(2015) 04 KAR CK 0150

In the Karnataka High Court

Case No : Criminal Appeal Nos. 33 and 48 of 2007

Ajay K. Mehta and Others — APPELLANT

Vs

Central Bureau of Investigation — RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120b, 120-B, 419, 420, 468
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(1)d, 13(2)

Citation : (2015) 3 AKR 612

Hon'ble Judges : Budihal R.B., J

Bench : Single Bench

Advocate : G. Jairaj, for the Appellant; P.M. Nawaz, S.P.P., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Budihal R.B., J.—Since these two appeals are arising out of same judgment passed by the Trial Court and since common questions of law and facts are involved in both the cases, they have been taken together to dispose of them by common judgment.

2. Crl. A. No. 48/2007 is preferred by accused No. 1 and Crl. A. No. 33/2007 is preferred by accused Nos. 2 to 4, being aggrieved by the judgment and sentence dated 30.12.2006 passed by the XXI Addl. City Civil and Sessions Judge and Spl. Judge for CBI Cases, Bangalore (CCC-4) in Spl. Criminal Case No. 131/1997.

3. Brief facts of the respondent-prosecution case before the Trial Court is that accused No. 1 along with accused Nos. 2, 3 and 4 were prosecuted for the offences punishable under Section 120B read with Sections 419, 420, 468 and 471 of IPC and accused No. 1 being a public servant, was further charged for the commission of offence of criminal misconduct punishable under Sections 13(2) and 13(1)(d) of Prevention of Corruption Act, 1988.

4. As per the complaint averments, a credible information was received at CBI, Bangalore Branch to the effect that during the year 1994-95, Sri N.E. Jadhav (accused No. 1) while functioning as a public servant in the capacity of Bank Manager, Gandhi Nagar branch of Bank of Maharashtra entered into criminal conspiracy with Sri Ajay Mehta (Accused No. 2) and Smt Achala Mehta (accused No. 3) and other unknown persons to cheat the Bank of Maharashtra by mis-utilizing Indian Master Card of Bank of India having agreement with Bank of Maharashtra. In furtherance of said conspiracy, accused No. 1 committed grave misconduct by allowing accused Nos. 2 and 3 to open Savings Bank Account No. 5594 with the Bank of Maharashtra, Gandhi Nagar branch without any introduction by any account holder of the said branch. Accused No. 1 had also allowed accused Nos. 2 and 3 to open two fictitious account Nos. 5748 and 5750 in the names of Sri Rakesh Javeri and Sri Rajesh Mehta, respectively. Immediately, applications for credit card were submitted by accused No. 2 in the name of Sri Rakesh Javeri and Sri Rajesh Mehata. Without the presence of account holders, accused No. 1 dishonestly and fraudulently accepted the applications and forwarded to the Regional Manager, Bank of Maharashtra. The applications were rejected by the Regional Manager as the minimum account operating period of six months was not completed by the account holders. Accused No. 1 further made strong recommendations and sent the applications again to the Regional Manager, who on his recommendation forwarded it to the credit card department, Bombay, for issuing the credit cards in favour of the applicants. The Master Card was approved by the Credit Card Cell, Bombay and accused Nos. 2 and 3 collected these credit cards from accused No. 1 by producing some authorization letter issued by the applicants. Accused Nos. 2 and 3 have further used these cards for heavy purchase of silk sarees and for booking of air tickets issued in the name of Sri Rakesh Javeri and Sri Rajesh Mehta, respectively, between the short period of January 1995 to April 1995. Later, accused No. 2 surrendered one card and the other card was not listed and picked up. Subsequent to the issue of credit cards, both the card holders accused Nos. 2 and 3 have withdrawn the balance amount of Rs. 90,000/- and 1,00,000 from their accounts and accused No. 1 dishonestly permitted them to do so. Thereby, the accused Nos. 1 to 4 caused wrongful loss to the tune of Rs. 4.42 lakhs to the Bank of Maharashtra and corresponding wrongful gain to themselves. On the basis of the said complaint, FIR was registered against the accused persons for the above said offences. After completing the investigation, Investigating Officer has filed the charge sheet against accused Nos. 1 to 3 and also against accused No. 4/Umesh Pramod chandra Shah.

5. After conclusion of the trial and after considering the oral and documentary evidence produced before it, the Trial Court convicted accused No. 1 for the offence punishable under Section 120-B read with Sections 419, 420, 468 and 471 of IPC and he is also convicted for the offence punishable under Sections 13(2) and 13(1)d of Prevention of Corruption Act, 1988. Accused Nos. 2 to 4 have been convicted for the offence punishable under Sections 120-B read with

Section 419, 420, 468 and 471 of IPC.

6. Being aggrieved by the judgment and order of conviction and challenging the correctness and legality of the judgment and order of the Trial Court, the appellants have preferred the appeals on the grounds urged in their respective appeal memorandums.

7. Heard the arguments of the learned counsel appearing for the appellant in Crl. A. No. 48/2007. Learned counsel has submitted that there is no material to show that accused No. 1 had conspired with other accused persons to commit the offences as alleged by the prosecution. Pursuing the evidence of prosecution witnesses and the documents produced in the case, accused No. 1 as a Branch Manager, has recommended for issue of Master Card to Sri Rakesh Javeri and Sri Rajesh Mehta which recommendation has been accepted by the Regional Manager. There is no illegality committed by accused No. 1 in recommending for the issue of Master Cards. In taking such decision for sending his recommendation, there may be error of judgment, which cannot be a ground to implicate accused No. 1 in the case. There is no irregularity committed by accused No. 1 in opening accounts of accused Nos. 2 and 3. He has followed the procedures in opening their account. He has also submitted that accused No. 1 recommending for issue of credit card facilities to accused Nos. 2 and 3 is not unusual nor it is in violation of any norms. No prosecution witnesses have deposed that accused No. 1 did the act alleged for his personal gain, and there is no evidence, which attributes criminality to accused No. 1. The evidence of PW-11 shows that only after following the procedure, accused No. 1 has recommended for issue of credit cards and hence, in doing the said act there may be procedural irregularity but certainly there is no illegality committed by accuse No. 1. He has further submitted that, if the deposition of prosecution witnesses is examined certainly it shows that prosecution has not made out a case against any of the accused persons in committing the alleged offences.

8. The Learned counsel has further submitted that Bank Managers were given targets, and to achieve the said targets there may be some error in the decision taken by accused No. 1, but there is no offence committed by him. Learned counsel has drew the attention of this Court to paragraph No. 4 of evidence of PW-11 so also paragraph Nos. 5 and 6 at page No. 98 of paper book. Learned counsel has submitted that the evidence of PW-11 clearly shows that before making his recommendation, PW-11 was satisfied. Learned counsel has also drew the attention of this Court to the evidence of PW-12/Office Assistant, and to para 3 and 12 of evidence of PW-14. Learned counsel has submitted that no witnesses have deposed before the Court that accused No. 1 has done the act with dishonest intention. The Trial Court wrongly appreciated oral as well as documentary evidence and wrongly convicted the accused. Hence, submitted to allow the appeal and to set-aside the judgment and order under appeal by acquitting the accused No. 1. In support of his arguments learned counsel appearing for the Accused No. 1 has relied upon the following decisions:

"i. State (Delhi Admn.) Vs. N.S. Giani and others, AIR 1990 SC 1190 : (1990) CriLJ 1207 : (1990) 3 Crimes 254 : (1990) 2 JT 76 : (1990) 3 SCC 325

ii. M. Durga Prasad, Spl. Assistant, Syndicate Bank and Vs. The State of A.P., (2003) 2 ALD(Cri) 545 : (2004) CriLJ 242 "

9. Learned counsel appearing for the appellants in Crl. A. No. 33/2007 during the course of his arguments has submitted that while opening the accounts in the names of R.C. Javeri and Rajesh Mehta, the Branch Manager has seen their photographs, satisfied, and then only he opened the accounts. The allegation of prosecution that accounts are opened in the names of two fictitious persons is baseless. Ex. D-2 and D-3 are in respect of R.C. Javeri and Rajesh Mehta. Accused No. 3 introduced R.C. Javeri and there is no evidence from the side of prosecution against accused No. 3 that she has committed the alleged offences. Learned counsel has submitted that PWs-2 to 10 and 18 are the traders and document Ex. P-53 shows that purchases are only for Rs. 66,000/- and odd. Hence, submitted that there is no material either oral or documentary to show the alleged conspiracy between accused Nos. 1 and 2 to 4 for committing the offences. The Learned Counsel further submitted that as against accused Nos. 2 to 4, there is no material placed by the prosecution to prove the alleged offences. Even then, the Trial Court has wrongly interpreted the oral and documentary evidence and wrongly came to the conclusion that accused Nos. 2 to 4 also committed the offences alleged against them. Hence, he has submitted to allow the appeal and to set aside the judgment and order of conviction.

10. The learned SPP during the course of his arguments has submitted that looking to the additional charge framed in the case, the intention of accused Nos. 2 and 3 to obtain credit cards in the names of fictitious persons itself shows the commission of offence by the accused. He has also submitted that PW-14 is the sanctioning authority, who issued the sanction order Ex. P-64 after perusing the materials and after proper application of mind. He has also submitted the witnesses, from whose shops articles were purchased, were also examined and charge slips were seized from them. The opinion of hand writing expert clearly shows that it is accused Nos. 2 and 3, in collusion with accused No. 1, have obtained the credit cards in the name of fictitious persons. He has also submitted that accused No. 3 initially filed an application to open the account without introducer and no reasons were mentioned by accused No. 1 while opening account of accused No. 3. Ex. D-1 and D 3 are account opening applications and Ex. P-53 and 63 are in the name of fictitious persons stating as R.C. Javeri and Rajesh Mehta for opening of whose account accused No. 3 stood as introducer. Learned counsel has also submitted that address mentioned in Ex. D1 and D2 account opening applications is the address, where accused Nos. 2 and 3 are residing. Learned SPP submitted that persons purchasing the articles have to sign on the charge slips and charge slips seized are signed by accused Nos. 2, 3 and 4. Hence, materials produced in the case by way of oral and documentary evidence coupled with report of handwriting expert and the oral evidence of

PW-20 handwriting expert clearly establishes the involvement of accused in committing the alleged offences. Hence, submitted that Trial Court has taken into consideration, all these aspects and rightly convicted the accused. No illegality has been committed nor there is any perverse or capricious view taken by the Trial Court. Hence, submitted that there is no merit in these appeals and the same may be dismissed.

11. I have perused the oral evidence of P.Ws. 1 to 20, documents at Exs. P.1 to P.142 and the documents at Exs. D.1 to D3.

12. Looking to the evidence of prosecution witnesses, P.W. 1/Byregowda has deposed in his evidence that house No. 362, 2nd C-Cross, 4th Main, 3rd Stage, 3rd Block, Basaveshwaranagar, Bengaluru belongs to him. In the said house, there are two portions, one is ground and the other is first floor. In the first floor, there are two portions. During January, 1994 the back portion of the first floor was given on lease to A2 and A3 through a broker. Lease amount was fixed at Rs. 1,70,000/- for three years. In the month of February 1994, A2 and A3 paid Rs. 1,00,000/- and in the month of March, they paid remaining Rs. 70,000/-. He identified A2 and A3 before the Court. A2 and A3 used to go in the morning and used to return in the evening. After six months of taking the house on lease, A2 and A3 told that they want to go to Bombay and will return after twenty days. After they went to Bombay, they did not return even after six months. Hence, he filed a case for eviction and possession in the court. One Manager of Maharashtra Bank by name Jayakumar used to come to the house of A2 and A3. During investigation, CBI police have shown him account opening form of A1 and A3 along with the photographs and at that time, he identified them. The account opening form of A2 identified by the witness is at Ex. P.1 and of A3 is at Ex. P.2. With the permission of the court, this witness was treated hostile and when cross examined by PP, he denied the suggestion that he has stated before the CBI police that he has seen A1 Sri. N.E. Jadhav, the Manager of Bank of Maharashtra , Gandhinagar visiting often to the residence of A2. He denied the suggestion that he has stated as per Ex. P.3. He does not know that A1 used to visit the house of A2 and A3. In the cross examination by advocate by A1, P.W. 1 has deposed that a bank manager came to him and told that A2 and A3 have cheated the bank and he also told him to return the lease amount of Rs. 1,70,000/- to the bank. He does not remember whether any letter is written to him by the Maharashtra Bank. Through extract of the letter dated 10.5.1995, he confronted to the witness and it is marked as per Ex. D.1. He does not remember whether the original of letter Ex. D.1 was received by him.

13. P.W. 2/Deepak Vardiya deposed in evidence in the examination in chief that till 1999, they were running a silk saree business under the name and style as All Silk at Kamaraj Road, Bengaluru. He was one of the partners and he was looking after the business. He used to accept the credit cards and cheques and cash for having sold the goods. Their firm was a member establishment of ANZ Grindlays Bank and used to accept the credit cards of the said bank. He has seen the

charge slips Exs. P.4 to P.8 and the purchaser of the silk was one Mr. R.C. Javeri. When they accepted the credit cards, the impression were taken manually and the present system of swiping machine was not available. The amount of purchase is mentioned on the charge slip. After taking the impressions manually, they used to take the impression of the customer on the charge slip. The signature of the customer found on the charge slips Exs. P.4 to P.8 are Exs. P.4(a) to P.8(a) respectively. He has seen the charge slip Exs. P.9 and 10. They are in the name of Mehta Rajesh. After submission of the charge slip to the bank, they will issue the cheque and they will receive the cash.

14. P.W. 3/Gnanesh has deposed in his evidence in the examination in chief that since 18 years, he is working as sales man in Karishma Silks and Sarees show room which deals with Silks Fabrics. It is a member establishment of ANZ Grindlays Bank, Andhra Bank, Citi Bank and other banks. If the customer purchases the goods on credit card basis, they will verify the credit cards by enquiring them and thereafter, they will swipe in the charge slip. Earlier charge slips used to swept manually and he used to manually take the impressions on the charge slips. He has seen the charge slips Exs. P.11 and 12 in the name of Mr. R.C. Javeri and the signature of the customer are Exs. p.11(a) and P.12(a). He has seen the charge slips Exs. P.13 to P.17 in the name of Mr. Mehta Rajesh for purchase of the silk. The signature of the said customer are P.13(a) to P.17(a).

15. P.W. 4/Narasimhamurthy has deposed in his evidence that since 1980, he was working as a manager in-charge in Shanthala Silks and Sarees at M.G. Road, Bengaluru dealing with silk sarees and dress materials. Their concern is member establishment of ANZ Grindlays Bank and Citi Bank, Bengaluru. He has seen the charge slips at Exs. P.18 and P.19. Exs. P.18 and P.19 are in the name of Mehta Rajesh, the purchaser. The said customer signatures are Exs. P.18(a) and 19(a). He has seen the charge slips Exs. P.22 to P.24 in the name of the customer R.C. Javeri and the signatures are Ex. P.20(a) to P.24(a).

16. In the cross examination by advocate by A2, A3 and A4. P.W. 4 has deposed that as there was no system in existence at that time to give the photographs of the credit card holders to merchant member as such, they had not received any photographs of the credit card holders in Shanthala Silks and Sarees. They compared the signatures on credit card with that of charge slips where the customer has signed. The account opening form dated 22.10.1984 along with photo of R.C. Javeri is confronted to the witness and for the purpose of identification it was marked as Ex. D.3 before the trial court. Another account opening form dated 22.10.1984 along with photo of Mehta Rajesh was marked as Ex. D.4. He further deposed that the persons'' photo shown in Exs. D3 and D.4 may be the persons who purchased the goods from Shanthala Silks and Sarees by availing the credit card facility but the witness volunteer and depose that now he cannot say whether they are the same person or not due to lapse of time.

17. P.W. 5/Kushal Raj has deposed in his evidence in the examination in chief that since 1991, they are running Pooja Silks at Majestic circle at Bengaluru and

he is one of the partners at the said concern. They are dealing with the pure silk and sarees and they were the member establishment of the Citi Bank. He has seen the charge slips. He has seen the charge slips Exs. P.25 to 29 and the purchaser is one R.S. Mehta. The signatures of the said customer are Exs. P.25(a) to P.29(a). He has seen another charge slips Ex. P.30 in the name of R.C. Javeri, the purchaser and the signature of the purchaser is Ex. P.30(a).

18. P.W. 6/Peethambar Gokuldas has deposed in his evidence in the examination in the chief that since 1973 he is running the silk and saree shop under the name and style of Gokuls at K.G. Road, Bengaluru and he is one of the partners. Their concern was having a member establishment with Citi Bank, Grindlays Bank and Standard Chartered Bank. He has seen the charge slips in the name of Mehta Rajesh as per Exs. P.31 to 38 and they are in the name of Mehta Rajesh, the purchaser. The signature of the said purchaser is Exs. P.31(a) to P.38(a). He has seen the charge slip under Exs. P.39 to P.41 in the name of R.C. Javeri the purchaser of the Silk are as per Ex. P.39(a) to P.41(a).

19. P.W. 7/G.V. Ramanan has deposed in his evidence that since 1974-75, he is working as a cashier in Sitalas, Gupta Market Bengaluru. He used to deal with all varieties of sarees. One Smt. Meenu Vasudev was the proprietrix of the said concern. They will sell the goods either on payment of cash or on credit cards. Their concern is member establishment of all the banks to accept the credit cards. He has seen the charge slips Ex. P.42 in the name of Javeri. The said Javeri signed at two places on Ex. P.42 as per Ex. P.42(a) and (b). He has seen another charge slip in the name of Mehta Rajesh at Ex. P.43 and the signature of the party identified as Ex. P.43 (a) and the another charge slip in the name of Mehta Rajesh is Ex. P.44 and P.44(a) is his signature.

20. P.W. 8/Ramesh Shobharajmal has deposed in his evidence in examination in chief that since 1990, he is working as manager in Roopali Silks and Sarees Textiles. He has seen the charge slips in the name of R.C. Javeri marked as Ex. P.45. In his presence, he has obtained the signature of the customer as per Ex. P.45(a). He has seen another charge slip in the name of Mehta Rajesh marked as per Ex. P.46. The customer has signed in his presence as per Ex. P.46(a).

21. P.W. 9/Suresh Dadlani has deposed in his evidence in the examination in chief that himself and his father are running the business in the name of Roopkala, private firm dealing with textiles including sarees. He has seen the charge slips in the name of R.C. Javeri marked as per Ex. P.47 and the signature of the customer is Ex. P.47(a). He has seen other charge slips under Exs. P.48 to 50 in the name of Mehta Rajesh and the signatures of the customer are Ex. P.48(a) to P.50(a).

22. P.W. 10/Lakshman K. Mehtani has deposed in his evidence in the examination in chief that since 1968, their establishment is dealing in sarees by name Mehtanis. Their establishment is registered for the credit cards. He has seen the charge slip in the name of R.C. Javeri marked as Ex. P.51 and the signature of

the customer is Ex. P.51(a). He has seen another charge slip in the name of Mehta Rajesh marked under Ex. P.52 and the signature of the card holder is Ex. P.52(a).

23. P.W. 11/Manohar Ananth Sardesai, General Manger, Bank of Maharstra has deposed in his evidence that from 1994 to September 1997, he worked as regional manager in Bank of Maharashtra , Bengaluru region, Bengaluru. He knew the accused before the court. The accused was working as Bank Manager of their bank, Gandhinagar Branch. Normally, the branch manager would sign the account opening form authoring for opening of the account. In the absence of Branch Manager, any other officer would sign for the said purpose. He has seen the application form for opening the account in respect of one Smt. Achala Mehta marked as Ex. P.2. The signature of the branch manager is Ex. P.2(a). He has seen the account opening form in respect of Rajesh S. Mehta Ex. D.3. The signature of accused No. 1 on Ex. D.3 is D.3(a). He has seen the specimen signature card in respect of Current Account of one Ajay Mehta marked at Ex. D.1 and the signature as per Ex. D.1 (a). In case of an application for credit card facility, the application of the applicant with recommendation of the branch Manager has to be forwarded to the credit card department of Mumbai. He has seen the application of R.C. Javeri for credit card facility. The said application is Ex. P.53 and it is signed by accused No. 1 as a branch manager. The annexures to Ex. P.53 are Ex. P.53(a) and 53(b). He has seen the recommendations made by the accused as a branch manager as per Ex. P.54 and the signature of accused No. 1 is Ex. P.54(a). Normal period of issuance of credit card after opening of the account is six months. But in case where the parties are well known to the branch manager, it could be less also. He has seen the recommendation of accused No. 1 as a branch manager in respect of R.C. Zaveri marked as per Ex. P.55 and the signature of accused No. 1 is Ex. P.55(a). He has seen the copy of the letter of the regional manager dated 23.11.1994 for observing the account of the applicant for a period of six months for eligibility to have the credit facility. He denied the signature of the R.K.M.D Desai who was officiating as regional manager at that time. The letter is Ex. P.56 and the signature of the said Mr. Desai is Ex. P.56(a). He has seen the letter dated 14.12.1994 written by accused No. 1 to the regional office recommending once again the credit card application of Mr. R.S. Mehta and Mr. R.C. Zaveri. The letter is Ex. P.57 and the signature is Ex. P.57(a). The office note prepared in the regional office for issuance of the credit card in the names of Mr. R.S. Mehta and Mr. R.C. Zaveri is Ex. P.58 and the signature of Prabhu Kumar is Ex. P.58(a). On the basis of the recommendation of the branch manager, he wrote to credit card division for issuance of credit cards in the name of R.S. Mehta and R.C. Zaveri and the said letter is at Ex. P.59 and his signature is Ex. P.59(a). As she had opportunity to see the handwriting, signature and initials of accused No. 1, he has identified signature and initials of accused No. 1 including handwriting.

24. In the cross examination by advocate by accused No. 1, P.W. 11 has deposed that normally the regional manager would see the full signature of branch

manager. There was an opportunity for him to identify the short signature of accused No. 1. The short signature of accused No. 1 found on Exs. P.1 and P.2 were made after the concerned party signed the specimen signatures. That is the requirement and procedure of the bank. He admitted as true that accused No. 3 had opened her account basing her identification on passport and an account held by her in Mumbai in their branch at Mumbai, Andheri branch west. The said procedure had been followed by accused No. 1 for the purpose of opening account in the name of accused No. 3. Accused No. 3 was entitled to introduce another customer for the purpose of opening of an account on account of she holding an account in her name. Accused No. 3 has introduced her husband accused No. 2 for opening an account, she being an existing account holder. In that case, there is no any irregularity. He admitted as true that accused No. 1, after having satisfied had put his signatures for opening of the account on Exhibits P.1 and P.2. He cannot state as to whether accused Nos. 2 and 3 had satisfactory operation of accounts in the branch. He admitted as true that the bank would be given a target for mobilizing the deposits. He admitted as true that only after he was satisfied with the recommendations made by accused No. 1 he had made further recommendations to the regional office for issuance of credit cards. On the materials available, the branch manager was satisfied that there was no mandatory requirement for the completion of period of six months after opening of an account for the eligibility to have the credit card. The recommendation of regional manager is sufficient for issuance of credit cards and they do not access the applicants. If the applicants did not deserve for issuance of credit cards, Regional Manager has an authority to reject the recommendation of the branch manager relating to such applicants. He admitted as true that accounts of Rajesh Mehta and R.C. Javeri were introduced by account holder accused No. 2. The said introduction is in the normal course and it is proper introduction.

25. P.W. 12 B.Y. Patil, Special Assistant of Bank of Maharashtra , has deposed in evidence in chief that he served as a special assistant in Bank of Maharashtra Gandhinagar, Bengaluru, during the period from 1992 to 1997. He saw Exs. D.2 and D.3 and stated that he had not seen the persons whose photographs are affixed to Exs. D.2 and D.3. Exs. P.1 and P.2 are the applications which he has seen and they are of accused Nos. 2 and 3. Accused Nos. 2 and 3 used to come to their branch for their routine transaction.

26. In the cross examination by counsel for accused No. 1, P.W. 12 has deposed that he had his role as a special assistant to assess the application of the customers for opening of the accounts and verify the contents before it finally placed for the signature of the branch manager. When the S.B. accounts in this case were introduced, he was not looking after S.B. Accounts on that particular day as he was allotted to some other works. He initialed on the application for opening of the account in respect of R.C. Javeri for verifying the signature of the introducer. He denied the suggestion that for introducing the account in the branch, he singed in respect of the application of R.C. Javeri. The signature of

the branch manager is not found on Ex. D.2. His initials are found there. In the cross examination by advocate for A2, A3 and 5, he denied the suggestion that R.C. Javeri and R.S. Mehta had personally come to the bank and that he had dealt with their applications of opening of the accounts but now he is stating falsely that he had not seen them with intention to get rid of his involvement.

27. P.W. 13/Smt. E.C. Menezes, Deputy Manager of Bank of Maharashtra , has deposed in her evidence in the examination in chief that she worked as Deputy Manager, Gandhi Nagar Branch of Bank of Maharashtra Bengaluru from July 1994 to 1998. Accused No. 1 Before the court was the manager of that branch during the period from 1994 to 1995. She has seen Ex. P.1. It is the specimen signature card of accused No. 2 Ajay Mehta. As a branch manager, accused No. 1 has signed Ex. P.1 on its back side and his signature is the same as Ex. P.1(a). Ex. p.3 is the account opening form, the specimen signature card in respect of account No. 5748 and Ex. D.3 (a) is the signature of accused No. 1., she has seen Ex. D.2. It is the account opening form, specimen signature card pertaining to account No. 5750 and she has seen account opening form cum specimen signature card in respect of account No. 5757., accused No. 1 had permitted opening of the said account and the same is marked as Ex. p.60 and P.60(a) is the signature of accused No. 1. Ex. P.53 is seen and it is an application form for credit card facility in respect of R.C. Javeri. Ex. P.55 is the recommendation letter of the Manager recommending the credit card facility to the said application of R.C. Javeri. She identified the signature of accused No. 1 as manager on Ex. P.55 and the same is Ex. P.55(a). She has seen the application for credit card facility made by Rajesh S. Mehta dated 25.10.1994 marked as Ex. P.61 and P.61(a) is the signature of the Manager accused No. 1. She has seen the note prepared by accused No. 1 dated 25.11.1994 for extension of credit card facility to applicant Rajesh S. Mehta marked as per Ex. P.62 and signature of accused is Ex. P.62(a). she has seen Ex. P.54 and state that it is the covering letter written by accused No. 1 addressed to regional manager enclosing the application for credit cards in respect of Rajesh S. Mehta and RC. Javeri. She has seen Ex. P.57 and state that it is the letter written by accused No. 1 assessing the credibility of the applicants for credit cards by name R.C. Javeri and Rajesh S. Mehta and signature of accused No. 1 Ex. P.57 (a). She has not seen the persons whose photographs are affixed to Exs. D.2 and D.3. She had seen the persons and spoken to them whose photographs are affixed to Ex. P.1 and P.2. Those persons used to come to the bank for their regular transactions and to meet the cashier and manager at that time. She has seen the ledger extract pertaining to S.B. Account No. 5748 in the name of Rajesh S. Mehta marked at Ex. P.63.

28. P.W. 14 T.S. Raghavan, Retired Chairman and Managing Director of Indian Bank has deposed in his evidence in the examination in chief that between May 1997 and October 1998, he had worked as CMD of Bank of Maharashtra . The Branch Manager Of Bank of Maharashtra Gandhinagar Branch Bengaluru will be of Scale-I or Scale-II. Accused No. 1 belong s to Scale-II. The Chairman and the MD are anybody designated by the CMD for that purpose will be appointing and

removal authority for an officer of scale-II in the Bank of Maharashtra depending upon the circumstance. S.P. CBI, ACP, Bengaluru had sent a request letter to them seeking sanction for prosecution of accused No. 1. Along with the said letter, the CBI had sent them the documents pertaining to this case such as Investigation report, copies of the statement of witnesses etc. He perused the entire papers and he was satisfied that a case was made out for prosecuting accused No. 1 and accordingly, he issued the sanction order as per Ex. p.54 and his signature on the last page is P.54(a).

29. In the cross examination by advocate for accused No. 1, P.W. 14 has deposed that normally when a new account is opened, a person who is already having an account with the bank should introduce him. Alternative mode is that the customer who wants to open an account should have passport and driving licence. He should furnish the xerox of the same for their record along with account opening application. As branch manager, if he is satisfied about the identity of the new customer can authorize opening of the account. Witness adds, but he has to endorse in the account opening form that he knows the customer personally. He denied the suggestion that accused No. 1 had followed the established procedure of the bank in opening the account. In Ex. P.2, there is an entry against the column of introducer''s name, passport No. A-00513 issued by Bombay Passport Office. Witness adds, it is not mentioned whether the bank had verified the same or not. Inspection reports were examined by him and they reflected that verification of the passport was not done in this particular case. He denied the suggestion that inspection report is not part of the procedure followed. To the question as per Ex. P.60(a), the manager had verified the signature, he answered that it is true there is such a printed form and beneath, the officer had signed. He does not know whether that it was the manager or other officials of the bank. He only says that he does not specifically say whether the signature is verified or not. In Ex. D.3, the introducer is accused No. 3. But he does not agree with the suggestion that there is specific endorsement that branch manager had verified the signature of accused No. 3 as an introducer. The credit cards were handed over to the persons who were having a purported authorization letter. He admitted that branch manager has got undoubted discretion for recommending loans, issue of credit cards as per rules. He admitted as true that the branch manager would be fixed a target for mobilisation of deposits as well as sanctioning of loans. When he examined the entire materials placed before him by the CBI, he got a feeling that there was scope for involvement of accused No. 1 in this case. He denied the suggestion that as at the stage of issuance of credit card, accused No. 1 had no reason to suspect any wrong to him on the part of rest of the accused and therefore, he cannot be found fault with him. He say this for the chief reason that accused No. 1 as a prudent manager should not have handed over the credit cards to third party which had opened up the possibility of credit losses. Accused No. 1 had violated the practice prevailing in their bank in opening the accounts and issue of credit cards.

30. P.W. 15 Gladys Jayanthi, Inspector of Police, CBI, Bengaluru, has deposed in her evidence that she was working as inspector of police CBI, Bengaluru since 1999 till this day. Sri. G.S. Kumar, inspector of police of CBI, was working in CBI, Bengaluru since 1994 to 1999. He is no more. This case was mainly investigated by the inspector G.S. Kumar. While he was working as Inspector, CBI Bengaluru, she was acquainted with his writings and signatures. On 13.10.1995, the Inspector G.S. Kumar had collected certain documents from the Senior Manager of the Bank of Maharashtra , Regional Office, Bengaluru. In that regard, he had prepared a receipt memo which is Ex. P.65 consists of three pages and P.65(a) is the signature of Kumar. Under Ex. P.65, totally 73 documents were seized. She has seen the complaint lodged on 31.7.1995, the signature appearing on this document Ex. p.66 is the signature of inspector of G.S. Kumar. She has seen the document dated 21.11.1995 which is the specimen writing taken by the investigating officer in respect of Ajay Mehta which is in 19 sheets. The signature appearing on these documents at the end of each page is seen with that of Mr. G.S. Kumar. The said documents are marked as Exs. P.67 to P.85 and the signatures of G.S. Kumar as Ex. P.67(a) to P.85(a). She has seen the document showing the specimen signature of Smt. Achala Mehta marked as per Exs. P.86 to P.93 and the signature of G.S. Kumar are Ex. p.86(a) to P.93(a). She has seen the document dated 24.11.1995 which is the specimen signature of Umesh Pramod Chand (accused No. 4) marked as Exs. P.94 to P.98 and the signatures of G.S. Kumar is Exs. P.94(a) to P.98(a). She has seen another document dated 24.11.1995 which is the specimen signature of Mr. Hitesh Shevantilal V. Shah marked as per Exs. P.99 to P-103. The signatures of G.S. Kumar are Exs. P.99(a) to P.103(a). She has seen the document dated 23.11.1995 which is a receipt memo marked as per Ex, P.104 and the signature of G.S. Kumar is Ex. P.104(a). She has seen two documents dated 23.11.1995 and 21.11.1995 as per Exs. P.105 and 106 and the signatures of G.S. Kumar are 105(a) and 106(a). She has seen the document dated 14.11.1995 which are the two search lists marked as Exs. P.107 and 108 and the signature of Kumar are 107(a) and 108(a). She has seen documents which are the search lists in three sheets dated 5.11.1995 marked as per Ex. P.109 and another document production memo dated 15.9.1995 which is marked as per Ex. p.110 and the signatures of G.S. Kumar are 109(a) and 110(a) and (b). She has seen the documents which are the statements and further statements of E.C. Menenzen recorded by G.S. Kumar marked as per Exs. P.111 and 112. She has seen documents dated 10.10.1995 which are the statements of witnesses Sardeshai, R.G.N. Desai, which also bears the signatures of G.S. Kumar and the documents are Exs. P.113 and P.114 and they are in the hand writing of G.S. Kumar. She has seen the documents marked as per Exs. P.115 and 126 which are the statements of Sri. B.Y. Patil, J. Uma Shankar, Deepak Vidhya, Ganesh, Kushalraj, Peethamabar Gokul Das, G.V. Ramanan, Suresh Dadlani, Narasimha Murthy, Ramesh, Laxman Mahalani, V.M. Vasudevan in the handwriting of G.S. Kumar. She had worked with him for more than five years. Some times, he used to record the statements of the witnesses in her presence and thereafter, used to put his signatures and sometimes, in her

presence, he used to ask her to record the statement upon which he used to put his signatures recorded by her and it is thereby that she had acquaintance of his signature as well as his writings. Whenever search and secret operations used to take place, she used to accompany him in respect of these cases, since she was the only lady officer in their branch. After the demise of G.S. Kumar, the file of this case was handed over to her for further investigation. On perusal, she found that some of the documents collected in the course of investigation were missing. As such, she filed an application before the court for granting permission for further investigation which was allowed by the court. There upon, she contacted the bank and requested to produce the concerned missing documents. The bank officials told her that they have already handed over those documents to G.S. Kumar and also showed her the acknowledgement for having handed over those documents to him. She made attempts to search for those documents in the Malkhana office and record section of CBI. But those documents were not available. Even certified copies of those missing documents were also not available.

31. In the cross examination by advocate for accused No. 1, P.W. 15 admitted as true that she does not have personal knowledge about the investigation conducted by G.S. Kumar since she took over the file only after his death. She denied the suggestion that she is deposing falsely to the effect that after obtaining permission for further investigation, she approached the bank for securing the missing documents. There is document in witness of the same in the form of letter given by the bank to the effect that the documents have been handed over to G.S. Kumar.

32. P.W. 16 Mahendra S. Patel, branch manager, Bank of Maharashtra, Gujarat State, deposed in the evidence in examination in chief that in the year 1995, he was working as an officer of Bank Of Maharashtra in Bandra branch of Ahamedabad. On 14.11.1995, CBI Police had come for causing search in the house of one Mr. Umesh Pramod Chandra Shah situated at B-2/103 of Anand Lakshmi Cooperative Society layout near railway crossing, Shahiba-Ahmedabad. Himself, one of his colleague, clerk of their branch were present. The CBI police had seized certain properties and they are mentioned in the search list Ex. P.107 and his signature is P.107 (b). After causing search of the said house, the entire team of CBI officers and themselves went for causing search in the house of Hitesh Sevanthilal Shah. In the said house also, search was done and properties have been seized by the CBI officers as per the search list Ex. P.108 and his signature is P.108(b). The school certificate, passport size photographs and other articles were seized under the said mahazar. Ex. P.107 and 108 were prepared in his presence. In the cross examination advocate for accused No. 2, P.W. 16 denied the suggestion that he signed the documents in the CBI office and Ex. P.107 and 108 were prepared in the CBI office. He denied the further suggestion that no articles were seized from the house of Mr. Umesh and Exs. P.107 and 108 were prepared in the house of Hitesh Shah.

33. P.W. 17 A.E. Vaidyanathan, Chief Manager of Inspection, Bank of Maharashtra , Bengaluru deposed in his evidence in the examination in chief that in the year 1995, he was working as Senior Manager in the regional office of Bank of Maharashtra. While so working, on 21.11.1995, CBI Inspector G.S Kumar had come to their regional office and has requested for handing over certain documents and accordingly, he had handed over two items of documents to him. They are the charge slips of credit cards pertaining to Mr. Rajesh Mehta and Rajesh C. Javeri. In witness of this document by name production memo was prepared to which himself as well as Kumar has signed. Ex. P.106 is the said document and his signature is P.106(b). Ex. P.106(A) to (D) are the charge slips pertaining to R.C Javeri and he had also furnished five more charge slips pertaining to R.C Javeri and they are Exs. P.20 to 24. He had also produced eight charge slips pertaining to Mr. Rajesh Mehta and they are at Ex. P.106(E) to (L). on 21.11.1995, he was summoned to the CBI office, Bengaluru and in his presence, specimen signature of Ajay Mehta was presented at that time were taken in the said office. Himself and one Mr. Thangarajan were present at that time. Ex. P.67 to 85 are the documents on which specimen signatures and writings of Mr. Ajya Mehta were taken and he has signed on all these pages of the said document and Ex. P.67(b) to P.85(b) are his signatures. On 12.12.1995, he was summoned to CBI office, Bengaluru. In the presence of himself and Thangarajan, the specimen signatures and writings of Achala Mehta W/o. Ajay Mehta were also taken. Himself, Thangarajan and the investigating officer have signed those documents on which specimen signatures and writings were taken. Ex. P.86 to P. 93 are the said documents and the signatures are Ex. P.86(b) to P. 93(b). On 24.11.1995, himself and Thangarajan were summoned to the CBI Office, Bengaluru and in their presence specimen writings and specimen signatures of Umesh Pramod Chandra Shah were taken as per Ex. P.94 to 98 and himself and Thangarajan have signed the said documents and their signatures are Exs. P.94(b) to P.98(b). On the same day, the specimen writings of Hitesh Sevantilal shah were also taken in the CBI Office in their presence and himself and Thangarajan have signed the said documents Ex. P.99 to 103 and their signatures are Exs. P.99 (b) to P.103(b). On 5.11.1995, the CBI Police had caused search in the house of Ajya Mehta. Himself, one Mr. R.K.M. Desai, Eshwara Prasad were present at that time. Certain articles were seized and they were subjected to the search list at Ex. P.127 to which he has signed as per Ex. P.127(a). Again on 6.11.1995, the CBI had caused search in the house of Ajay Mehta situated at No. 362, I Floor, II Cross, 4th Main Road, 3rd block of Basaveswaranagar, West of Chord Road, Bengaluru. Himself and Eshwara Prasad were present and the document prepared with regard to search is Ex. P.128. Under Ex. P.128, the police have seized the photograph and Ex. 129 is the said photograph. P.129 is his signature and Eshwara Prasad had also signed the said photograph.

34. In the cross examination by advocate for accused No. 2 to 5, P.W. 17 has denied the suggestion that Exs. P.67 to 85 were prepared by the investigating

officer. It is not true to suggest that at the time when Exs. P.65 to 85 were came into existence, he was not present in the CBI office. He denied the suggestion that the specimen signatures and writings on Exs. P.67 to 85 are not at all the specimen signatures or writings of Ajay Mehta. He has denied the suggestion that Exs. P. 67 to 85 are the documents which have been concocted by investigating officer for the purpose of this case. H denied the further suggestion that Exs. P.86 to 93 are the documents concocted by the investigating officer only for the purpose of this case. It is not true to suggest that Ajay Mehta or Mrs. Achala Mehta were not at all present in the CBI office on the dates specified by him. He denied the suggestion that the specimen signatures and writing appearing on Exs. P.67 to 103 are the specimen signatures and writings of Mr. Hitesh Shah, Zaveri and Rajesh. He denied the further suggestion that Exs. P.106, 127 and 128 were prepared by the investigating officer in the CBI office and he signed Exs. P.127 and 128 in the CBI office. It is not true to suggest that photograph Ex. P.129 was not seized by the CBI Police in his presence.

35. P.W. 18 Vijayshekar has deposed in his evidence that he has been the partner of Deepam Silk International, Bengaluru since 1981. He had seen the production memo Ex. P.105 and said that on 23.11.1995, CBI police had seized the charge slips from his above said business establishment. For having seized the said document, production memo was prepared mentioning the number of charge slip. Charge slip is the one which is the document which authorized the use of credit card for the amount of articles purchased from his establishment. Ex. P.105 is the production memo and his signature is 105(b). He had made an endorsement for having received the copy of Ex. P. 105 on the said document and it is at Ex. P.105(c). Ex. P.106(a) to Ex. p.106(1) are the said charge slips which were seized by the CBI officer.

36. P.W. 19 J.N. Singh, has deposed in examination in chief that in the year 1995, he was working as Asst. Vigilance officer in MTNL (Mahanagar Telephone Nigam Ltd.) at Bombay). O4.11.1995 evening, he was informed by his superior officer that on the next day, there will be proceedings to be conducted by the CBI officers and his friend informed him over telephone and told that on the next day, he has to accompany him and thereby on the next day he will pick him up at 7.00 a.m. at Anderi. The vehicle came and he boarded the said vehicle wherein his friend by name R.G. Thanawala and CBI Officers were already there inside. He was taken in the said van to the house of one Smt. Mehta situated near by Anderi. The CBI officers conducted search for the house of Smt. Mehta. The CBI officers seized about 21 to 25 documents after search of the said house. CBI officers had shown all those documents to them and in witness of the seizure, he has signed on each and every documents, which were already seized by the CBI officer. A search list was prepared there and in the search list, those documents have been mentioned. In the said search list, address of Smt. Mehta where the search was conducted has also been mentioned. Ex 109 is said search list and his signature is at 109(b) and his friend Thanawala has also signed the said document at 109(c).

37. In the cross examination by advocate for accused Nos. 2 to 4, P.W. 19 has admitted as true that Ex. P.109 was prepared by CBI officer and it was prepared in the house of Hitesh Shah. Though he cannot give the names of the each and every documents seized on that day, he can say that those documents include pass book, passport, cheque book, withdrawal slips and some other loose documents and on that day, cash amount was counted by the CBI officers and thereafter, it was returned to a man who was in the said house.

38. P.W. 20 L.K. Arora, Deputy Government Examiner of Questioned document, Chandigarh, has deposed in the evidence that he had worked as Assistant Govt. Examiner of Questioned document in Hyderabad during October 1984 to May 2002. The documents pertaining to this case sent to his Hyderabad office by S.P. CBI Bengaluru, vide letter dated 13.11.1996 along with annexures-I to III. He had carefully, thoroughly and independently examined the documents of this case and came to the following conclusions:

"i. Person who wrote the blue enclosed writings stamped and marked as S-1 to S-5 and S-13 to S-26 also wrote the red enclosed writings. Similarly stamped and marked Q1, Q3 to A11, Q13 to A16, Q18 to Q20, Q22 to Q45, Q85, Q86 and Q87 (relating to Ajay Mehta).

ii. Person who wrote the blue enclosed writings stamped and marked as S-6 to S-12 and S-32 to S-36 also wrote the red enclosed writings similarly, stamped and marked Q2, Q12, Q17 and Q21 (this relates to Achala Mehta).

iii. Person who wrote the blue enclosed writings stamped and marked as S-37 to S-41 also wrote the red enclosed writings similarly, stamped and marked Q77 to Q84 (this pertains to Mr. Umesh Pramod Chand Shah).

iv. The Photograph marked S-42 is the enlarged print of corresponding photograph marked as Q-88.

v. He could not express any opinion about the writings marked as Q46 to Q76 on the basis of materials on hand."

He has referred about this and gave his opinion dated 29.11.1996 marked as Ex. P.141 and his signature is Ex. p.141a. It also bears the signature of Mr. B.B. Goel, the then Government Examiner of Questioned document, who had also examined those documents independently and has come to the same conclusion. He has separately given the reasons for his opinion marked as per Ex. P.142 and his signature is P.142a.

39. In the cross examination by learned counsel appearing for accused Nos. 2 to 4, P.W. 20 denied the suggestion that handwriting examination science is still a developing science. The witness volunteers to state that it is a perfect science, if suitable and sufficient data is available, a definite opinion can be arrived at as in the present case. He denied the suggestion that in the instant case even though sufficient data was not made available in order to please the investigating officer he is stating sufficient data were made available to him. He denied the

suggestion that the opinion given is incorrect. He admitted as true that there will be natural variation in the natural writings. But witness volunteers and states that this is so because the hand is not a machine. He denied the suggestion that in the instant case, it is the unnatural variations which are to be found and not the natural variations. He denied the suggestion that he did not apply superimposition test only because if he had done it, it will go against his opinion. He denied the suggestion that though there is major diversion in the writings he is giving false evidence. He denied the further suggestion that basing on one or two identical points, he had given his false reports. He denied the further suggestion that the author of the specimen writing is not the person who wrote the disputed writings. He denied the suggestion that on account of pressure of CBI, he has given the false report and his reasonings given are not based on facts.

40. Perusing the materials on record, the charges against the appellants accused are that the appellants along with one deceased Hitesh Sevanthi Lal committed the criminal conspiracy and by committing fraud on the bank, availed the credit cards by impersonation of the fictitious persons namely R.C. Javeri and Rajesh Mehta and thereby cheated the Bank of Maharashtra, Gandhinagar Branch at Bengaluru by forging and fabricating false documents.

41. With regard to the allegation of conspiracy is concerned for the offence under Section 120b of IPC, there cannot be direct evidence available for the said offence and on the basis of the materials placed on record and the attending circumstances, the Court has to ascertain whether there was criminal conspiracy by the appellants accused in committing the offence of cheating and forging the documents for getting the wrongful gain and causing wrongful loss to the Bank of Maharashtra, Gandhinagar Branch at Bengaluru.

42. Looking to the evidence on record, it is the consistent case of the prosecution that though R.C. Javeri and Rajesh Mehta are not the living persons, the accused and more particularly accused Nos. 1 to 3 by creating the documents in the name of such persons committed the alleged offences. To prove this fact, the prosecution has examined P.W. 1 the owner of the house wherein accused Nos. 2 and 3 were residing in the portion of the first floor of the said house on lease basis. In the account opening form for R.C. Javeri and Rajesh Mehta as per Exs. D.2 and D.3 so also for the application for credit card Exs. P.53 and P.61, the same address which was the address mentioned by accused No. 2 and 3 in their account opening forms Exs. P.1 and P.2 was furnished in Exs. D.2 and D.3 and Exs. P.53 and P.61. Looking to the evidence of the P.W. 1 the owner of the house, he has not deposed in his evidence that like accused Nos. 2 and 3, he has also given portion of the house property to other two persons namely R.C. Javeri and Rajesh Mehta. It is also not the evidence of P.W. 1 that at least he has seen the said two persons at anytime coming to the house of accused Nos. 2 and 3 and he has seen them. Looking to the evidence of prosecution witnesses, the employees of the bank, who have been examined, about whose evidence I have already

referred in detail above, have also stated that they have seen accused Nos. 2 and 3 regularly coming to their bank and not seen the persons R.C. Javeri and Rajesh Mehta. It is also not the case of the defence that those two persons personally came to the bank, met the manager accused No. 1 and submitted their account opening forms as per Exs. D.2 and D.3 so also the application for issue of the credit cards as per Exs. sP.53 and P.61. When that is so and when it is the defence of the accused that R.C. Javeri and Rajesh Mehta are the living persons and they are not the fictitious persons, then the burden cast upon the accused to establish the said fact. When there is an allegation against the accused persons that they have impersonated the said R.C. Javeri and Rajesh Mehta, by way of defence evidence, they could have examined the said persons after their examination and recorded their statement under section 313 of Cr.P.C. which is not done in this case.

43. Even for the purpose of opening of the account of accused No. 3 Smt. Achala Mehta, it has come on record from the mouth of the prosecution witnesses that accused No. 1 has not followed the procedure in opening the account of accused No. 3. It is the normal practice of the bank as deposed by the witnesses that whenever the new account is to be opened for any person, he is to be introduced by the account holder of the bank. It is no doubt true that during the course of cross examination of P.W. 11, it was elicited that if there is a passport or the driving licence of the person who wanted to open the account, on that basis the account can be opened without insisting the introducer. It is the claim of accused No. 3 that her passport was given at the time of opening the account and hence, accused No. 1 has followed the procedure in opening the account of accused No. 3. But it has been deposed by witness P.W. 14 that a Branch Manager if he is satisfied about identity of the new customer can authorise opening of the account. But witness has also added that the branch manager has to endorse in the account opening form that he knows the customer personally. The said witness denied the suggestion that accused No. 1 had followed the established procedure of the bank in opening the account. It is also his evidence that by opening the account of accused No. 3 Achala Mehta, in the column of introducer''s name, passport number issued by the Bombay passport office has been entered. However, P.W. 14 deposed that there is no specific mention whether the bank had verified the same or not. Admittedly, there is no such endorsement by accused No. 1 that he verified the passport and satisfied about the number of the passport that it belonged to accused No. 3 Smt. Achala Mehta and because of such confirmation, he has authorised to open the account in the name of accused No. 3 without insisting the introducer''s name. The materials go to show that so far as the account opening form Exs. D.2 and D.3 and the applications for issue of credit cards under Exs. P.53 and P.61, which were submitted to accused No. 1 through accused Nos. 2 and 3, it is not the defence that they were submitted directly to the manager accused No. 1 by said R.C. Javeri and Rajesh Mehta.

44. The evidence of P.W. 14 goes to show that the credit cards were handed over

to accused Nos. 2 and 3 and they were not directly handed over to R.C. Javeri and Rajesh Mehta. Under the purported authorization letter, accused No. 1 handed over them to accused Nos. 2 and 3. On the basis of such credit cards, accused Nos. 2 and 3 went on making purchases of the silk items in respect of which the prosecution has examined the witnesses from P.Ws. 2 to 10 and collected the charge slips wherein the purchaser''s signatures said to have been obtained by the owners of the said shops. The same were collected during investigation by the investigating officer.

45. In order to ascertain whether the writings and the signatures in Exs. P.2 and P.3 and Ex. P.53 and P.61 are from the said R.C. Javeri and Rajesh Mehta or it is by any of the accused persons, the prosecution has collected the specimen handwriting and signatures of accused Nos. 1 to 4 and also the deceased Sevanthi Lal Shah. Though the defence has relied upon the decision reported in M. Durga Prasad, Spl. Assistant, Syndicate Bank and Vs. The State of A.P., (2003) 2 ALD(Cri) 545 : (2004) CriLJ 242 and contended that the specimen writings and the signatures were not obtained before the court and collected by the investigating officer, then the same cannot be relied upon. Here the Court has to examine the evidence on record that whether it is satisfactorily and cogently established by the prosecution about collecting the specimen writings and the signatures. If it is satisfactorily established, then the court can rely upon such materials as the witnesses were examined before the court on oath and put to the test of cross examination. If there is no such acceptable material during the course of the trial, the question of relying upon such material does not arise.

46. In the case on hand, the prosecution has examined P.W. 17 Vaidyanathan, who has consistently deposed in his evidence that in the presence of himself and his friend Thanawala, the CBI inspector Mr. G.S. Kumar had come to their regional office and requested for handing over certain documents and accordingly, he handed over two items of documents. Ex. P.106 is the document which he had signed as per Ex. P.106(b). He has also deposed about G.S. Kumar taking the writings and specimen signatures as per documents Exs. P.67 to 85 of Ajay Mehta so also Exs. P.86 to P.93, the specimen signature and writings of Achala Mehta. Therefore, looking to the evidence of prosecution witness, obtaining the writings with the signature of the accused persons is also satisfactorily established by the prosecution which documents were referred to the expert P.W. 20 to give his opinion after examining the writings and specimen signatures obtained comparing the same with the disputed writings.

47. Looking to the evidence of P.W. 20, the expert and his report, he has given the findings about the examination of the disputed writings with the writings and the specimen signatures taken from accused Nos. 2 to 4. Looking to the evidence of P.W. 20, it goes to show that investigating officer had sent questioned writings and signatures marked as per Q.1 to Q88 and the specimen signatures of accused Nos. 2 to 4 and also deceased Jayanthilal Shah. Amongst the documents examined by him, questioned document Q.1 is the signature of Ajay Mehta on

the account opening form Ex. D.2, Q.3 is the signature of R.C. Javeri the letter addressed to the manager as per Ex. P.134, Q.4, Q.11, Q.5, Q.6 are the signatures appearing of RC Javeri on the credit card application, Q.8 is the letter addressed to the manager Ex. P.135 and Q.14 is the signature appearing on the account opening form of Rajesh S. Mehta, Q.16 and Q.17 are the signatures of Rajesh S. Mehta on the application form of credit card Ex. P.61. Q.20 is the account opening form of Ajay Mehta, Q.22, Q.24 to Q.45 and Q.85 and Q.86 i.e., Exs. P.4 to P.42 and P.139 are the signatures appearing of R.C. Javeri and Rajesh S. Mehta on the credit card in the register of acknowledgments of receipt of credit cards of these two persons. Ex. P.139 and also Q.87 is the signature of Rajehs S. Mehta in the cheque issue register or in the handwriting of accused No. 2 Ajay Mehta. His evidence also goes to show regarding Q.2 signature and writing of accused No. 3 on the account opening form, Q.12 which is the signature of accused Nos. 2 and 3 on Ex. D.3 of account opening form of Rajesh S. Mehta, Q.17 which is the handwriting portion in the application form of credit card relating to Rajesh are in the hand writing of Achala Mehta. His evidence also goes to show that the hand writing appearing in Q.77 to Q.84 are the signatures of Rajesh S. Mehta and the charge slips Exs. P.9, 10, P.13 to 15, 18, 19 and 138 are at the hand writing of accused No. 4 Umesh Pramodchand Shah. The passport size photograph affixed on the account opening form of R.C. Javeri is the enlarged photo of group photo Ex. P.129.

48. Looking to the documents Ex. P.139 and 140 it is clear that credit cards of said Javeri and Rajesh Mehta have been received by accused No. 2. During the course of cross examination of prosecution witnesses, the accused never elicited that apart from accused No. 1, any other staff of the bank have made any writings or put their endorsement or signatures on the documents Exs. P.1, 2, Exs. D.1 to 3, Ex. P.53 and 61. These documents go to show that it is accused No. 1 the Branch Manager signed and processed the said documents. Even accused No. 1 has gone to the extent of making a mention in the letter addressed to the regional office as per Ex. P.57 that two account holders R.C. Javeri and Rajesh Mehta are the relatives of accused No. 2. Looking to the materials on record, they clearly goes to show even the involvement of accused No. 1 along with the other accused persons in creating false documents and causing wrongful loss to the bank by use of such false and forged documents.

49. When accused No. 1 recommended the regional office for issue of credit cards to R.C. Javeri and Rajesh Mehta that they are the relatives of accused No. 2, the trial court has rightly observed in this regard that those two persons according to the persecution are not living persons and they are fictitious persons. Any of the accused would have taken steps to call the said two persons before the court during the course of the trial to establish that they are the living persons and also for establishing their identity that they are R.C. Javeri and Rajesh Mehta as it was only within the knowledge of the accused persons. For not taking such steps, the trial court has rightly drawn the adverse inference against the accused persons.

50. I have also perused the two decisions relied upon by learned counsel appearing for the accused No. 1 which are referred above. Perusing the facts and circumstances so also the evidence on record in the reported decisions and the facts and circumstances in the case on hand, they are not one and the same. The case of the prosecution is not based only on the expert''s evidence and his report, but the prosecution has relied on the evidence of other witnesses about which I have already made reference which consistently goes to show that accused No. 1 firstly allowed accused No. 3 Smt. Achala Mehta to open the account in the bank without insisting the introducer and basing only on the passport said to have been produced. The materials goes to show that even the Accused No. 1, manager has not verified the said passport and without such verification and about his satisfaction, he conceded for opening the account in the name of accused No. 3 Achala Mehta and thereafter, for opening the account of accused No. 2, accused No. 3, the wife of accused No. 2 was the introducer. The prosecution material goes to show that accused No. 1 the branch manager with criminal conspiracy went on creating the forged documents Exs. D.2 and 3, the account opening forms cum.... specimen signature form so also the application for the issue of credit cards as per Exs. P.53 and 61.

51. Perusing all these materials on record and as accused No. 1 never insisted the other accused more particularly accused Nos. 2 and 3 to bring R.C. Javeri and Rajesh Mehta to the bank at least for the purpose of receiving the credit cards, also goes to show involvement of all the accused persons in criminal conspiracy and thereby committing the other offences against the bank.

52. The trial court has considered each and every aspect of the matter both oral and documentary, extensively and recorded its findings. No illegality has been committed by the trial court nor there is any perverse or capricious view taken by the trial court in coming to such conclusion, the trial court has rightly held that the prosecution has established its case beyond reasonable doubt and rightly convicted them. There are no valid and justifiable grounds for this court to interfere with the judgment and order of conviction passed by the trial court. No merits in both the appeals. Accordingly, the appeals are dismissed and judgment and order of conviction passed by the trial court is hereby confirmed.

