(2019) 02 J&K CK 0097

In the Jammu And Kashmir High Court

Case No : Criminal Appeals (CRA) No. 9900013 Of 2003

Bansi Lal Zijoo APPELLANT

Vs

State Through CBI RESPONDENT

Date of Decision : 22-02-2019

Acts Referred:

Indian Penal Code, 1860 — Section 71, 381
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120B, 409, 463, 464, 467, 468, 471, 477A
Code Of Criminal Procedure, 1973 — Section 31, 161, 342, 427, 428
Evidence Act, 1872 — Section 73
Indian Post Office Act, 1898 — Section 52
Constitution Of India, 1950 — Article 20(3)

Citation : (2019) 02 J&K CK 0097

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : R.K. Bhatia, Monika Kohli

Final Decision : Disposed Off

Judgement

1. In the instant appeal, the appellant has assailed the judgment of conviction/ order of sentence dated 31.07.2003 & 01.08.2003 respectively passed by the Court of learned 2nd Additional Sessions Judge, Jammu in the case, titled State through CBI vs. Bansi Lal Zijoo in FIR No.05/1987 under Sections 409, 471, 467 & 477-A of Ranbir Penal Code, by virue of which he has been sentenced under Section 409 RPC to undergo simple imprisonment for a period of one year and fine of Rs.9000/-, in default of payment of fine, he shall undergo simple imprisonment for a period of three months; sentenced under Section 467 RPC to undergo imprisonment for a period of one year and fine of Rs.9000/-, in default of payment of fine, he shal1 have to undergo simple imprisonment for a period of three months; sentenced under Section 471 RPC to undergo simple imprisonment for a period of one year and fine of Rs.9000/-, in default of payment of fine convict shall undergo simple imprisonment for a period of three months; and sentenced under Section 477-A RPC to undergo simple

imprisonment for a period of one year only. Court below has further held that sentence/punishment awarded to appellant shal1 run consecutively i.e one after the other. Out of amount of fine awardad to the offender/convict, Rs.26,500/- shall be deposited/ paid to the bank concerned and Rs.500/- shall be deposited in Govt. Treasury.

2. The impugned judgment/order dated 31.07.2003/01.08.2003 respectively have been assailed by the appellant in the instant appeal, on various ground including that there is no evidence that appellant has converted the money for his use at relevant time; that important witnesses have not been examined; that appellant has been involved in a false and concocted case; that court below has not properly appreciated the evidence on record. That specimen signature of appellant has not been taken before Magistrate, so conviction cannot be based.

3. I have considered the rival contentions. The counsel for appellant has reiterated the grounds taken in memo of appeal; whereas counsel for respondant has supported the judgment of conviction.

4. Brief facts of the case are that appellant/ B. L. Zijoo was working as Head Cashier at Punjab National Bank (PNB) Maharaj Gunj Srinagar from 1976 to September, 1986. Mr. Zijoo was himself doing most of the work relating to remittance/deposits of cash of Maharaj Gunj (PNB) branch, Amirakadal, Srinagar, PNB branch, which was maintaining currency chest, as per Reserved Bank of India Rules. Accused was preparing remittance and transit vouchers which were passed by authorized officer for depositing the excess cash in currency chest and also transfer vouchers. On 11.08.1986, Sh. Bansi Lal Zijoo prepared remittance transfer voucher for Rs.3.20 lacs which was passed by Sh. M. K. Nehru Assistant Manager PNB Branch Maharaj Gunj, Srinagar. This amount was given to Mr. Nazir Ahmed Bhat the then Cashier for depositing in PNB Branch Amira Kadal, while depositing the said deposit by Nazir Ahmed Bhat, the then Cashier at Amira Kadal Bank branch of PNB, notes worth Rs. 26,500/- were found unsorted notes and were returned to Sh. N. A. Bhat. The remaining amount of Rs. 2,93,500/- were deposited by said N.A. Bhat at PNB Branch Amira Kadal, Srinagar. The receipt in the shape of counter foil pay-in-slip was issued by the PNB Branch, Srinagar to N.A.Bhat for an amount of Rs.2,93,500/-. Sh. N.A.Bhat gave the said receipt along with amount of Rs.26,500/- to Sh. B.L. Zijoo at PNB Branch MaharajGunj. Sh. B.L. Zijoo decided to mis-appropriate the said amount of Rs.26,500/-, so he destroyed the payment receipt issued by PNB branch Amira Kadal, Srinagar for Rs.2,93,500/-and himself prepared false receipt for an amount of Rs.3.20 lacs. He forged the signatures of concerned clerk and authorised officer on the said receipt. On the basis of said forged receipt Sh. B.L. Zijoo prepared transfer credit voucher for Rs.3.20 1acs and himself forged the signatures of Sh. M.K. Nehru, authorised officer, on the said transfer voucher thereby mis-appropriated Rs.26,500/-.

5. As per FIR the information was received by SP Crime (E) through source and the above detailed facts constitutes commission of offence by Sh B. L. Zijoo and

N. A. Bhat as they had entered into a criminal conspiracy in the year 1987, where they were working as Head Cashier and Cashier in PNB Branch Maharaj Gunj, Srinagar and mis-appropriated amount of Rs.26,500/- as per FIR No.5/87 and offences under Sections 120-B, 409, 467, 471 and 477-A RPC were found to have been committed, on registration of the FIR. Investigation was entrusted to Mr. M.K. Angral, Inspector CBI, Srinagar. Investigating Officer has recorded statements of witnesses u/s 161 Cr.P.C. Documents related were seized. After investigation Sh. Zijoo has been found to have committed criminal breach of trust and mis-appropriated amount of Rs.26,500/- entrusted to him, as a public servant by forging record and using the same as genuine.

As per investigation, Sh. B. L. Zijoo has committed offence punishable under Sections 409, 467, 471, 477-A RPC.

6. After completing the investigation, challan was produced in the Court of learned CJM Srinagar on 11.08.87 and the case being exclusively triable by the court of Sessions, the case was committed to the Sessions Judge, Srinagar. The case was transferred to 2nd Addl. Sessions Judge, Srinagar for disposal. The 2nd Aditional Sessions Judge, Srinagar after hearing the arguments found the accused person involved under the offences levelled against him, so accused was charge-sheeted on 12.07.1989 under Sections 409, 467, 471 and 477-A RPC. On denial of the plea by the accused the prosecution was directed to adduce evidence in support of its case. Statements of two witnesses namely N.A. Bhat and M.K.Nehru were recorded on 31.08.89 partly, deferring their statements to the extent of cross-examination.Vide order dated 09.03.1995 of High Court the case was transferred from the court of 2nd Addl. Sessions Judge, Srinagar to 2nd Addl.Sessions Judge, Jammu. The statement of prosecution witnesses, N.A. Bhat and M.K.Mehru were completed.Thereafter, statements of rest of the witnesses were recorded. After recording the statement of the witnesses produced by the Prosecution, statement of accused under Section 342 Cr.P.C was recorded who denied the incriminating material; and did not produce any defence witness. After hearing the argument, trial court found the case proved against the accused and convicted the accused appellant as detailed above under various sections.

7. I have given my thoughful consideration to whole aspects of the matter.

8. Prosecution has produced as many as 22 witnesses insupport of itscase. Theirstatements have been recorded. The gist of their statements is as under:-

P.W. N.A. Bhat has stated that on 11.08.86 he was posted as Cashier in PNB Maharaj Gunj Branch, Srinagar and on that day accused was posted as Head cashier there. Asstt. Manager was Mr. M.K. Nehru. Their branch was depositing surplus cash in PNB Branch Amira Kadal because in their branch there being no currency chest. Sometime Cashier and Head cashier was depositing the amount in that branch. At the time of depositing the cash pay-in-slip is to be filled and its counter-foil remains as its receipt in the branch. On 11.08.86 he has gone to deposit cash amount af Rs.3.20 lacs in Amira Kadal Branch. He received amount of Rs.3.20 lacs from the accused. He signed the payment voucher. Payment voucher on the file is same. It bears his signature and it is marked as EXPW 2/1. When he reached Amirakadal Branch, pay-in-slip for an amount of Rs.3.20 lacs was filled. He went to Cashier. Cashier returned him Rs.26,500/- as unsorted cash. Cashier told him to get pay-in-slip filled for an amount of Rs.2,93,500/-. He filled another pay-in-slip for Rs.2,93,500/- and deposited in Amirakadal Branch. Pay-in-slip EXPW 1/4 dated 11.08.86 for an amount of Rs. 2,93,500/- was deposited in the Amira Kadal Branch. It is in his hand and under his signatures. This part of pay-in-slip is that which remains in the branch where amount is deposited. The 2nd part of the said pay-in-slip was taken by him as receipt and was handed over to Head cashier of his branch along with cash of Rs.26,500/-. The same was given to the accused. EXPW 1/5 is not the counter-foil of that which was given by him to the accused. One which was handed over by him to the accueed was in his hand. Copy of remittance register is on the file. On this denomination of notes is given which were taken by him. The notes were of denomination of Rs.100, numbering 2000, and denomination of Rs.50/- numbering 2000 and of denomination of Rs.20/- numbering 1000. His signatures are on the note sheet. He identifies it. It is exhibited.This sheet bears also signature of Mr. Nehru.

On cross-examination, the witness stated that his statement was deferred. Then cross examined on 28.02.1999 stated that on 11.08.86 he was posted in Maharaj Gunj Bank Branch (P&B) as Cashier. The amount which was taken from their branch to Amirakadal Branch, it was decided by Branch Manager on 11.08.87 for taking of Rs.3.20 lacs to Amirakadal Branch of PNB, was told to him by accused. There were other Cashiers also who were taking amount to Amirakadal Branch. He does not know by whom the credit and debit vouchers were prepared. The amount of Rs 2,93,500/- was deposited by him in Amirakadal Bank. Balance amount of Rs.26,500/- which was non issuable was brought back by him and he himself deposited in the bank. Voucher for an amount of Rs. 26,500/-was depostied by him in his bank and amount was given to accused. In the Branch we usually deposit amount on counter and with Head cashier. Because it was half past four so amount was deposited with Head Cashier. This is correct that at 2 P.M. transaction of money stops. Then stated in ?Dol date? it is received, that means on the next date it is received. Amount of Rs.26,500/- was taken on 11.08.96 because cash book was open. Cash book is closed at 2 P.M. It is signed by Cashier and Manager. He does not know on that date cash book was closed at 2 P.M. or not and he also does not know that Manager had signed on that date or not. This is wrong to say that he had not given an amount of Rs.26,500/- to the accused as was asked. Whereas has deposited in Amirakadal Branch.Then on the instance of PP stated that amount of Rs 2,93,500/- was deposited in that branch.

P/W Maharaj Krishan Nehru has stated that o 11.08.86 he was Asstt. Manager PNB Branch, Maharaj Gunj and accused was head cashier. Jagjit Singh was Manager. In this branch currency chest was not available whereas in Amira-kadal

PNB Branch surplus cash was being deposited by them. This was being firstly decided how much amount is to be deposited in the currency chest.

This payment voucher was being prepared and after entering in the remittance register, after passing voucher was being given to Head cashier. Head cashierwas either depositing the same himself or deputing some cashier. After depositing the amount in currency ches of Amirakadal Branch of PNB it was being deposited by filling pay-in-slip by the person who deposit the cash. Counter foil of pay-in-slip by way of receipt was being given to the Head Cashier the tranfer debit voucher and transfer credit vouchers were being prepared and were being passed by authorised officer. Payment voucher which has been mentioned above was also being passed by authorised officer. Manager and Assistant Manager are authorised officers. If for some reasons currency chest does not accept whole amount, either they are torn or unsorted notes returned to the person who has gone for depositing the amount, is authorised to deposit that much amount only which is being accepted by them by filing another pay-in-slip. Unsorted notes are being brought back by that person and are being deposited by Head Cashier. Payment voucher for an amount of Rs.3.20 lacs on the file is in the hand of accused. He as an authorised officer has passed this. This cash was to be deposited in the Amirakadal Branch.This bears his signature. It is marked as EXPW 1/1. This amount was taken by N. A. Bhat cashier which was to be deposited in Amirakadal Branch. He identified signature of N. A. Bhat also. It is marked as EXPW 1/2. Voucher which is in black ink is in the hand of accused. It is marked as EXPW 1/3-Pay-in-slip dated 11.08.86 is in the hand of N. A. Bhat Cashier. He identifies Nazir's signature. As per this pay-in-slip an amount of Rs.2,93,500/- have been deposited in currency chest in Amirakadal Bank. This pay-in-slip is marked as EXPW 1/4, EXPW 1/4,pay-in-slip is the portion which remains in the bank where the amount is deposited. Other portion is given to depositor as a receipt. That was given to Head cashier. Counter foil dated 11.08.86 on the file is in the hand of the accused. This counter-foil is marked as EXPW 1/5 counter-foi1 (pay-in-slip) EXPW 1/4, counter foil 1/5 are not of same size. Debit transfer voucher dated 11.08.86 and credit transter voucher dated 11.08.86 are in the hand of accused. The signatures which are on these as an authorised officer, point Q-2 and Q-16 are not in his hand and also are not of the Manager, also are not of any officer of that time. These are marked as EXPW 1/6 and 1/7 respectively. As per these vouchers the amount of Rs.3.20 lacs have been shown to have been deposited in Amirdrakadal Branch. No further question. The statement of witness was to the extent of cross-examination was deferred). Rest of the statement was recorded on 28.02.98.

On 28.02.98 has stated that he is Asstt. Manager PNB Rohtak presently. There are near about 22 employees with him. The employees who have direct concern with him, their signatures he can identify. There he has direct concern with Head cashier, officers, ledger keeper and Managers. This differs from branch to branch as per the job chart. He cannot identify the signture of such above mentioned officer. He cannot identify the signature of such above mentioned officer, then stated can identify. It is very rare that two persons have similar signatures. In these cases he cannot make the difference. When he was posted at Srinagar, accused was Head cashier. As per the norms of the bank debit and credit vouchers dated 11.08.86 remains with the clerks. In bank work, no one can say orally that voucher be passed. We will be passing vouchers afterwards. How much amount is to be sent to Amirakadal Branch, this is being decided by Asstt. Manager, and Manager and Head cashier. Accused was also among them who decided to deposit amount on 11.08.86. Head cashier prepared remittance voucher. As per that, amount is deposited in Amirakadal Branch. The amount which is returned is being deposited by the clerk with Head Cashier. He does not know the debit transfer voucher dated 11.08.86 for an amount of Rs 3.20 lacs was passed by him. But signatures are not of any officer posted at that time. CBI has called him, then he came to know that on this paper there are no signatures of passing officer. After completing the bank job for the day we did not tally signatures but we tally the amount only. The amount from the day book is being entered in the register. Total of credit and debit anount are also being checked. They should also check the signatures. He does not know about this credit voucher whether it was checked or not. Counter foil EXPA1/5 bears, whose sigmatures, he cannot state. Then stated it does not seem that it is a counter-foil. Shr. Nazir Ahmed has not given amount of Rs.26,500/- to the accused in his presence.

PW R.J. Krishan has stated that in the year 1987 he was Manager PNB Branch Amirakadal. Seizure memo dated 28.04.87 on the file bears his signature and contents of the same are correct. It is marked as EXPWIJ. As per record, list is correct. This is the same record given by him on 9/10 and was seized. In cross-examination has stated that documents placed on the file does not pertain to him. Documents are not in his hand. These are being written by clerks. Witness states this of his own.

PW Mohd. Amin Bhat has stated that in the year 1986-87 he was posted as tallier in PNB branch Maharaj Gunj. Accused present in the court is known to him. In this case he has handed over some documents to CBI. These were seized and seizure memo was prepared, was signed by him and the same was shown in the court, is the same. It is marked as EXPNA. It is dated 20.05.87. Contents are correct.

PW A.K.Mota has stated that in the year 86-87 he was posted in Regional Office PNB Srinagar. Bansi Lal accused is known to him. He was told by Regional Officer of the time, Sh. Rekhi to attend the CBI office. He was accompanied by R.L.Ticku Asstt. Manager. When they reached CBI office, there they saw CBI officer and the accused. officer gave papers to the accused and told the accused to put his signatures on the blank paper and write some- writing. When accused wrote and put the signatures, they attested the same, on papers from SI to S4. It also bears signature of the accused. He identifies the same. His signatures are also on this and identifies. These are exhibited as EXPWAK-I and AK-2 respectively.

In Cross-examination has stated that from Regional Officer PNB Srinagar to Maharaj Gunj PNB Branch office is 1½ KM. In those days Maharaj Gunj branch there were 20/25 employees and Amirakadal Branch there were 20/30 employees. R. L. Ticku was also in the Regional Office. We both were sitting in the same hall. His officer has verbally informed him to go to CBI office. Regional Manager has told Mr. R.L.Ticku and Mr. Ticku had told him to accompany each other to CBI office. Mr. Ticku had not told him in his presence to accompany. On this side of river it is their office and across river of other side, there is CBI office. We both went in ?Shakara' and then stated whether they crossed on Shakara or by Departmental vehicle. He also does not remember whether they had gone by civil vehicle or by an Auto. He cannot state at what time they left their office and reached CBI office. But it is sure that they visited CBI office from 10 to 2 PM. His memory is okay. He cannot state how many storeys CBI building had. Accused and CBI officer were in the ground floor. Except him Mr. Ticku, accused and CBI Officer, no other person was in that room, when accused wrote and put his aignature. When accused wrote and put his signature, papers were signed by him and Mr. Ticku and CBI officer. He does not know whether accused had been arrested or not. In their presence CBI officer (I,O) did not ask anything from the accuscd, whereas told the accused to sign papers. He does not know since when the accused person was with CBI officer. We remained there for an hour or more. He cannot state whether they left the place together or came separately. He cannot say whether accused was given any torture. Nazir Ahmed Cashier is known to him. He did not see Nazir Ahmed in the CBI office. Specimen signatures of Nazir Ahmed were not taken in his presence.

PW Roshan Lal has stated that in the year 1986-87 he was posted as Asstt. Manager in the Regional office of PNB Srinagar. Accused is known to him. In the year 1986-87 accused was head cashier in PNB Branch Maharaj Gunj. On the instructions of Divisional Manager he went to CBI office. There he met IO, A. ?. Angral. Accused was also there. He was accompanied by A. K. Mota. I.O told the accused to sign the bank papers and these signatures of the accused were attested by him. Writing shown to him, the specime signatures S1 to S22 have been seen by him which are already marked as EXPAW AK1 to EXPWAK 22.

In cross-examination has stated that at the time of obtaining signatures of the accused, no Magistrate was there. There was no direction in writing to go to the office of CBI. He had gone on foot to CBI office. After 10 minutes Mr. Mota also reached there. He cannot state whether he had gone to CBI office after closing his office or prior to that. It took some time to the accused to put his signature. In CBI building in 2nd storey I.O. and accused were present. He does not know whether accused had been arrested or not. The I.O told the accused to write on paper. He cannot state whether there was any torture to the accused or not.

PW Hirday Nath has stated that he was posted in PNB Branch Amirakadal, Srinagar from 1983 to 1987. His duty was to check cash book and entries on every evening at the time of closing the Cash book. Debit voucher dated

11.08.86 which is on the file for amount Rs.2,93,500/- was deposited in Amirakadal Bank Branch on 11.08.86. This amount was of PNB Branch Maharaj Gunj. This was deposited from one Branch to another Branch. Debit vouchers do not bear his signatures. Signatures are of Zahoor Ahmed. His initials are also there. It has already been marked as EXPW1/4. Voucher dated 11.08.86 is entered in the cash book at page No.94 of PNB Amirakadal Branch at S.No. 5. Varinder Khatu who was maintaining cash book had made the entry of the debit vouchers. It bears his signatures also. It is correct and is marked as EXPW HN. Cash book is marked as A. All entries of page No.95 have been checked by him and put his signatures. On these signatures of Manager are also identified. He has put his initials at the end of the page 95. All these entries are in the hand of Varinder Khatu. This is marked as EXPWHN. Counterfoil of Rs.3.20 lacs is seen by him. It is in counter foil of the detail voucher. Rs.2,93,500/- (EXPW 1/4), who has put signatures and initials on it, he cannot state. Accused is known to him. Accused was taking cash from the people, depositing cash in the bank and depositing in the other branches of the bank.

On cross-examination the witness has stated that accused has never worked with him. So he cannot identify his signature and writing. He has not done any course of comparing signatures. EXPW 1/4 debit voucher counterfoil, who has written, he cannot say. Amount has not been deposited in his presence. Voucher EXPW 1/4 firstly goes to cashier and then cash book tallier and then comes to him. Whenever amount of one branch is being deposited in another branch, first branch is being informed and advise for confirmation are being sent. Credit voucher regarding this was sent to Maharaj Gunj Branch from another section. He cannot say who has sent the credit advise.

PW G.M. Mir has stated that in the year 1986 he was Accounts Officer PNB Maharaj Gunj Branch. As per rules of the bank currency chest is being fixed in one branch and the surplus cash are being deposited in such bank where chest is availale. That accused is Known to him. In the year 1986 accused was Cashier in PNB Maharaj Gunj bank. The job of the accused was to obtain cash from the people and to give them the cash. The vouchers under signatures of accused were not passing through his table, but were passing through the table of another officer, namely, Mr. M.K.Nehru. He is well acquainted with the signature and writing of the accused. In the bank we have the duty to compare the signatures of the customers. Remittance vouchers dated 11.08.86 is of the amount of Rs.3.20 lacs and is on the file. It has been written by the accused and it bears the signature of Mr. M.K. Nehru. This amount as per the rule was to be deposited in Amirakadal Branch Bank. These have been marked earlier as EXPW 1/1 and EXPW 1/2 and EXPW 1/3 respectively. The debit tranafer voucher dated 11.08.86 regarding amount of Rs. 3.20 lacs has been prepared by the accused and it has not been signed by authorised officer, whereas are fraud signatures. This should have the signatures of Mr. Nehru or his (witness) signatures should have been there. We both were authorised officers.

Out of we two the signatures are not ours and are fraud signatures. Who has signed these fraud signatures he cannot say. In the column of clerk there is no signature, whereas it should have been. Voucher had been early marked as EXPW1/6. Credit transfer voucher dated 11.08.86 on the file, has been seen by him which is regarding amount of Rs.3.20 lacs. This has been prepared by the accused. On this also the signatures of authorised officer are not there. Whereas fraud signatures are there. Who put these signatures, he cannot state anything. This has already been marked as EXPW 1/7. Remittance charge voucher dated 11.08.86 regarding Rs. 25/- is on the file. This writing is in the hand of accused Bansi Lal. It bears signatures of authorised officer Jagjit Singh. This also bears the receipt signature of Nazir Ahmed as he identifies his signature. Nazir Ahmed had gone along with cash to branch of PNB Amirakadal for depositing the same. This is maked as EXPWGM and EXPWGM-1. Cash book started from 16.06.86 on page No.87 S.No.2. Mentioning of remittance voucher is there for an amount of Rs.3.20 1acs. These entries are in the hands of Mst. Sunita clerk of Bank. He identifies the same.

On cross-examination has stated that he is well acquainted with the rules and regulations of the bank. Upto amount of Rs. 5.00 lacs can be deposited from one bank branch to another bank branch by the cashier. No voucher was prepared in his presence. Out of these vouchers credit transfer voucher EXPW 1/6 and debit transfer voucher EXPW 1/7 have passed through his table. As per EXPW 1/7 the amount of Rs.3.20 lacs was to be deposited in the bank as per EXPW 1/6. Rs 3.20 lacs were sent to Amirakadal bank. At the place of signature of clerk on EXPW 1/7 the signature of accused are there. When EXPW 6 and EXPW 1/7 have passed through his table and amount had been deposited. These do not bear his signature. There was no necessity of seal of the bank on it. EXPW 1/6 and EXPW 1/7 have passed through his table. He has not informed the Manager that signatures of these vouchers are fraud. The receipt EXPW 1/5 from Amirakadal bank branch regarding Rs.3.20 lacs has slight traces of seal. He has not undergone for any expert handwriting training. Who was authorised officer in Amirakadal branch, he cannot state. Whosoever is the authorised officer he is acquainted to his signatures. Ultimately receipt had gone to the record keeper. On the second day receipt had gone to Sunita, who is a witness. She is not in record section. Period for which the case has been reported and investigated, he remained in the office. This is wrong to say that earlier case was registered against Nazir Ahmed Cashier. Acutally bank has lodged a case against all the employees. Manager Jagjit Singh has lodged a case. An application was written, whether typed or hand written, but he has taken that letter to CBI. Day of application, he does not remember. After lodging report all the documents were in the custody of record keeper. When this embezzlement was surfaced he cannot state. Accused is involved in other cases also. But this matter surfaced in the year 1987. As per rules of the Bank Amirakadal branch had to inform the Maharaj Gunj branch on next day, that amount has been received and deposited. But this has not been observed. Once embezzlement is surfaced then it has been put to practice. On fraud voucher detail of notes is not required to be given. Receipt which has been received from Amirakadal branch, on that detail of notes is not given. It is not necessary also. Till advise confirmation is not received from Amirakadal branch amount should have been shown outstanding towards the Amirakadal branch. Accused prepared the copy of the voucher and that was passed in ?Khata?. First it had gone to clerk then to him. He recognizes the hand writing of Nazir Ahmed Cashier also.

PW Jagjit Singh has stated that on 11.8.86 he was branch Manager on 11.8.86. He was branch Manager PNB Maharaj Gunj. In their branch to deposit surplus amount, procedure was the debit remittance in transit was being prepared enter made in the register. On this signatures of person taking cash and that of passing officer were being affixed then the cashier was taking his amount to the branch where the currency chest would be, currency chest of their bank was Amirakadal branch. From that bank the cashier was getting counterfoil pay-in-slip which was presented in the bank and debit remittance in transit register was squared. The debit credit voucher was made entery in the day book then debit voucher was entered in the debit extract.

Remittance voucher and debit voucher was being prepared by cashier and the head cashier. On 11.08.86 in his branch accused was Head Cashier and Nazir Ahmed was Cashier. Nazir Ahmed had got the counterfoil after depositing the cash and has handed over to the head cashier. He is acquainted with the writing and signatures of the accused because accused had worked with him. Remittance in transit voucher dated 11.08.86 for Rs.3.20 lacs were remitted from Maharaj Gunj branch to Amirakadal branch. This voucher is written by accused and on this cashier Nazir Ahmed has signed as a receipt. On this earlier EXPW 1/1, EXPW 1/2 and EXPW 1/3 has been marked. In the column of authorised officer signature of M.K.Nehru are there. He recognized them. Pay-in-slip which was given along with the cash in Amirakadal branch as per this amount of Rs.2,93,500/- has been deposited in Amirakadal Branch and depositer Nazir Ahmed?s signature is there. He identifies. On this, in red ink, amount of words have been written and their signatures of receiving cashier of Amirakadal branch and also of that branch is impressed. This has been marked as 1/4 earlier. On the counterfoil pay-in-slip there should have been signature of receiving clerk and amount of Rs.2,93,500/- and writing should have been in the hands of Nazir Ahmed and signature of receiving cashier at Amirakadal branch. But the counterfoil which has been kept by the accused in Maharaj Gunj branch is not in the hand of Nazir Ahmed cashier and nor of his signature also. Amount of Rs.2,93,500/- is also not entered. Whereas counterfoil is in the hand of accused and amount of Rs.3.20 lacs. Signature of Amirakadal branch, receiving cashier are also not there. There is no receipt seal which should have been on the counterfoil. There is slight ?Akas? of some seal. In counterfoil in the column of signature officer, some TN Koul?s signature are there. Whose signatures are these he cannot state. It has been marked earlier as EXPW1/5, EXPW 1/6 EXPW 1/7 is in the hand of accused. On this amount shown is Rs. 3.20 lacs. These does not bear the signature of Maharaj Krishan Nehru as an authorised officer, as there should have been his signature. In bank they have specimen signatures of all officers. Manager has all knowledge about it. On EXPW 1/6 and EXPW 1/7 there are no signatures of any bank officer. Cash book starting from 10.06.86 has been seen by him. On page no.87 S.No.2, remittance entry is Rs.3.20 lacs which is Suneeta?s hand and in page 88 there are signatures of accused head cashier which are identified by him. Actually on 11.8.86 through Nazir Ahmed Cashier, cash of Rs 3.20 lacs was sent to Amirakadal branch for depositing but only Rs.2,93,500/- were deposited and rest of the cash being ?Khasta? for an amount of Rs.26,500/- were returned. Nazir Ahmed Cashier returned those notes worth Rs.26,500/- to the accused in his capacity as head cashier and also handed over the counterfoil for Rs.2,93,500/-. Accused prepared a new counterfoil for Rs.3.20 and misappropriated Rs.26,500/- and caused loss to the bank.

On cross-examination has stated that Nazir Ahmed did not filed the voucher for Rs.26,500/- whereas handed over the amount of Rs.26,500/- to the accused. Amount was not handed over by Nazir Ahmed in his presence. Accused did not destroy the counter foil in his presence. No cash book entry is made at the time of sending the cash. When cash is deposited, day book is mainained by day book writer. Day book writer, he does not know. But he identifies his signature. Signature of Gh Mohi-ud-din Mir checking Officer are identified. He makes entry after seeing both counterfoil. It was their duty to see that counterfoil. There was seal or not I do not know. It was necessary for Gh Mohi-ud-Din checking officer that there are signaturers of concerned officer or not. Day book?s page no.88 has been marked as EXPWGS. Today he has seen the accused also. He cannot state how embezzlement was detected. When matter came to his notice he reported the matter to the Police. Then stated, he reported the matter to the police. Then stated that he referred the matter to the head office and they reported it to CBI. That report has not been seen by him today in the Court. He does not have any writing of the accused with him. In the year 1986 lastly he has seen the writing of the accused. From that date till date he worked with hundred people. He has not undergone any training about comparing of hand writing. But they get training in the bank. He has undergone six months course at Jallandhar civil lines at the beginning. It requires some instruments as to know one?s hand writing. He remained suspended for seven years. Concerned head cashier has done something for which he was suspended. He has no contact with the accused. He has given statement under section 161 CrPC before the police. It was necessary as per rules. After confirmation matter should have been reported to the police. Confirmation advise is received by post. Mr. M.K Nehru is responsible for this lapse. Voucher was to go to Mr. Nehru. After coming to head cashier then it was to be entered in day book. In this case procedure had not been followed. Voucher had directly gone today book section and that section had not raised any objection.

PW Anoop Nath has stated that on 11.08.86 he was clerk cum-cashier in PNB

Maharaj Gunj. From year 1983-1987 he remained there for about five years. He being senior and attending all seats whatever being ordered to him by the Manager. He was performing the duty as Day book, Cash book etc. Drawal and deposits were being done by head cashier. Debit, credit vouchers were also prepared by head cashier. On 11.08.86 he made entry in the day book. Day book from 01.05.86 to 26.05.86 of PNB has been seen by him. In this at page 86 all entries are made by him. Entry regarding Rs.3.20 lacs as per S.No.323 remittance in transit is in his hand. This amount has been shown to be deposited in the PNB Amirakadal branch. This is marked as EXPW A/W. This entry is credit entry. This is done when amount is shown to be deposited to Amirakadal branch. On this page at S.No. 327 Rs. 3.20 lacs debit entry has also been shown. This shows that the amount has been withdrawn for depositing the amount in Amirakadal branch. This is also in his hand. It is marked as EXPW1, EXPW 1/1 EXPW 1/2 and EXPW 1/3 remittance vouchers are on the file which is for Rs 3.20 lacs. It is in the hand of the accused. EXPW 1/6 and EXPW 1/7 are also seen by him. These are also in the hand of the accused. As per this he has made credit entry in the day book on page no.88. As Incharge officer signatures are of accused, as is evident from the copy. Signatures which are in red ink are not of any officer of their branch. Because they have specimen signatures of every officer in the bank. EXPW 1/5 is seen by him. This is being compared by credit and debit vouchers. As per EXPW 1/4 Rs.2,93,500/- has been deposited. Who has signed counterfoil he cannot identify. Debit page no.7 S.No. I, entry is in his hand for Rs.3.20 lacs. This has been shown to have been deposited in Amirakadal bank. Debit page no. 7 is correct. It is marked as EXPW A/W-2.

In cross-examination has stated that the date when the amount is sent to the bank, on next day it is entered in the day book. Entry EXPW 2 is done on that day when counterfoil of Amirakadal branch was there. Then stated that he made this entry after getting confirmation from Amirakadal branch of the bank. As per rules Amirakadal branch sends confirmation on the next day. That this much amount has been deposited. On the basis EXPW 1/7 day book entry at page no. 88 EXPW A/W has been made, because there are many vouchers. His job is not to check the signature. He has not to satisfy himself about the signatures of the entries because vouchers had to come to him after passing by passing officer or any other officer. How this voucher was passed by manager of the branch I do not know. The Manager was Mr. S Jagjit Singh (witness). This time he cannot state whether it bears signatures of Manager or not. Much time has lapsed he cannot identify.

PW Kamaljeet Singh has stated that on 11.08.86 he was cashier in PNB branch Amirakadal. In their branch amount from different branches was being deposited to our branch. Currency chest facility was in Amirakadal bank. Bank representatives whosoever was coming for depositing cash was filling pay-in-slip. The persons who were depositing cash were being given counterfoil with signatures of head cashier and receipt seal is being affixed. Pay-in-slip dated 11.08.86 EXPW 1/4 is seen by him which is on the file, which is regarding

Rs.2,93,500/-. On this he has affixed receipt seal and in red ink in his own hand made entry regarding amount, is made. He identifies the signature. Regarding this amount in the counterfoil pay-in-slip he has also affixed receipt seal, his signature after receiving amount of Rs.2,93,500/- which was given to the depositor. Depositor?s signature Nazir Ahmed, he cannot identify. He had returned ?Khasta? notes, how much, he does not remember. Counterfoil EXPW 1/6 on the file is seen by him. In this amount of Rs.3.20 lacs is shown, is wrong. On this his signature and receipt seal of the bank is not there. Amount for which is written in red ink is not in his hand and under his signature. The writing of this is not in the hand of Nazir Ahmed. At the place of signature of officer, it does not bear signature of officer of their bank. So counterfoil is fake.

In cross- examination he has stated that on EXPW 1/4 there are three signatures only, one is his signature. 2nd is of receiving officer whose name he does not know and third is of depositor. He has signed as receiving cash, but under his signature passing officer is written.

In what capacity other officer has signed he cannot state. This can be asked from the concerned one.

On EXPW 1/4 he has impressed his seal.This is wrong to say that 1/2 of the seal should be on EXPW 1/4 and half of it on its counterfoi1. Nazir Ahmed has given only Rs.2,93,500/- for which he has given receipt to him. In this amount notes were in order and EXPW 1/5 whose signatures are there and who has signed he cannot state.

PW Mst Reeta Koul has stated that in the year 1986 she was accountant/officer in PNB Branch Maharaj Gunj. She was dealing with saving account, current account and cash book. Accused was in PNB Maharaj Gunj Bank, on those days was Head cashier. Cash book from 16.06.86 is seen by her. Page No.85 to 88 have also been seen by her. On page 85, 87, 88 she identifies her initials as checking officer. At the end of page 88 her full signature are there. These pages are marked as AR, BR and CR. Pages 85, 87 and 88 bears her signature. On page 87 entry No.2 dated 11.08.86 which has been exhibited as EXPWGM 2, on this entry she has put her signature as checking officer. Voucher dated 11.08.86 for an amount of Rs.3.20 is seen by her. As per this she entered in the cash book. This amount shall be deposited in PNB Amirakadal. On this Head cashier signs are identified. Counterfoil which has been shown to her, have been deposited in Amirakadal. The amount shown is Rs.3.20 1acs, in whose hand this voucher is, she cannot state. This also she cannot state whether entry is correct or not because voucher concerns to other branch of the bank. Counterfoil is not correct because there are no signatures. Signatures of the officer of the bank number is also not given. Pay-in-slip is seen by her. As per this Nazir Ahmed has deposited an amount of Rs.2,93,500/-. She identifies the signature of Nazir Ahmed. Voucher/pay-in-slip has been marked as EXPWI/4. On this pay-in-slip signature of Cashier of Amirakadal Bank are there. Counter foil of this pay-in-slip Q 11 has been shown. It is marked as EXPWI/5. After seeing both thesecounter-foils she can say that these are not counterfoils of Rs.3.20 lacs and not Rs.2,93,500/- Nazir Ahmed had got notes returnéd because these notes would have not been accepted by the bank. After returning these notes, were given to Head cashier. It was the duty of Head Cashier that the amount received, he should have prepared a voucher and should have made voucher in the cash book. After receiving this amount Head cashier has not prepared voucher nor has shown excess cash. Nazir Ahmed is present in the court.

In cross-examination has stated that from page 85 to 87 cash book is of one date. In the cash book shown in the court dated 08.11.86 page No.88 entry of balance cash is Rs.6,75,679/- has been shown. It is correct. It has been tallied with the cashier's record. If Cashier 'missed? any voucher, cashier should have shown excess cash. Receipt is more and payment is less-Entry of Rs.3.20 lacs is at page No.87. This shows that after this amount was taken to be deposited to Amirakadal Branch. Voucher to that extent has not been received back whether the amount was deposited or not. About this there is no entry in the Cash book. It was not her duty whether amount has been deposited or not. But as per the counterfoil dated 11.08.86 Rs.3.20 lacs have been shown to have been deposited in Amirakadal Branch. Counterfoil for Rs.3.20 lacs should have come, whether that has come, she does not know because 13 years have elapsed. That counterfoil for Rs.3.20 lacs, there should have been details of notes which is not there. Seal on this is not legible. She cannot state that seal of Amirakadal branch is or not.With whom she had worked she can identify signature. Who was authorised officer in Amirakadal she cannot state. She cannot state who was on cash duty on that day becaue she did not tally the signature on counterfoil dated 11.08.86. On this counterfoi1 there was no signature of any officer known to her. Because whosoever has signed it he has not given his power of attorney number.Counter-foil which are coming, their entry is made on next day. As per day book page 86 dated 11.08.86 amount of Rs.3.20 lacs has been shown to have been deposited in Amirakadal Branch. She cannot state in whose hand this has been prepared. She has not undergone any Forensic training expert. But out of experience she can identify the signature. She has done her GTC II from Chandigarh, GTC 1st from Delhi and GTC from Ludhiana and ARC from Srinager. Certificates are not issued. There are no provisions. As per procedure after remittance of cash, on the date confirmation was to come from Amirakadal Branch and that confirmation comes to Assistant Manager. Asstt: Manager can say whether confirmation has come to him or not. As Accountant it was not her duty. That amount was due in Amirakadal Branch or not. In those days Manager was Jagjit Singh and Asstt: Manager was Mr. Nehru. The statement regarding accused was recorded by CBI so she remember this day. On checking fraud matter was referred to CBI. Voucher for Rs.2,93,500/- is in Nazir Ahmed's hand writing. Nazir Ahmed has deposited this amount after filling voucher to Cashier and brought back Rs.26,500/- and has handed over to the Head cashier. This amount alongwith receipt. For not receiving confirmation from Maharaj Gunj Branch Manager was to contact to Amirakadal Branch. She cannot state whether

Manager Maharaj Gunj Branch has contacted Manager Amirakadal branch or not.

PW Ashwani Lal Pandit has stated that in the year 1986 he was Cash officer in PNB in Amirakadal Branch. His job was that the extra cash which was being deposited in Amirakadal branch was kept by him in the currency chest. Other branches of our bank also deposit their cash in the bank. Cash is being deposited in our bank by filling pay-in-slip. Cashier of our bank gives half of it to the person who deposits the amount and half of it is being kept in the bank, on which details of notes are being given, after unsorted notes are being returned Deposited amount is shown in the cash book. Cash book of Amirakadal branch marked as ? A? is seen by him on page No.94 dated 11.08.86. Cash of Maharaj Gunj Branch amounting to Rs.2,93,500/- has been entered, writing he cannot identify. Receipt dated 11.08.86 on the file is seen by him. As per this an amount of Rs.2,93,500/- has been deposited in Amirakadal Branch. Kamal Jeet Singh is known to him. In those days Kamal Jeet Singh was Cashier in Amirakadal Branch. His writing and signatures he can identify, as he has worked with him. On this receipt signatures of Kamal Jeet Singh are there but it is marked as EXPWAP.

In cross-examination the witness has stated that unsorted notes which are returned, for that no receipt is made. Only receipt of deposited amount is given. Kamal Jeet Singh is presently posted in Jammu and against him no case is lodged. An amount of Rs.2,93,500/- was deposited in Amirakadal Branch ?n his presence. He cannot say how many notes were unsorted. He has given statement before police. In police statement it has been written that there should be detail of cash is correct. Voucher for Rs.2,93,500/- is on the file. In this such detail is not given. For details it helps the Cashier. The Cashier with whom this amount has been deposited is the responsible employee. This is true that on deposit of amount on the next day, credit advise is being sent to the branch, who deposits the amount. This is the responsibility of the Manager and Cash book Incharge. Who was Manager Incharge Cash book he does not remember. He does not know whether credit advise has gone to Maharaj Gunj branch or not.

PW Mst Usha Matoo has stated that in the year 1986 she was clerk cum-typist ?n PNB Amirakadal Branch. Inter branches transactions are being made on the basis of vouchers. Credit extract item No. 2 is on the file. It pertains to PNB Amirakadal. It is marked as ?. On page 31 entry is made by her on 11.08.86. Page No. 3 to 63 is in her hand.This is regarding cash of Rs.2,93,500/- deposited by Maharaj Gunj branch in Amirakadal Branch. Entries are on the basis of cash voucher. It is marked as EXPWUM. Voucher EXPW 1/4 dated 11.08.86 is on the file. On the basis of this voucher entry has been made.

In cross-examination voucher EXPW 1/4, in whose hand she cannot state nor can she say who has passed it. In her presence amount of Rs.2,93,500/- has not been deposited. Regarding this advise voucher must have gone to Maharaj Gunj Branch. Whether it has gone, she cannot state.

PW Sunita Koul has deposed that in the year 1986 she was clerk cum-Cashier in PNB Maharaj Gunj Branch. Accused was head cashier in the said branch. She was maintaining cash book. Cash book of PNB of 1986 has been seen by her. It is marked as ?S?. In this cash book at page No.85 entries are in her hand and under signatures. One page No.88 all entries are in her hand and under her signatures. These entries are marked as EXPW SK. Entries at page No 87 are also in his hand. It is maked as EXPW SKI. On this page S.No.2 entry is in her hand. This entry is remittance entry for Rs.3.20 lacs. She has made this on seeing the remittance voucher dated 11.08.86, is signed by her. Writing of this voucher is of the accused. This amount has been taken by clerk to deposit the same. His signatures are at EXPW 1/2 which she identifies. Voucher dated 11.08.86 for an amount of Rs.25/- is also written by accused regarding this Entry is at page No.87, S. No.27 by her. It ?s marked as EXPW SK. Whosoever goes to deposit the amount to the other bank the counterfoil brought by him and amount returned by him is being handed over to head cashier on his return. Head Cashier deposited this amount and entries are being made in the record. At the place of authorised officer in the said voucher signature of Mr.Nehru are there. Signatures of accused are also there. At the place of clerk whose signatures are, she cannot state. Twelve years earlier accused was working witn her. During this period she has not seen writing and signature of accused. She has not undergone to any hand writing training. Cash book from 16.06.86 to 01.09.86 is in her hand.Whenever any amount of Maharaj Gunj Branch was being deposited in Amirakadal Branch confirmation Advise used to come on the next day about the deposit of amount. She cannot state in this regard whether confirmation advise was received or not. Because it is not entered in the cash book.This was not her duty whether amount sent has been deposited or not. It was the duty of Manager. Unsorted notes if any are returned, those are to be handed over to Head Cashier. This amount is deposited by way of voucher in the bank and that voucher is also entered in the record. She has not seen any receipt of Rs.3.20 lacs in Amirakadal Branch nor has she made any entry regarding it.

PW Ashok Kumar Angral Sr. Deputy Manager Vigilance Gas Authority of India U.P has stated that in the year 1987 he was Inspector CBI ACB Srinagar. FIR No.5/87 has been investigated by him. This was under orders of SP CBI Sh. Prem Gupta. He examined FIR and he discussed the matter with officers of PNB Branch of Amirakadal and Mahatraj Gunj. Relative documents, vouchers and ledger of both the branches were verified and seized. There related rules of banking procedure about the same was obtained. The witnesses which were necessary for this purpose, their statements have been recorded u/s 161 Cr.P.C. He inquired from the accused Bansi Lal and obtained signatures and writing of the accused, in presence of witnesses without any pressure. Specimen signatures have been seen, those have been already marked as EXPW 1 to EXPWAK 22. He identifies his signture also. On this seizure memo dated 28.04.87 and 20.05.87 are in his hand and under his signature. These have been marked as EXPWIJ and EXPWMA. Seizure memo dated 28.04.87, documents were obtained from Jagjit Singh

Branch Manager PNB Maharaj Gunj. It bears his signatures. Contents are correct. It is marked as EXPWAK(I). FIR is the same which was handed over to him at the time of investigation. On this signature of SP Prem Gupta are identified. It is marked as EXPWAKII. He has sent questioned documents, specimen signatures and writings of the accused to the hand writing expert and has obtained opinion. In view of these documents and statements he found that accused has embezelled Rs.26,500/- and against him offence under Sections 409/467/471/477A RPC were found proved and challan against the accused was presented on 31.07.87. Challan bears his signature. It is marked as EXPWAKIII.

In cross-examination has stated that FIR was lodged by SP so he does not know source. SP is now DIG Jammu. As per his investigation about the occurrence no concerned officer of the bank has reported the matter before lodging the FIR and after that also no officer of the bank has given any report. Instead he approached them and recorded their statements. On the day of investigation there were two officers and accused. He did not ask from them why the matter was not reported by him. But when he reached in the bank PNB Maharaj Gunj he came to know that branch had reported the matter to the local police against accused and police has arrested the accused and taken him to custody. So he need not to enquire from the officer of the bank that why report has not been lodged by them. As per report accused was arrested by 1ocal police. Copy was not obtained by him. FIR is lodged after a period of nine months, but there is no delay. He has not inquired from the bank why from 11.06.86 till 24.07.87 matter has not been reported. From FIR there is addition in the challan. That Nazir Ahmed has taken an amount of Rs.3.20 lacs for depositing and deposited Rs.2,93,500/- and handed over remaining cash of Rs.26,500/- and counterfoil to Bansi Lal accused. He has not obtained writing and hand writing of the accused in presence of accused. Whereas has taken in presence of two independent witnesses Sh. R. L. Hakoo and A.K. Mota.

They are employees of PNB Regional Office. Specimen signatures and hand writing of the accused was obtained and CBI office Srinagar which is in the residential area, in FIR name of Nazir Ahmed as suspect is there. He has not obtained signatures and writings of Nazir Ahmed and also has not obtained signatures of Mr. M. K. Nehru or authorised officer, of Amirakadal Bank. In CBI he has investigated near about 10/12 cases. In such cases were signatures and writing were fraudently immitated and forged. It has not come in his investigation that Cashier after obtaining receipt from Amirakadal Branch has placed before Manager PNB Maharaj Gunj. Whereas he had to give it to Head cashier. He cannot state that at the time of closing day book, which had to be prepared and consolidated statement regarding cash transaction was to be prepared. But in day book ledger entry regarding transaction has been made. The amount was refused to be taken by the Cashier of Amirakadal Bank verbally. But the pay-in-slip for an amount of Rs.2,93,500/- was accepted by cashier Amirakada1 branch and counterfoil was given to Nazir Ahmed, Cashier. Amount was returned because notes were cut and torn. The notes were not seized. Day book was seized. Cashier who has returned the notes worth Rs.26,500/-. His name is Kamal Jeet Singh and is a prosecution witness. Nazir Ahmed after coming from Amirakadal branch handed over notes worth Rs.26,500/- to the accused. Then accused prepared contra voucher, forged the signatures of authorised officer and then sent directly to record. There is proof that Nazir Ahmed has handed over the amount of Rs.26,500/- to the accused but there is no eye witness except Nazir Ahmed. It was the duty of the head cashier to get voucher signed by Manager. There is no eye witness, that receipt of Rs.2,93.500/- was destroyed by accused, but the fraud voucher which was prepared by accused was sent to expert opinion alongwith specimen signatures, hand writings of the accused, after tallying opinion was received which shows that accused had prepared fake receipt.There is no eye witness to that extent. The fraud voucher of Rs.3.20 lacs which has been prepared by accused does not bear seal of Amirakadal Branch. There should have been inter locking seal as it is on the original voucher of Rs.2,93,500/-. Accused has sent the fake voucher of Rs.3.20 lacs without showing to anybody or officer, to record and made its entry in the register himself, was of some officer to whom this fake voucher had been handed over. As per the Bank official, it was not necessary that amount which was returned amounting to Rs.26,500/- by Amirakadal branch should have been deposited in the bank by a voucher. Return of unsorted notes is daily practice. Amirakadal branch had sent confirmation advise to the the Maharaj Gunj branch confirming how much amount was deposited. Confirmation advise has been received afterwards. The accused prepared voucher and shown adjustment prior to that. Credit advise was not seized. He does not know that for not sending the credit voucher in time who is responsible. Against such person no proceedings have been initiated.

PW I.U. Khan at present Secretary PCB J&K State has stated that I examined the standard writing marked Al to Al2 and (S) to S-22) were compared with the question writings marked Q1 to Q 17. The authorship of both the sets were the same and the report is given vide report No.500/FSL/1987 dated 30.06.87 the report is on the file bears my signature. Report is based on two leaves and its contents are correct. Same is exhibited as EXPWIUK and all the documents which were examined by me as per report today shown to me and all the documents are examined stamps.

On cross-exanination deposed that a person can disguise writing which will not resemble usually but inherent features will not be changed. I have read so many books on the subject of testing the handwriting like question documents by Osborn and scientific examination by Harrison. I do not agree with a proposition that the handwriting and signature can be immitated and after immitation the same can tally with that which has been immitated. There will be superficial resembalance but inconscious feathers cannot resemble in the handwriting of two persons. I do not agree that different papers can make any change in the writing habit. A signature cannot be forged to such an extent that it will look genuine. I cannot say whether the questioned documents in the present case and admitted writings have been written with the same pen and paper, handwriting habits cannot be changed. I do not agree with a proposition that the option of two different handwriting experts can differ on the same matter. There is slight change with the passage of age of the writer. State of health also makes changes. No Magistrate has testified the specimen writing and signatures which I have examined in the present case. When I examined the documents of this case in Srinagar Laboratory, there was no such like laboratary at that time at Jammu. It is not correct that all the required scientific aids were not available in Srinagar Labortary those days. I do not know whether the Laboratry at Delhi has more scientific aid available than Srinagar Laboratory.

9. The contents of chargesheet reads as under:-

"Charge Sheet

I, P.L. Dassi, IInd Additional Sessions Judge, Srinagar charge you Shri Bansi Lal Zijoo S/o Shri Prem Nath Zijoo r/o Pir Mohalla Natipora as under:

That you on 11.08.1986 while working as Head Cashier, PNB, Amira Kadal Branch was entrusted, with an amount of Rs.26,500/- and you to wit in your capacity as a public servant committed criminal breach of trust by misappropriating an amount of Rs.26,500/- and thereby committed an offence u/s 409 RPC and within my cognizance.

And I hereby direct you to be tried under the said charge. Secondly that on 11.08.86 you forged the counterfoil of a pay-in-slip showing a deposit of Rs.3.20 lacs in Amira Kadal Branch of PNB and transfer credit and debit voucher for Rs.3.20 lacs purporting to be valuable securities, with the intention of misappropriating this amount and thereby committed an offence u/s 467 RPC and within my cognizance. And I hereby direct you to be tried for the said charge.

Thirdly on 11.08.86 you dishonestly and fraudulently used as genuine, the counterfoil of pay-in-slip falsely showing the deposit of Rs.3.20 lac in Amira Kadal Branch of PNB and transfer credit and debit voucher for Rs.3.20 lacs which you then knew to be forged documents and thereby committed an offence punishable u/s 471 RPC and within my cognizance. And, I hereby direct you to be tried on the said charge.

Fourthly, that on 11.08.86 you being Head Cashier of PNB, Maharaj Gunj Branch, within the intention to defraud falsifies the records of the bank and falsely showed a deposit of Rs.3.20 lac in PNB Amira Kadal, Srinagar, instead of actual deposit, which was only Rs.2,93,500/- and thereby committed an offence punishable u/s 477A RPC and within my cognizance. And I hereby direct you to be tried on the said charge."

10. The appellant has been chargesheeted for fogery of valuable security, misappropriation of money and falsification of bank account. Forgery is defined under Section 463 RPC, it reads:-

"463. Forgery.

Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

11. Making of false document is defined in Section 464 of RPC. It reads:-

"Sec.464. Making a false document.

[A person is said to make a false document or false electronic record-First- who dishonestly or fraudulently-

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

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

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

(d) makes any mark denoting the execution a document or the authenticity of the digital signature; with the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signal, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly- who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

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

12. As per sections 463/464 RPC, the person who is charged with offence of forgery has to make sign, seal and to execute a document, which he knows that it is false. To attract sections 467 and 468 there has to be alteration of document dishonestly and fraudulently. Further, if the documents is to be altered it has to be some gain or with such objective on the part of the accused. For attracting section 471 RPC this forged document should have been used as genuine document.

13. The prosection was thus to prove that appellant remained posted in PNB Maharaj Gunj Branch Srinagar at relevant time; he prepared remittance in transitvoucher for an amount of Rs.3.20 lacs which was passed by the authorised

officer PW Mr.Nehru Asstt. Manager; the said amount was given to prosecution witness Nazir Ahmed Bhat (Cashier) for depositing the surplus amount in Amirakadal branch in currency chest; PW Nazir Ahmed Cashier Maharaj Gunj branch had deposited an amount of Rs.2,93,500/- by filling in pay-in-slip in Amirakadal Branch and unsorted cash worth Rs. 26500/-were returned to him; PW Nazir Ahmed handed over the counterfoil of pay-in-s1ip for an amount of Rs.2,93,500/- and an amount of unsorted worth Rs.26,500/- to accused. Accused instead of depositing Rs.26,500/- in his branch and placing the counterfoil pay-in-slip for an amount of Rs.2,93,500 on record, destroyed the counterfoil, prepared fake pay in slip for an amount of Rs.3.20 1acs, forged the signatures of authorised office and kept in record. Accused missappropriated an amount of Rs.26,500/- and put himself to gain and caused 1oss to the bank.

14. P.W. N.A. Bhat, the Cashier in PNB Maharaj Gunj Branch, Srinagar, has stated that on 11.08.86 accused was posted as Head cashier there; on that day he had gone to deposit cash amount of Rs.3.20 lacs in Amirakadal Branch.He received amount of Rs.3.20 lacs from the accused. He signed the payment voucher EXPW 2/1. When he reached Amirakadal Branch, pay-in-slip for an amount of Rs.3.20 lacs was filled. He went to Cashier.Cashier returned him Rs.26,500/- as unsorted cash. He filled another pay-in-slip EXPW 1/4 dated 11.08.86 for an amount of Rs.2,93,500/- for deposit in Amirakadal Branch and deposited the same in the Amirakadal Branch; the 2nd part of the said pay-in-slip was taken by him as receipt and was handed over to accused, the Head casher of his branch along with Cash of Rs.26,500/-. He has stated that copy of remittance register is on the file. P/W Maharaj Krishan Nehru, who was Asstt. Manager in PNB Branch, Maharaj Gunj, has stated that accused was Head Cashier. Jagjit Singh was Manager.

In this branch currency chest was not available whereas in Amira-kadal PNB Branch surplus cash was being deposited by them. Head cashier was either depositing the same himself or deputing some cashier. If for some reasons currency chest does not accept whole amount either they are torn or unsorted notes returned to the person who has gone for depositing the amount; Unsorted notes are being brought back and are being deposited by Head Cashier. He has proved Payment voucher EXPW 1/1 for an amount of Rs.3.20 lacs on the file, which is in the hand of accused. He as an authorised officer has passed this Payment voucher. PW N. A. Bhat cashier had gone to deposit in Amirakadal Branch. He has also proved voucher EXPW 1/ 2, which is in handwriting of accused in black ink. He has proved EXPW 1/3-Pay in-slip dated 11.08.86, which is in hand writing of N. A. Bhat Cashier. As per this pay-in-slip an amount of Rs.2,93,500/- was deposited in currency chest in Amirakadal Bank. He has proved EXPW 1/4 pay-in- slip which remained in the bank where the amount was deposited. He has further stated that other portion of it was given to depositor as a receipt. This portion was given to Head cashier/ accused. Counter foil EXPW 1/5 dated 11.08.86 on the file is in the hand of the accused. This counter-foil EXPW 1/5 is counter-foi1 of (pay-in-slip) EXPW 1/4; counter foil 1/5 are not of same size. This witness has denied his signatures Q-2 and Q- 16 on Debit transfer voucher dated 11.08.86 and credit transfer voucher dated 11.08.86; he has stated that these are in the hand of accused. These have been marked as EXPW 1/6 and 1/7 respectively. This witness has clarified that as per these vouchers the amount of Rs.3.20 lacs have been shown to have been deposited in Amirdrakadal Branch. PW R.J. Krishan Manager PNB Branch Amirakadal is witness to seizure memo EXPW-IJ of record of Bank of Amira Kadal branch.

15. PW Mohd. Amin Bhat, Tallier in PNB branch Maharaj Gunj, is witness to seizure memo EXPNA dated 20.05.87 of bank record. He also knew the accused. PW A.K. Mota has stated that in the year 86-87 he was posted in Regional Office PNB Srinagar. Bansi Lal accused is known to him. He was told by Regional Officer of the time, Sh. Rekhi to attend the CBI office. He was accompanied by R.L.Ticku Asstt. Manager when they reached CBI office, there they saw CBI officer and the accused, officer gave papers to the accused and told the accused to put his signatures on the blank paper and write some- writing. When accused wrote and put the signatures, they attested the same, on papers from SI to S4. He is thus attesting witness to specimen signature memo EXPWAK-I and AK-2 respectively of accused obtained by CBI. PW Roshan Lal has stated that in the year 1986-87 he was posted as Asstt. Manager in the Regional Office of PNB Srinagar. Accused is known to him. In the year 1986-87 accused was head cashier in PNB Branch Maharaj Gunj. On the instructions of Divisional Manager he went to CBI office. There he met IO, A. ?. Angral. Accused was also there. He is also witness to the memos EXPAK 1 to EXPWAK 22 of specimen signatures S1 to S22. PW Hirday Nath, employee posted in PNB Branch Amirakadal, Srinagar at relevant time from 1983 to 1987, has stated that Debit voucher dated 11.08.86 EXPW 1/4 for amount of Rs.2,93,500/- was of Amirakadal Bank Branch. This amount was of PNB Branch Maharaj Gunj. This memo also bears his initial. Voucher dated 11.08.86 has been entered in the cash book at page No.94 of PNB Amirakadal Branch at S.No.5. Varinder Khatu who was maintaining cash book had made the entry of the debit vouchers. It bears his signatures also; It was marked as EXPWHN. Cash book has been marked as A.He has proved all entries of page No. 95 as checked by him; He has also admitted that he put his initials at the end of the age 95. He has further stated that all these entries were in the hand of Varinder Khatu. This has marked as EXPWHN. He has further stated that who put signature and initial on (EXPW 1/4),he does not know. PW G.M.Mir -Accounts Officer PNB Maharaj Gunj Branch at the relevant time has stated that as per the rules of the bank currency chest is being fixed in one branch and the surplus cash is being deposited in such bank where chest is available; accused was Cashier in PNB Maharaj Gunj bank at relevant time; the vouchers were passing through the table of another officer, namely, Mr. M.K. Nehru.He is well acquainted with the signature and writing of the accused. Remittance vouchers dated 11.08.86 of amount of Rs.3.20 lacs has been written by the accused and it bears the signature of Mr. M.K.Nehru.This amount as per the rule was to be deposited in Amirakadal Branch Bank. He has testified EXPW 1/1, EXPW 1/2 and EXPW 1/3

respectively. The debit tranafer voucher dated 11.08.86 regarding amount of Rs.3.20 lacs has been prepared by the accused and it has not been signed by authorized officer, there are fraud signatures on it. This should bear signatures of Mr. Nehru or him (witness). Who has signed these fraud signatures he cannot say. In the column of clerk, there is no signature, whereas it should have been. Voucher had been early marked as EXPW1/6. Credit transfer voucher dated 11.08.86 on the file, has been seen by him which is regarding amount of Rs.3.20 lacs. This has been prepared by the accused. On this also the signatures of authorised officer are not there. Remittance charge voucher dated 11.08.86 regarding Rs.25/- is on the file. This writing is in the hand of accused Bansi Lal. It bears signatures of authorised officer Jagjit Singh; it bears the receipt signature of PW Nazir Ahmed as he identifies his signature.

16. PW Jagjit Singh, Branch Manager PNB Maharaj Gunj, has stated that in their branch to deposit surplus amount the procedure was the debit remittance in transit was being prepared and entery be made in the register, on this signature of person taking cash and that of passing officer were being affixed; then the cashier used to take amount to the branch where the currency chest would be; currency chest of their bank was in Amirakadal branch. From that bank the cashier used to get counterfoil pay-in-slip. Remittance voucher and debit voucher was being prepared by cashier and the head cashier. On 11.08.86 in his branch accused was Head Cashier and Nazir Ahmed was Cashier. Nazir Ahmed had got the counterfoil after depositing the cash and handed over to the head cashier. He is acquainted with the writing and signatures of the accused because accused had worked with him. Remittance in transit voucher dated 11.08.86 for Rs.3.20 lacs were remitted from Maharaj Gunj branch to Amirakadal branch. This voucher is written by accused and on this cashier Nazir Ahmed has signed as a receipt. He has proved EXPW 1/1, EXPW 1/2 and EXPW 1/3 . He has also proved the signature of authorised officer, signature of M.K.Nehru. Pay-in-slip EXPW -1/4 which was given along with the cash in Amirakadal an amount of Rs.2,93,500/- was deposited in Amirakadal Branch by depositer PW Nazir Ahmed. On the counterfoil pay-in-slip there should have been signature of receiving clerk and amount of Rs.2,93,500/- and writing should have been in the hands of Nazir Ahmed and signature of receiving cashier at Amirakadal branch. But the counterfoil which has been kept by the accused in Maharaj Gunj branch is not in the hand of Nazir Ahmed cashier and nor of his signature also. Amount of Rs.2,93,500/- is also not entered. Whereas counterfoil is in the hand of accused an amount of Rs.3.20 lacs. Signature of Amirakadal branch, receiving cashier are also not there. There is no receipt seal which should have been on the counterfoil. There is slight ?Akas? of some seal. In counterfoil in the column of signature officer, some TN Koul?s signature has been written. Whose signatures are these he cannot state. Contents of EXPW1/5, EXPW 1/6 EXPW 1/7 are in the hand of accused. On this amount shown is Rs.3.20 lacs has been written. These do not bear the signature of Maharaj Krishan Nehru as an authorised officer. On page no.87 S.No.2, remittance entry is Rs.3.20 lacs which are Suneeta?s hand

and in page 88 there are signatures of accused Head Cashier which are identified by him. In fact on 11.8.86 through Nazir Ahmed Cashier, cash of Rs. 3.20 lacs was sent to Amirakadal branch for depositing but only Rs.2,93,500/- were deposited and rest of the cash being ?Khasta? for an amount of Rs.26,500/- were returned. Nazir Ahmed Cashier returned those notes worth Rs. 26,500/- to the accused in his capacity as head cashier and also handed over the counterfoil for Rs.2,93,500/-. Accused prepared a new counterfoil for Rs.3.20 and misappropriated Rs.26,500/-and caused loss to the bank.

17. Mr. PW Anoop Nath has stated that on 11.08.86 he was clerk cum-cashier in PNB Maharaj Gunj; he was performing the duty as Day book, Cash book etc. Drawal and deposits were being done by head cashier. Debit credit vouchers were also prepared by head cashier. On 11.08.86 he made entry in the day book. Day book from 01.05.86 to 26.05.86 of PNB has been seen by him. In this at page 86 all entries are made by him. Entry regarding Rs.3.20 lacs as per S. No. 323 remittance in transit is in his hand. This amount has been shown to be deposited in the PNB Amirakadal branch. This is marked as EXPW A/W. This entry is credit entry. This is done when amount is shown to be deposited in Amirakadal branch. On this page at S.No. 327, Rs.3.20 lacs debit entry has also been shown. This shows that the amount has been withdrawn for depositing the amount in Amirakadal branch. This is also in his hand. It is marked as EXPW1, EXPW 1/1 EXPW 1/2 and EXPW 1/3 remittance vouchers are on the file which is for Rs.3.20 lacs. It is in the hand of the accused. EXPW 1/6 and EXPW 1/7 are also seen by him. These are also in the hand of the accused. As per this he has made credit entry in the day book on page no.88. As Incharge officer signatures are of accused, as is evident from the copy. Signatures which are in red ink are of not of any officer of their branch. Because they have specimen signatures of every officer in the bank. EXPW 1/5 is seen by him. This is being compared by credit and debit vouchers. As per EXPW 1/4 Rs.2,93,500/- has been deposited. Who has signed counterfoil he cannot identify. Debit page no.7, S.No.I, entry is in his hand for Rs.3.20 lacs. This has been shown to have been deposited in Amirakadal bank. Debit page no.7 is correct. It is marked as EXPW A/W-2.

18. PW Kamaljeet Singh has stated that on 11.08.86 he was cashier in PNB branch Amirakadal. In their branch amount from different branches was being deposited to our branch. Currency chest facility was in Amirakadal bank. Bank representatives whosoever was coming for depositing cash was filling pay-in-slip. The persons who were depositing cash were being given counterfoil with signatures of head cashier and receipt seal is being affixed. Pay-in-slip dated 11.08.86 EXPW 1/4 is seen by him which is on the file, which is regarding Rs.2,93,500/-. On this he has affixed receipt seal and in red ink in his own hand made entry regarding amount, is made. He identifies the signature. Regarding this amount in the counterfoil pay-in-slip he has also affixed receipt seal, his signature after receiving amount of Rs.2,93,500/- which was given to the depositor. Depositors? signature Nazir Ahmed, he cannot identify. He had returned ?Khasta? notes, how much, he does not remember. Counterfoil EXPW

1/6 on the file is seen by him. In this amount of Rs.3.20 lacs is shown, is wrong. On this his signature and receipt seal of the bank is not there. Amount for which is written in red ink is not in his hand and under his signature. The writing of this is not in the hand of Nazir Ahmed.

19. PW Mst Reeta Koul accountant/officer in PNB Branch Maharaj Gunj has stated that accused was in PNB Maharaj Gunj Bank, on those days and was Head cashier; cash book Page No.85 to 88 have also been seen by her. On page 85, 87, 88 she identifies her initials as checking officer. At the end of page 88 her full signature are there. These pages are marked as AR, BR and CR. Pages 85, 87 and 88 bears her signature. On page 87 entry No.2 dated 11.08.86 which has been exhibited as EXPWGM 2, on this entry she has put her signature as checking officer. Voucher dated 11.08.86 for an amount of Rs.3.20 has been seen by her; this amount has to be deposited in PNB Amirakadal. Counterfoil shown to her, has been deposited in Amirakadal. Nazir Ahmed has deposited an amount of Rs.2,93,500/-. She has identified the signature of Nazir Ahmed on Voucher/pay-in-slip EXPW I/4. Counter foil of this pay-in-slip EXPWI/5 Q 11 has been seen by her. After seeing both these counter- foils she can say that these are not counterfoils of Rs.3.20 lacs and not Rs.2,93,500/-; Nazir Ahmed had got notes returnéd because these notes would have not been accepted by the bank. After returning these notes, were given to Head cashier. It was the duty of Head Cashier that the amount received, he should have prepared a voucher and should have made voucher in the cash book. After receiving this amount Head cashier has not prepared voucher nor has shown excess cash. Nazir Ahmed is present in the court.

20. PW Ashwani Lal Pandit Cash officer in PNB in Amirakadal Branch has stated that his job was that the extra cash which was being deposited in Amirakadal branch to be kept in the currency chest. Other branches of our bank also used to deposit their cash in the bank. Cash is being deposited in his bank by filling pay-in-slip. Cashier of our bank gives half of it to the person who deposits the amount and half of it is being kept in the bank,on which details of notes are being given; unsorted notes are being returned and Deposited amount is shown in the cash book. Cash book of Amirakadal branch which has been marked as ?A? has seen by him; on page No.94 dated 11.08.86 cash of Maharaj Gunj Branch amounting to Rs.2,93,500/- has been entered. Receipt dated 11.08.86 on the file has been seen by him. As per this, an amount of Rs.2,93,500/-was deposited in Amirakadal Branch. Kamal Jeet Singh was Cashier in Amirakadal Branch. He has identified the signatures of Kamal Jeet Singh on EXPWAP.

21. PW Mst. Usha Matoo has stated that in the year 1986 she was clerk cum-typist in PNB Amirakadal Branch. Inter branches transactions are being made on the basis of vouchers. Credit extract item No. 2 is on the file. It pertains to PNB Amirakadal. It is marked as ?. On page 31 entry is made by her on 11.08.86. Page No. 3 to 63 is in her hand.This is regarding cash of Rs.2,93,500/- deposited by Maharaj Gunj branch in Amirakadal Branch. Entries are on the basis of cash

voucher. It is marked as EXPW-UM. Voucher EXPW 1/4 dated 11.08.86 is on the file. On the basis of this voucher enery has been made.

22. PW Sunita Koul clerk cum-Cashser in PNB Maharaj Gunj Branch has stated that accused was head cashier in the said branch. She was maintaining cash book. Cash book of PNB of 1986 has been seen by her. It has been marked as ? S?. In this cash book at page No.85 entries are in her hand and under signatures. On page No.88 all the entries are in her hand and under her signatures. These entries have been marked as EXPW- S. K. Entries at page No.87 are also in his hand. It has been maked as EXPW SK/I. On this page S.No.2 entry has been in her hand. This entry is remittance entry for Rs.3.20 lacs. She has made this on seeing the remittance voucher dated 11.08.86. Writing of this voucher is of the accused. This amount has been taken by clerk to deposit the same. His signatures are at EXPW 1/2 which she has identified. Voucher dated 11.08.86 for an amount of Rs.25/- is also written by accused regarding this Entry is at page No.87 S. No.27 by her. It has been marked as EXPW SK. Whosoever goes to deposit the amount to the other bank the counterfoil is being brought by him and amount returned by him is to be handed over to head cashier on his return. Head Cashier deposited this amount and entries are being made in the record.

23. PW Ashok Kumar Angral is investigating officer who conducted the investigation and found offences 409/467/471/477A RPC proved against the appellant /accused and challan against the accused was presented on 31.07.87. PW I.U. Khan is expert who examined the standard writing marked Al to A12 and S to S-22 and compared with the question writings marked Q1 to Q 17 on forged document and gave report EXPW-IUK.

24. After carefully re-appreciating the evidence on record, including documentary as well oral, I am of the considered opinion that prosection has proved followings facts beyond reasonable doubts;-

1. That appellant /accused was posted as Head Cashier in PNB Maharaj Ganj Srinagar at relevant time on 11.8.1986 and was doing work of remittance/ deposit of cash.

2. That during those days there was no currency chest in said bank; currency chest was being maintained by PNB branch Amirakadal Siringar.

3. That on 11.8.1986 accused/appellant prepared remittance transfer voucher for surplus amount of Rs.3.20 lakh which was duly passed by PW M.K.Nehru Assittant Manager of Bank for depositing in currency chest at PNB Branch Amirakadal Srinagar. That a sum of Rs.25/- was also paid to Nazir Ahmed Cashier as expenses for depositing Rs.3.20 lacs in Amirakadal Bank branch.

4. That this remittance transfer voucher was given to PW Nazir Ahmed Bhatt, then cashier in PNB Maharaj Ganj Srinagar, who went in PNB branch Amirakadal Sringar; there Rs.26,500/- were detected as unsorted money and so only

Rs.2,93,500/- were to be got deposited in chest.

5. That PW Nazir Ahmed then filled fresh pay-in-slip for Rs.2,93,500/- and deposited the same in said bank and Rs.26,500/- were taken back by PW Nazir Ahmed.

6. That PW Nazir Ahmed then came back in PNB Maharaj Ganj Srinagar, and handed over counter slip of deposit of Rs.2,93,500/- and returned Rs.26,500/- to the accused.

7. That Accused/ appellant destroyed the counter foil of pay in slip of Rs.2,93,500/- and prepared a forged counterfoil of Rs.3.20 lakh on which he forged signatures of concerned official of PNB branch Amirakadal Siringar and those of his own bank and entered the same in the bank record. He thus misappropriated Rs.26,500/- and thereby caused loss to bank.

8. Prosecution has also proved the relevant incriminating documents collected during course of investigation.

9. It has also been proved that accused /appellant has prepared a false bank account after forging the counterfoil.

25. The foremost ground taken is that specimen signatures of accused appellant has been taken by I/O not in presence of magistrate and without order of magistrate, so conviction cannot be based. He has been forced to be witness against himself, which is in violation of Article 20(3) of the Constitution of India. He has relied upon decision Madras High Court dated 26.7.2011 in case (Crl. R.C. No.532 of 2005) titlted N. Mani v. State by Deputy Superintendent of Police CBCID, Metro Wing Chennai, wherein it is held that if sample signatures collected by I/O in office while the accused appeared in person, without any order of magistrate, then FSL report cannot be relied.

26. Apex court in Sukh Ram vs State of H.P (CRIMINAL APPEAL No.224 OF 2012 with CRIMINAL APPEALS NO. 2290-2291 of 2014 & 2292-2293 of 2014, decided on 25 July, 2016, has held as under:-

"18. In State of Uttar Pradesh v. Ram Babu Misra, (1980) 2 SCC 343: AIR 1980 SC 791, the Supreme Court dealing with the scope and ambit of Section 73 of the Evidence Act held as under:

"The second paragraph of Section 73 enables the Court to give specimen writings ?for the purpose of enabling the Court to compare? such writings with writings alleged to have been written by such person. The clear implication of the words ?for the purpose of enabling the Court to compare? is that there is some proceeding before the Court in which or as a consequence of which it might be necessary for the Court to compare such writings. The direction is to be given for the purpose of ?enabling the Court to compare? and not for the purpose of enabling the investigating or other agency ?to compare?. If the case is still under investigation there is no present proceeding before the Court in which or as a consequence of which it might be necessary to compare the writings. The language of Section 73 does not permit a Court to give a direction to the accused to give specimen writings for anticipated necessity for comparison in a proceeding which may later be instituted in the Court. Further, Section 73 of the Evidence Act makes no distinction between a Civil Court and a Criminal Court. Would it be open to a person to seek the assistance of the Civil Court for a direction to some other person to give sample writing under section 73 of the Evidence Act on the plea that it would help him to decide whether to institute a civil suit in which the question would be whether certain alleged writings are those of the other person or not? Obviously not. If not, why should not make any difference if the investigating agency seeks the assistance of the court under Section 73 of the Evidence Act on the plea that a case might be instituted before the Court where it would be necessary to compare the writings?"

27. Further an accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more. In other words, the mere fact of being in police custody at the time when the statement in question was made would not, by itself, as a proposition of law, lend itself to the inference that the accused was compelled to make the statement, though that fact, in conjunction with other circumstances disclosed in evidence in a particular case, would be a relevant consideration in an enquiry whether or not the accused person had been compelled to make the impugned statement. The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not ?compulsion?. ?To be a witness? is not equivalent to ?furnishing evidence? in its widest significance; that is to say, as including not merely making of oral or written statements but also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused. Giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression ?to be a witness?.?To be a witness? means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in Court or otherwise.To be a witness in its ordinary grammatical sense means giving oral testimony in Court.

28. Another argument of counsel for appellant is that, except handwriting report, there is nothing on record, so conviction on the basis of only on this expert report cannot be sustained. This argument is not tenable as there is ample incriminating evidence against the appellant beside expert report.

29. In view of above, this appeal has no merit. Hence, conviction is upheld. So far as sentences are concerned, court below has directed that sentences shall run consecutively i.e. one after another. In AIR 2015 SC (Supp) 811 case titled Nagaraja Rao Vs. Central Bureau of Investigation, it has been held

"15. The issue as to in which circumstances the Court should direct the sentences to run"concurrently" or "consecutively" after the accused is convicted of more than one offence in one trial or more has been the subject matter of several cases in this Court and thus remains no more res integra. This issue was considered by this Court while considering the scope of Sections 31,427 and 428 of the Code and Section 71 of IPC.

16. We consider it apposite to refer to some of the decisions.

17. In Mohd. Akhtar Hussain @ Ibrahim Ahmed Bhatti v. Assistant Collector of Customs (Prevention), Ahmedabad, (1988) 4 SCC 183, the accused was sentenced to undergo 7 years imprisonment and a fine of Rs.

10 lakhs was imposed for having found to be in possession of primary gold worth Rs. 1.4 crores which was in violation of the Gold (Control) Act. He was subsequently indicted for infringing the provisions of Customs Act by smuggling gold valued at Rs. 12.5 Crores and exporting silver worth Rs. 11.5 Crores. The accused pleading guilty in commission of the offences was awarded 4 years imprisonment and also a fine. Both the sentences were directed to run "consecutively". However, the State contended that the offence under the Customs Act merited the maximum sentence, while the accused contended that sentences should run "concurrently". The High Court, however, enhanced the sentence as contended by the State and rejected the plea of the accused in regard to the award of sentences.

This Court in an appeal filed by the accused accepted the plea raised by him and while allowing his appeal directed both the sentences to run "concurrently" by referring to Section 427 of the Code. The following observations made by this Court in paras 9 and 10 are apposite:

"9. The section relates to administration of criminal justice and provides procedure for sentencing. The sentencing court is, therefore, required to consider and make an appropriate order as to how the sentence passed in the subsequent case is to run. Whether it should be concurrent or consecutive?

10. The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different."

18. Likewise, a question arose before the three-judge Bench in State of Maharashtra v. Najakat Alia Mubarak Ali, (2001) 6 SCC 311, as to whether the accused convicted in two cases one after another was entitled to claim set off the period of detention during investigation, inquiry or trial from the sentence imposed on conviction in both the cases. While interpreting Section 428 of the Code, the majority of the judges answered the question in affirmative. While answering the question, Justice Thomas, speaking for majority of the Judges, made the following observations, which are pertinent.

"17. In the above context, it is apposite to point out that very often it happens, when an accused is convicted in one case under different counts of offences and sentenced to different terms of imprisonment under each such count, all such sentences are directed to run concurrently.

The idea behind it is that the imprisonment to be suffered by him for one count of offence will, in fact and in effect be imprisonment for other counts as well."

19. The aforesaid principle of law was relied upon by this Court in Chatar Singh v. State of M.P, (2006) 12 SCC 37 and State of Punjab v. Madan Lal, (2009) 5 SCC 238, and lastly recently in Manoj @ Panu v. State of Haryana, (2014) 2 SCC 153, wherein this Court taking recourse to Section 31 of the Code directed in somewhat similar facts that the sentences awarded to the accused to run "concurrently" in place of "consecutively".

20. Keeping the aforesaid principle of law in mind and applying the same to the facts of this case in the light of powers available under Section 31 of the Code, we are of the considered opinion that both the sentences awarded to the appellant in the case at hand should run "concurrently" and this we do by invoking Section 31 which enables the Court to so direct.

21. In our considered opinion, this is a fit case where we can direct the sentences awarded to the appellant to run "concurrently" for the reasons that firstly, the case out of which this appeal arises relates to the year 1993 and is pending for a long period of 21 years; secondly, the two sentences, which were imposed on the appellant, arose out of one offence of theft punishable under Section 381 IPC tried in one trial; thirdly, the provisions of Section 52 of the IPO Act were required to be invoked against the appellant because he was the postal employee; fourthly, the Gold Chain was long recovered and also handed over to the person concerned; fifthly, the appellant has already been dismissed from services due to impugned conviction; and lastly, the appellant has been suffering from heart ailment since long, as is proved by documents filed along with the appellant's affidavit 03.11.2014

22. It is for all these reasons, in our considered opinion, the interest of justice would be subserved by directing both the sentences awarded to the appellant to run "concurrently". Since we have upheld the conviction, which was not challenged by the appellant in this appeal, thedirections to run both the sentences "concurrently" can always be passed by the appellate Court because such directions are in the nature of consequential on and incidental to the affirmance of the conviction as held by this Court in the case reported in Sawal Das v. State of Bihar, (1975) 3 SCC 156.

23. In the light of foregoing discussion, the appeal succeeds and is allowed in part. The conviction and sentences awarded to the appellant by the courts below for the offences punishable under Section 381 of IPC and Section 52 of the IPO Act are upheld. However, it is directed that both the sentences awarded to the appellant under IPC and IPO Act would run "concurrently".

24. As a consequence, if the appellant has already undergone the period of sentence imposed on him he shall be released forthwith if not required in connection with any other case."

30. In present case, appellant/accused has been convicted for different offences, but on account of single transaction. Further, offence committed is pertaining to year 1986, so order of court below thereby directing the sentences of imprisonment to run consecutively, is set aside. It is directed that sentences shall run concurrently. So far as fine part is concerned, the shall remain intact. This appeal is disposed off accordingly.

31. Record be sent back to trial Court, who shall issue warrant against appellant to undergo rest of imprisonment.

