difficult to accept the prayer of the Respondent that a lenient view is taken in this case. The corruption by public servants has become a gigantic problem. It has spread everywhere. No facet of public activity has been left unaffected by the stink of corruption. It has deep and pervasive impact on the functioning of the entire country. Large-scale corruption retards the nation building activities and everyone has to suffer on that count. As has been aptly observed in Swatantar Singh v. State of Haryana, MANU/SC/0510/1997: (1997) 4 SCC 14, corruption is corroding, like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and demoralising the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke."

18. In the case of A.B. Bhaskara Rao vs Inspector of Police, CBI, Visakhapatnam, MANU/SC/1110/2011 : (2011) 10 SCC 259 it was inter alia held that in a case of corruption by public servant merely because the delinquent lost his job due to conviction under the Prevention of Corruption Act, may not be a mitigating circumstance for reduction of sentence, particularly, when the Statute prescribes minimum sentence.

19. In the case of Narendra Champaklal Trivedi vs State of Gujarat MANU/SC/0484/2012 :(2012)7 SCC 80 it was inter alia held that "It should be paramountly borne in mind that corruption at any RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 89/94 CBI vs Vivek Sinha & Ors.

level does not deserve either sympathy or leniency. In fact, reduction of the sentence would be adding a premium. The law does not so countenance and, rightly so, because corruption corrodes the spine of a nation and in the ultimate eventuality makes the economy sterile."

20. Corruption is considered to be one of the major roadblocks in India's journey from a developing to a developed economy. There is an urgent need to have a comprehensive framework that would help curtail corruption. Rigid bureaucracy, complex laws and long drawn processes of the legal system deters people from taking legal recourse against corrupt public servants.

21. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book nor suitably punished. In the fact of the matter the economic offences were committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. Also, disregard for the interests of the Community was manifest in the acts of convicts, who were also unmindful of the damage done to the society and nation.

22. Keeping in mind the gamut of facts and circumstances, I do not find any reason that any of convicts deserve either sympathy or leniency. Cry of society is that such convicts are to be suitably
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sentenced.

23. Be that as it may, I cannot be oblivious of the fact that the convicts have no bad antecedents and have already undergone agony of trial for more than 21/2 years as well. Keeping in mind overall facts and circumstances of the case, the convicts Ajit R. Kyal (A□2), A.K Chaturvedi (A□3) and Kamaljeet Singh (A□4) are sentenced as under:

(A□2) is sentenced to:

Ajit R. Kyal

(i) Rigorous Imprisonment for one year for offence under Section 120 B of IPC r/w Section 420 of IPC r/w Section 13 (1)(d) r/w Section 13 (2) of Prevention of Corruption Act, 1988 and fine of Rs 2 lakhs in default thereof he would undergo Simple Imprisonment for a further period of six months;

(ii) Rigorous Imprisonment for four years for offence under Section 420 of IPC r/w Section 120B of IPC and fine of Rs 4 lakhs in default thereof he would undergo Simple Imprisonment for a further period of one year.

A.K Chaturvedi (A□3) is sentenced to:

(i) Rigorous Imprisonment for one year for offence under Section 120 B of IPC r/w Section 420 of IPC r/w RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 91/94 CBI vs Vivek Sinha & Ors.

Section 13 (1)(d) r/w Section 13 (2) of Prevention of Corruption Act, 1988 and fine of Rs 1 lakh in default thereof he would undergo Simple Imprisonment for a further period of six months;

(ii) Rigorous Imprisonment for four years for offence under Section 420 of IPC r/w Section 120B of IPC and fine of Rs 2.5 lakhs in default thereof he would undergo Simple Imprisonment for a further period of one year;

(iii) Rigorous Imprisonment for four years for offence under Section 13 (1)(d) r/w Section 13 (2) of Prevention of Corruption Act, 1988 and fine of Rs. 2.5 lakhs in default thereof he would undergo Simple Imprisonment for a further period of one year.

Kamaljeet Singh (A□4) is sentenced to:

(i) Rigorous Imprisonment for one year for offence under Section 120 B of IPC r/w Section 420 of IPC r/w Section 13 (1)(d) r/w Section 13 (2) of Prevention of Corruption Act, 1988 and fine of Rs 1 lakh in default thereof he would undergo Simple Imprisonment for a further period of six months;

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(ii) Rigorous Imprisonment for four years for offence under Section 420 of IPC r/w Section 120B of IPC and fine of Rs 2.5 lakhs in default thereof he would undergo Simple Imprisonment for a further period of one year;

(iii) Rigorous Imprisonment for four years for offence under Section 13 (1)(d) r/w Section 13 (2) of Prevention of Corruption Act, 1988 and fine of Rs. 2.5 lakhs in default thereof he would undergo Simple Imprisonment for a further period of one year.

24. For convicts A□2, A□3 and A□4 their respective sentences of Rigorous Imprisonment shall run concurrently while their respective sentences of Simple Imprisonment in default of payment of fine shall run consecutively.

25. The convicts A□2, A□3 and A□4 were not arrested in course of investigation and were on bail since appearance, on being summoned and during trial. The convicts A□2, A□3 and A□4 have been sent to jail on 19/01/2015 after the judgment of conviction in this case. Needless to say, convicts A□2, A□3 and A□4 would be entitled to benefit of Section 428 Cr.P.C.

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26. The fine imposed on the aforesaid convicts shall be payable to Bank of India, Malai Mandir Branch, New Delhi as compensation for the loss suffered which was caused by the offences inter alia committed by the sentenced convicts. On deposit/recovery of such sum, it shall be so payable to Bank of India, Malai Mandir Branch, New Delhi after expiry of period of appeal or decision of appeal which ever is later, in terms of Section 357 of The Code of Criminal Procedure 1973.

27. A copy of judgment and order on sentence be given to the convicts A□2, A□3 and A□4 free of cost.

28. Let the convicts A□2, A□3 and A□4 be sent to jail under appropriate warrants for which the Reader is directed to do needful.

29. The convicts A□2, A□3 and A□4 have also been made aware about the fact that they have right to file appeal.

30. Ahlmad is directed to page and book□mark the file forthwith so as to enable digitization of the entire record.

(Gurvinder Pal Singh) Announced in open court Special Judge (PC Act)(CBI)□6, today i.e., 21/01/2015 Patiala House Court, New Delhi Deepika RC No. 219/2011/E0003/EO□/New Delhi CC No. 03/12 94/94