(2003) 08 AP CK 0028

In the Andhra Pradesh High Court

Case No : Criminal Appeals No''s. 102, 106, 125, 209, 226 and 258 of 1998

M. Durga Prasad, Spl. Assistant, Syndicate Bank and	APPELLANT
Vs	
The State of A.P.	RESPONDENT

Date of Decision : 14-08-2003

Acts Referred:

Evidence Act, 1872 — Section 45
Penal Code, 1860 (IPC) — Section 120B, 420
Prevention of Corruption Act, 1988 — Section 13

Citation : (2003) 2 ALD(Cri) 545 : (2004) CriLJ 242

Hon'ble Judges : Gopala Krishna Tamada, J

Bench : Single Bench

Advocate : C. Praveen Kumar, in Criminal A. Nos. 102 and 106/1998, B. Chinnappa Reddy, in Criminal A. No. 125/1998, P. Satyanarayana, in Criminal A. No. 209/1998, V. Srinivasa Rao, in Criminal A. No. 226/1998 and T. Rajendra Prasad, in Criminal A. No. 258/1998, for the Appellant; C. Sadasiva Reddy, S.C. for CBI, for the Respondent

Final Decision : Allowed

Judgement

Gopala Krishna Tamada, J.—The learned Special Judge for CBI cases, Visakhapatnam tried eight persons as A1 to A8 in C. C. No. 8/95 and by his judgment dated 19-1-1998, while acquitting A5 and A7, however, found Al, A2, A3, A4, A6, A8 guilty of the alleged offences punishable u/s 120(B), 465 of IPC and Section 13(1)(d)(ii) r/w 13(2) of Prevention of Corruption Act. On his finding that the above accused persons were guilty, the learned Judge awarded the following sentences.

2. A-1 was convicted for the offence punishable u/s 120-B, IPC and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 1000/- in default to suffer simple imprisonment for a period of 3 months; for the offence punishable u/s 465, IPC to undergo rigorous imprisonment for a period of 2 years; and for the offence punishable u/s 13(1)(d)(ii) r/w Section 13(2) of Prevention of Corruption Act to undergo rigorous imprisonment for a period of 3

years and to pay a fine of Rs. 2000/- in default to undergo simple imprisonment for three months:

3. A-2 and A-4 were convicted for the offences punishable under Sections 120-B and 420, IPC and 13(1)(d)(ii) r/w 13(2) of Prevention of Corruption Act and each of them were sentenced to undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs. 1,000/- in default to undergo simple imprisonment for 3 months, under each count;

4. A-3 was convicted for the offences punishable under Sections 120-B and 420, IPC and sentenced to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs. 5000/- in default to undergo simple imprisonment for six months, under each count; and for the offences punishable u/s 465 and 471, IPC, he was convicted and sentenced to undergo rigorous imprisonment for a period of one year under each count;

5. A-6 and A-8 were convicted for the offences punishable under Sections 120-B and 420, IPC and each of them were sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 1000/- in default to undergo simple imprisonment for 3 months, under each count. The above sentences imposed were ordered to run concurrently.

6. Against the said conviction and sentences, A1 preferred Crl. A. No. 226/98, A2 preferred Crl. A. No. 102/98, A3 preferred Crl. A. No. 258/98, A4 preferred Crl. A. No. 209/98, A6 preferred Cri A. No. 125/98 and A8 preferred Crl. A. No. 106/98.

7. As the point involved in all these appeals is the same and against the conviction and sentence in C. C. No. 8/1995, all the appeals are disposed by this common judgment.

8. For the sake of convenience and brevity, the appellants herein are referred to as they were arrayed in C. C. No. 8/95.

9. Basing on the charge sheet filed by the CBI, the learned trial Judge framed the following charges against the accused and the substance of the charges is as under :--

Charge No. 1 :--That A1 to A8, E. Subash and Sk. Basha during the year 1989 at Vijayawada and other places, agreed to do an illegal act viz., to cheat the Income Tax Department to a tune of Rs. 3,92,552/- by illegal means viz., filing bogus Income Tax returns in the name of fictitious persons and fraudulently claiming tax refunds by enclosing false and forged TDS certificates purported to have been issued by ; the Executive Engineer, NSC Division at Tiruvur and Mylavaram and in pursuance of the said agreement A3 with the help of A7 and A8 filed bogus Income Tax returns in the names of fictitious persons by fabricating TDS certificates and A7 and A8 dishonestly and fraudulently helped A3 in fabricating TDS certificates in filing the Income Tax returns in the office of A1.

S. Subash, Attender, Income Tax Officer, Vijayawada had introduced A3 to A1, A2 and A7 and also to Syndicate Bank, Gandhinagar Branch, to open S. B. Account in the factitious name of T. Ramulu. Sk. Basha @ Kanagamuli Srinu had helped A3 in claiming TDS refund order of Rs. 17,211/-and getting sanctioned from A1 and in withdrawing Rs. 17,000/- on 21-11-1987 from SBI, Gandhinagar branch. Further A3 withdrew Rs. 24,000/- on 27-11-1989 from Vysya Bank, Governorpet Branch : Rs. 11,000/- on 6-12-1989 from Union Bank of India, Mylavaram branch by impersonating fictitious claimants and A1 dishonestly and fraudulently just before his retirement during the months of November and December, 1989 had processed and sanctioned refunds for TDS claims in the names of above mentioned fictitious persons to a tune of Rs. 3,92,552/- knowing them to be bogus. A5 dishonestly dispatched the abovesaid refund orders to the addresses other than the addresses mentioned in refund claim forms and facilitated their encashment by A3 and others. A6 and A8 fraudulently introduced A3 in the guise of fictitious claimants of TDS refunds to open S. B. Account with Syndicate Bank, Gandhinagar branch; Union Bank of India, Mylavaram branch, S. B. I. Gandhinagar branch; Vysya Bank, Governorpet branch and facilitated A3 to impersonate the fictitious persons and to encash the alleged refund orders. A2 and A4 dishonestly helped A3 in getting credited the amounts of the said refund orders into the S. B. Accounts purposefully in the names of different fictitious persons within a short span of period and thereby to withdraw the funds by A3, and thereby committed an offence punishable u/s 120-B of IPC.

Charge No. 2 :-- That A1, A3, A7 and A8 at Vijayawada during the year 1989 fraudulently used the forged and false TDS Certificates purported to have been issued by the Executive Engineer NSC Division, Tiruvur and Mylavaram and by enclosing the same claimed tax refunds in the bogus income tax returns filed before A1 by A3 assisted by A7 and A8 and used those false and forged TDS Certificates as genuine and claimed refund of Rs. 3,92,552/- which they knew at the time of using them to be the forged documents and thereby they committed an offence punishable Under Sections. 465 and 471, IPC.

Charge No. 3 :--That A1 to A8 during the year 1989 at Vijayawada, cheated the Income Tax Department by dishonestly inducing the said department to deliver refund orders to a tune of Rs. 3,92,552/- in the names of fictitious persons and which was the property of the Income Tax Department and thereby they committed an offence punishable u/s 420, IPC.

Charge No. 4 :-- That Al, A2, A4 and A5 during the year 1989 at Vijayawada, being the public servants viz., Al, Income Tax Officer; A2, Assistant, Syndicate Bank, Main Branch, Vijayawada; A4, Clerk, Syndicate Bank, Gandhinagar Branch, Vijayawada and A5, L. D. C., Income Tax Office, Vijayawada: abused their official positions as public servants and obtained Rs. 3,92,552/- pecuniary advantage to A3 i.e., Hanumantha Rao, and thereby they have committed the offence of Criminal Misconduct punishable u/s 13(1)(d)(ii) r/w 13(2) of IPC.

10. The case of the prosecution, according to the evidence let in during the

course of trial, is that A-3 is a contractor doing civil contracts and is residing at Mylavaram of Vijayawada. He along with others by name E. Subhash and Sheik Bhasha who were examined as PWs 1 and 2 respectively, and A-2 herein, conspired to cheat the Income Tax Department and in collusion with A-1 who was working as Income Tax Officer, Ward No. 7, Vijayawada during the relevant period, filed bogus income tax returns before A-1 in the year 1989 in the names of fictitious persons and thus claimed Income Tax refunds. In furtherance of the said conspiracy, A-6 and A-8 fraudulently introduced A-3 enabling him to open S. B. Accounts with Syndicate Bank, Union Bank of India, State Bank of India and Vysya Bank and thus facilitated A-3 to impersonate these fictitious persons to encash the alleged refund orders. A-2 and A-4 dishonestly helped A-3 in getting credited the amounts in the names of different fictitious persons and thus facilitated him to withdraw the funds on the dates mentioned below from Syndicate Bank, Gandhinagar Branch. Vijayawada :

S. S.B. Account No. Date of Amount No. Payment (Rs.)

1. 15788 12-1-1990 66,178.00 Ch. No. 560107 2. 15787 12-1-1990 66,030.00 Ch. No. 560108 3. 15793 10-1-1990 62,975.00 Ch, No. 162556 4. 15769 4-1-1990 46,300.00 Ch. No. 162560 5. 15768 4-1-1990 44,110.00 Ch. No. 162561 6. 12692 15-11-1989 15,000.00 Ch. No. 123719 7. 15761 4-1-1990 3,830.00 Ch, No. 560104

A-1 who was working as a responsible Income Tax Officer at the relevant point of time, knowing fully well that the above Income Tax returns were filed in the names of fictitious persons, dishonestly and fraudulently processed and sanctioned the refund of T. D. S. claims to a tune of Rs. 3,92,552/-. A-5 who was working as clerk under A-1 also knowing it fully well dishonestly dispatched the said refund orders to the addresses other than the addressees mentioned in the refund claim forms with a view to facilitate the encashment. A-2 and A-4 who were the employees of Syndicate Bank Gandhinagar Branch, Vijayawada dishonestly assisted A-3 by getting credited the amounts under the aforesaid refund orders into the above S. B. Account and thereby made A-3 to withdraw the said amounts. Thus A-3 withdrew an amount of Rs. 3,04,423/- from Syndicate Bank, Gandhinagar Branch and similarly he withdrew an amount of Rs. 24,000/- from Vysya Bank, Govenorpet Branch, Vijayawada, on 27-11-1989 and Rs. 11,000/- from Union Bank of India, Mylavaram on 6-12-1989. According to the case of the prosecution, A-1 as Income Tax Officer is the mastermind behind the entire episode and thus he designed and executed with the connivance of all the accused. Subhash who was working as an Attender at the relevant point of time and Sheik Bhasha who facilitated A-3 to open an account with Syndicate Bank, however, were treated as accomplices and, thus, they were granted pardon by the learned Chief Metropolitan Magistrate, Visakhapatnam.

11. In support of it''s case, the prosecution relied on the evidence of the accomplice witnesses who were examined as P.Ws. 1 and 2 and other 37 witnesses and got marked Exs. P-1 to P-136. No witness was examined on behalf

of the accused. On appreciation of the entire oral and documentary evidence produced by the prosecution as already mentioned, the learned Sessions Judge acquitted A-5 and A-7 as the evidence did not establish their guilt at all, but however, the appellants herein were convicted and sentenced as stated supra.

12. The learned Senior Counsel. Sri C. Padmanabha Reddy, appearing for A-1, A-2, A-6 and A-8 vehemently contended before this Court, that the entire case rests on circumstantial evidence and the prosecution miserably failed to prove the circumstances to rope in the accused. According to him, so far as A-2 is concerned there is absolutely no evidence excepting the evidence of P. W. 3 and the transaction in which A-2 is allegedly involved is only a solitary instance, i.e., filling up of the application form for opening of an account in the name of A-3, i.e. A/c No. 15361, which was marked as Ex. P-31 and from the said solitary instance, according to the learned Senior Counsel, it cannot be inferred that A-2 also conspired and committed an offence as alleged by the prosecution. According to him, even P. W. 2, who is an important witness examined by prosecution, could not say as to whether the handwriting in Ex. P-31 is that of A-2 or not as he never worked under him. He further contended on behalf of A-6 and A-8 that the allegations against them are only that these two accused introduced one P. Ramaiah and V. Kondaiah during the years 1980 and 1986 respectively for the purpose of opening of the accounts. Even if the said allegation is accepted, according to the learned Senior Counsel, it cannot be said that they have cheated the Income Tax Department and further it cannot be said that there was conspiracy in opening of these accounts. While making submissions on behalf of A-1, the learned Senior Counsel has drawn my attention to the evidence of P. Ws. 4 and 5 and contended that as per their evidence, being an Income Tax Officer, the duty of A-1 was to see whether there were any errors in the returns and when once the said application forms are in tact, there was no necessity for him to hold any enquiry about the genuineness of the documents filed in support of the returns. In the instant case, as spoken to by P. W. 5, the application forms submitted by A-3 were in tact and A-1 simply signed on those documents and thus it cannot be said that A-1 is a party to the conspiracy along with others. According to the learned Senior Counsel, the approvers who were examined as P. Ws. 1 and 2 did not speak anything about A-1.

13. The learned counsel Sri R. Satyanarayana, appearing for A-4, contended that there is absolutely no evidence forthcoming against A-4. Even if the evidence of the prosecution witnesses is accepted, A-4 does not know A-1, A-2 and A-3 and simply because he obliged them and filled in the vouchers Exs. P-6, P-11, P-15. P-20, P-24, P-28 and P- 31, it cannot be said that he is hand in glove with other accused. According to him, it is not proved by the prosecution that the signature in the above exhibits belongs to A-4 as the said documents were not sent too the handwriting expert.

14. Coming to A-3, the learned counsel Sri Rajendra Prasad, reiterated the submissions made by other learned counsel and further submitted that the entire

case rests on circumstantial evidence and there is no direct evidence to establish the guilt of A-3 except the ipse dixit of P. Ws. 1 and 2. According to the learned counsel, the evidence of an accomplice witness is a weak piece of evidence and as such the evidence of P. Ws. 1 and 2, who were granted pardon, cannot be accepted in toto unless the said evidence is corroborated. He further submitted that their evidence is not at all trustworthy and they spoke falsehood at the instance of the prosecution to save their skin as otherwise they also would have been implicated as accused persons. According to him, as there is no independent corroborative evidence on material particulars and no independent evidence is adduced by the prosecution, it is not safe to rely on an uncorroborative testimony of the approvers to base a conviction. It is further contended that there is absolutely no evidence forthcoming to establish that A-3 opened bank accounts in the names of fictitious persons and withdrew amounts from various banks and in the absence of any such evidence, the case against him has to be thrown out. The TDS certificates alleged to have been pressed into service by A-3 are, according to the prosecution, fictitious and fabricated documents but no sufficient evidence is adduced in this behalf. Even though P, Ws. 10 and 11 were examined, they stated only with regard to Exs. P-40A, P-41A, P-42-A, P43A and P-44A. the alleged T. D. S. certificates, and when their evidence is read along with the evidence of P. W. 14, these amounts were handed over to A-2 but not to A-3. with regard to other T. D. S. certificates, it is submitted that no witness was examined to prove that the said T. D. S. certificates are bogus. Further, according to the learned counsel, A-3 does not get any benefit by producing false T. D. S. certificates in the name of fictitious persons as he has to forego huge amounts. In the absence of any specific evidence that A-3 did contract works in the names of fictitious persons to avoid tax, opened bank accounts in the names of those fictitious persons and has withdrawn, the amounts by producing false TDS certificates, it is not safe to base a conviction. It is lastly contended that if re-ally he submitted false income tax returns, there are penal provisions in the Income Tax Act which can as well be invoked to initiate appropriate action against the accused and the fact that no such action was initiated against A-3 clinchingly proves that A-3 has not submitted any false income tax returns in the names of fictitious persons with a view to get the T.D.S. certificates. He, therefore, contended that the prosecution tailed to prove the guilt of A-3.

15. On the other hand, the learned Standing Counsel for C. B. I. Sri Sadasiva Reddy, while admitting that there is no direct evidence and the entire case rests on circumstantial evidence, has submitted that the prosecution has proved the case against the accused beyond reasonable doubt by connecting all the links to make a chain. According to him, it is not as if every case depending on the circumstantial evidence is to be thrown out and when once the prosecution is able to connect all the links, the irresistible conclusion to which the Courts can arrive at is that the accused, accused alone are responsible for the offence. In the instant case, the learned Standing Counsel submits that no doubt it is true

that the evidence against A-2, A-4, A-6 and A-8 as spoken to by the prosecution witnesses is quantitatively inferior but is qualitatively superior and the ocular evidence as spoken to by P. Ws. 3, 12 and 18, insofar as A-2 and A-4 are concerned, when read along with the remaining evidence, clinchingly proves the complicity of the accused persons beyond reasonable doubt. According to him, from the documentary evidence marked during the course of trial, it is clear that A-3 opened various accounts and the opinion of the handwriting expert also is to the effect that the handwriting of A-3 tallies with his specimen signatures. Further, the evidence of P. Ws. 1 and 2, the approvers, clinchingly established the role of the accused persons. According to him, there is no necessity for A-1, who was on the verge of his retirement, to process the TDS certificates as if they were urgent. The modus operandi of the accused was to submit income tax returns mentioning therein some meagre annual income, which, if computed as per the relevant provisions of the Income Tax Act, does not attract any tax liability, and to claim refunds on the basis of some forged documents i.e. T. D. S. certificates. As part of the same, A-3 opened various bank accounts in the names of fictitious persons as if those persons have done contract works and income tax was deducted at source from those individuals and subsequently submitted the income tax returns in the names of those fictitious persons who were not at all in existence and thus clandestinely claimed tax benefit which is not liable to be paid by the Income Tax Department. He further stated that without the knowledge and connivance of A-4, A-3 could not have opened so many bank accounts, i.e. by filling up of the application forms at the time of opening of accounts by A-3 and the said act clinchingly establishes that A-4 had the knowledge about the conspiracy and as such A-4 is also liable. Learned standing counsel, however, fairly conceded that there are only few instances so far as A-2, A-6 and A-8 are concerned but it does not mean that they do not have any connection with the offence. While reiterating, his submissions that it is the quality of evidence but not the quantity of evidence that has to be seen and when once the evidence as spoken to by the prosecution witnesses is taken into consideration, learned standing counsel submits that all the accused are responsible for the alleged offences and as such the Court below is justified in convicting the accused persons.

16. In the light of the said circumstances, now I will discuss the evidence of the prosecution.

17. P. W. 1 (Ennu Subhash), who is an accomplice witness, worked as Attender in Income Tax Office, Vijayawada, where A-1 worked as Income Tax Officer during the relevant period. He deposed that he introduced one Ramulu of Mylavaram to the Syndicate Bank, Vijayawada. The specimen signature card of the said Ramulu is marked as Ex. P-l, which bears the signature of P. W. 1 as an Introducer. P. W. 1 identified A-3 (namely, T. Hanumantha Rao) in Court stating that "A-3 in this case who is present in the Court is the said T. Ramulu". P.W. 1 further stated that in Ex. P-1, he (A-3) put his specimen signatures as T. Ramulu" in his presence. At that time. P.W. 1 was informed that his name was T. Ramulu. This witness

specifically stated that by then he does not know that his name was T. Hanumantha Rao and later he came to know that his name was T. Hanumantha Rao but not T. Ramulu. Subsequently, P.W. 1 informed the Manager, Syndicate Bank, by letter dated 25-7-1994 (marked as Ex. P-2) to the effect that he later came to know that by mistake he introduced him (A-3) as T. Ramulu but later came to know that his name was T. Hanumantha Rao. The file containing the specimen signatures and specimen writings of P.W. 1 in English and Telugu are marked as Ex. P-3. He further deposed that his statement u/s 164 Cr. P. C. was recorded by the Magistrate at Visakhapatnam and he was granted pardon.

18. P. W.2 (Shaik Basha), another accomplice witness, who is a tailor by profession, deposed in his evidence that he was at Mailavaram since his childhood and until one year prior to his giving evidence. He was a Hindu by birth and was adopted by one Shaik Mehaboob. He deposed that he knows A-3 and that for about 4 or 5 years he got acquaintance with A-3. In the year 1986, A-3 asked P. W. 2 to accompany him to State Bank of India, Vijayawada. They went together for the purpose of opening of an account in the name of "Kanakamuli Srinu". Accordingly, an account was opened in the name of Kanakamuli Srinu. At the request of A-3, he (P.W.2) signed the account opening form (marked as Ex. P-4) as "Kanakamuli Srinu". Ex. P-4 bears the two signatures subscribed by P. W. 2 as "Kanakamuli Srinu". P. W. 2 further stated that those signatures were identified and introduced by A-3. A-3 signed in his presence. At the instance of A-3, P. W. 2 also signed on the reverse of Ex. P-4, as Kanakamuli Srinu. He deposed that he did it with a view to help A-3. The three sheets which bear the specimen signatures as Kanakamuli Srinu are marked as Ex. P-5. He also deposed that his statement u/s 164 Cr. P. C. was recorded by the Magistrate at Visakhapatnam. He lastly stated that after hearing the financial problems of A-3, he signed with good faith as Kanakamuli Srinu.

19. P. W. 3 (M. S. Prakasa Rao), who worked as Sub-Manager in Syndicate Bank, Gandhinagar Branch at Vtjayawada, during the period from June 1992 to June 1995, deposed that as per the requisition of C. B. I. officials, he handed over the credit, debit and ledger sheets to them. A-4 worked under him at that time and that he is acquainted with the handwritings of A-4. According to P.W.3, Ex. P-6 is the specimen signature card of one P. Raghavaiah. The account number is 15788. Ex. P-6 was filled in by A-4 and that it also bears the initial of one C. Santhoshrao and A. V. Sastry, who worked as Assistant Manager and Sub-Manager in-charge respectively. Ex. P-7 is the credit voucher relating to Ex. P-6 account whereunder Rs. 5/- was deposited while opening the account initially. Ex. P-8 is the credit slip for Rs. 66.178/- dated 11-1-1990 for the said account. Ex. P-9 is another credit slip dated 8-1-1990 for Rs. 66,178/-. Ex. P-10 is the withdrawal cheque for Rs. 66,178/-dated 12-1-1990, which was presented by the said P. Raghavaiah pertaining to the aforementioned account number. The said cheque was filled in by A-4. Similarly, the prosecution marked the specimen signature cards of B. Anjaneyulu (Ex. P-11), V. Kondalu (Ex. P-15), T. Rambabu (Ex. P-20), K. Ramaiah (Ex. P-24J, K. Rama Rao (Ex. P-28) and Gunja

Venkateswarlu (Ex. P-31) through this witness. This witness also identified the specimen signature card (Ex. P-1) of P. Ramulu. He stated that accounts were opened in the names of the aforementioned persons. The account numbers are - 15788, 15787, 15793, 15769, 15761, 15768, 15361 and 12692 respectively. The credit vouchers (meant for credit of amounts into banks), credit slips and withdrawal cheques which were used by the respective account holders while operating the aforementioned ac -counts have been marked through P. W. 3, He further deposed that the specimen signature cards of P. Raghavaiah, B. Anjaneyulu, V. Kondalu, T. Rambabu, K. Ramaiah and K. Rama Rao (Ex. P-6, P-11, P-15, P-20, P-24 and P-28) were filled in by A-4 while the specimen signature card of Gunja Venkateswarlu (Ex. P-31) was filled in by A-2.

20. P. W. 3 further deposed that along with account opening form, credit voucher will be prepared. Clearing voucher will be issued along with cheque and will be sent for clearance. In case clearing vouchers are returned in the clearing house either for the reason of any insufficiency unfunds or for any other reason, another clearing voucher will be prepared for resubmitting the instruments. P. W. 3 further deposed that while he was acting as in charge Manager in 1994, P. W. 1 came to him and tried to explain about his introduction of a person to open a particular account. He asked P. W. 1 to give it in writing. Ex. P-2 is the explanation given by P.W. 2. Ex. P-2(A) is the letter addressed by P. W. 3 to the C. B. I., for forwarding Ex. P-2.

21. P. W. 12 (N. Babu Rao), who worked as Clerk in Syndicate Bank, Gandhinagar Branch, Vajiyawada during the period from 1985 to 1991 deposed that Ex. P-28 is the specimen signature card of K. Ramarao, which bears his initial at the column below the Manager. The account-holder K. Ramarao did not sign before him. Ex. P-29 is the credit voucher pertaining to Account No. 15768 dated 3-1-1990 crediting the, amount of Rs. 44, 180/-. Ex. P-30 is the loose cheque dated 4-1-1990 for Rs. 44,110/-wlthdrawn by the account-holder K. Ramarao. He deposed that he passed the cheque after verifying with the specimen signature card (Ex. P-28) and put his initial. He took permission from the Manager. He also signed. It bears the ''Paid'' stamp showing that the amount was paid. On the reverse side of Ex. P-30, the token number was noted as ''170''. The signatures of K. Ramarao and T. Ramulu were there. Ex. P-30 is the self cheque. This witness further tried to clarify stating that since cash was paid to T. Ramulu, the Cashier must have obtained the signature of T. Ramulu at the time of actual payment.

22. P. W. 12 further deposed that in the specimen signature card of T. Rambabu (Ex. P-20) relating to Account No. 15769, he put his initial below the Manager''s column. The account-holder T. Rambabu did not sign in his presence. He also put his initial in the column of ''checked'' in Ex. P-21 -- credit voucher dated 4-1-1990 for Rs. 5/-. Similarly, Ex. P-22 credit voucher pertaining to the very same account also bears his initial as ''checked''. He further deposed that he passed Ex. P-23-loose cheque, which is drawn for a sum of Rs. 46,300/- by the

account-holder T. Rambabu, for payment and that he put his initial thereon after duly comparing with specimen signatures of T. Rambabu. He also took permission from the Branch Manager, who also signed thereon. The loose cheque bears two signatures - one is that of T. Rambabu and the other is that of T. Ramulu. He further stated, that since amount was paid to T. Ramulu, the Cashier might have obtained the signature of T. Ramulu after paying the cash and taking the Token bearing No. 171. This witness further stated that A-2 was the Scroll officer at that time in their bank. A-4 also was an employee of their bank. Ex. P-58 is the ledger sheet pertaining to K. Ramarao in respect of his Account No. 15768, opened on 3-1-1990. The transactions of Ex. P-29 and P-30 are reflected in Ex. P-58, which bears his initial against the column. Similarly, Ex. P-59 is the ledger sheet pertaining to T. Rambabu in respect of his Saving Bank Account No. 15769, opened on 3-1-1990. The transactions of Exs. P-22 and P-23 are reflected in Ex. P-59, which also bears his initial against the column.

23. P.W. 13 (Kavipurapu Varalakshmi), who worked as Special Assistant in Syndicate Bank, Gandhinagar branch during the period from 1985 to 1990, deposed that Ex. P-1 is the specimen signature card belonging to T. Ramulu in respect of Account No. 12692 dated 12-12-1987. He put his initial after verifying the signature of the introducer. He deposed that he did not remember whether T. Ramulu signed in his presence or not. Ex. P-36 is the credit voucher for Rs. 25/- which bears his initial as ''checked''. He also could not say whether the person by name T. Ramulu has signed in Ex. P-36 in his presence or not. Ex. P-60 is the ledger sheet pertaining to T. Ramulu. The transaction of Ex. P-36 is reflected in Ex. P-60. He put his initial against the entry.

24. P. W. 14 (D. Chandrasekhar), who worked as Clerk in Syndicate Bank, Gandhinagar Branch, Vijayawada, during the period from 1985 to 1990, deposed that he used to work as Cashier also sometimes. He knows A-2 and A-4. He further deposed that on 4-1-1990, 10-1-1990 and 12-1-1990. he was Cashier at the counter. Exs. P-10. P-14, P-19, P-23, P-27 and P-30 were the cheques received by him for payment. All of them were signed by him on the "Paid" stamps. Cash was paid under the above cheques and the denominations were also noted on the backside of the cheques. All the payments were made under tokens. A-2 was working as Scroll Officer, at that time and he also noted the scroll serial numbers of the above cheques. This witness stated that he could not identify the handwriting in the body of the cheques. He also could not identify the handwritings in the credit slips covered under Exs. P-7, P-8, P-9, P-12, P-13, P-16 to P-18, P-21, P-22, P-25, P-26, P-29, P-32, P-33, P-36 and P-37. This witness also stated that he could not identify the body writings in withdrawal slips covered under Ex. P-10, P-14, P-19, P-23, P-27, P-30, P-34 and P-35. In view of the fact that this witness has resiled from his previous statements, at the request of the prosecution, the Court below declared him as hostile witness. P. W. 14, however, deposed that as per Ex. P-10, the amount was paid to I. Ramulu, who was the holder of Token No. 172. He similarly deposed that as per Exs. P-14, P-19, P-23, P-37, P-30, P-38, _ amounts were paid to T. Ramulu, the

holder of tokens bearing No. 173, 170, 171, 172, 170 and 180 respectively.

25. P. W. 16 (C. Rama Mohan Rao), who worked as Sub-Manager, Syndicate Bank, Gandhinagar Branch, Vijayawada, from 1988 to 1990, deposed that he knows A-2 and A-4. Exs. P-20, P-24, P-28 and P-31 bear his signatures in the capacity of Sub-Manager. He deposed that he does not have any personal knowledge with regard to the account-holders mentioned in the respective accounts. All the specimen signatures of the account-holders will be obtained and kept in the bank. Exs. P-29, P-30, P-22 and P-23 bear his signatures in the capacity of Sub-Manager. Since the amount in those cheques exceeded Rs. 20,000/-, he countersigned in the above cheques.

26. P. W. 17 (C. Stallin), who worked as Clerk-cum-Cashier in Syndicate Bank, Gandhinagar Branch, Vijayawada, during the period from 1987 to 1991, deposed that Exs. P-7, P-16, P-25 are the pay-in-slips for payment of Rs. 5/-, Rs. 5/- and Rs. 10/- respectively and that they are meant for opening of accounts. He received those amounts and put his initials and also cash received stamp on the said exhibits. He, however, stated that he does not know the persons who paid the above amounts.

27. P. W. 18 (C. Santhosha Rao), who worked as Assistant Manager in Syndicate Bank, Gandhinagar branch, Vijayawada, from May 1989 to October 1993, deposed that he knows A-2 and A-4. He noted the name and address of the applicant in Ex. P-24 and thereafter put his initial in the capacity as Assistant Manager. He further deposed that Exs. P-8, P-9, P-12, P-13, P-17, P-25 and P-26, which are the credit slips in the name of P. Raghavalah (A/c. No. 15788), B. Anjaneyulu (A/c. No. 15787), V. Kondalu (A/c. No. 15793) and K. Ramaiah (A/c No. 15761) respectively, were filled by A-2 and that he initialled all of them in the capacity as Assistant Manager. He further deposed that Exs. P-6, P- 11 and P-15 (specimen signature cards) and Exs. P-10, P-14, P-19 and P-27 (withdrawal cheques) were filled up by A-4 and A-2 signed them a@ Scroll supervisor and that he signed therein passing the same for payment. He stated that Ex. P-18 (credit slip pertaining to V. Kondalu) was filled up by one A. Visweswara Sastry and also signed by him and that it was initialled by this witness. After comparing the specimen signatures which were available in his custody and after his satisfaction that they are tallied, he passed them for payment. He further deposed that Ex. P-31 specimen signature card was filled up by A-2. The account under Ex. P-31 (specimen signature card in the name of G. Venkateshwarlu) was opened on 7-9-1989. The officer-in-charge of S. B. Department (namely One Mr. Baburao) did not put his initial in Ex. P-31 and that although this witness joined subsequently he put his initial therein on 12-9-1989 in order to update it. Ex. P-33 voucher was filled up by A-2 and initialled by P. W. 48. He further deposed that Ex. P-89 Ledger sheet pertains to K. Ramaiah having Account bearing No. 15761. Exs. P-25 to P-27 transactions reflected in Ex. P-89. Similarly, Exs. P-12 to P-14 transactions are reflected in Ex, P-90 ledger sheet pertaining to B. Anjaneyulu bearing Account No. 15787. Exs. P-8 to P-10 transactions are

reflected in Ex. P-91 ledger sheet pertaining to P. Raghaviah bearing Account No. 15788. Exs. P-17 to P-19 transactions are reflected in Ex. P-92 ledger sheet pertaining to V. Kondalu bearing Account No. 15793. Exs. P-33 and P-34 transactions are reflected in Ex. P-93 ledger sheet pertaining to G. Venkateswarlu, bearing Account No. 15361.

28. P. W. 19 (G. Lalitha Kalyanai), who worked as Clerk-cum-Cashier in State Bank of India, Gandhinagar Branch of Vijayawada upto 8-7-1993, deposed in her evidence that on 21-11-1989, she was in cash counter. Ex. P-94 is the withdrawal slip dated 21-11-1989 for a sum of Rs. 17,000/- in the name of Kanagamuri Sreenu. The token No. 26 was mentioned in Ex. P-94. She deposed that she paid the cash to the token holder whose particulars tallied with the name Kanagamuri Sreenu. She stated that she does not know Kanagamuri Sreenu. Similarly, Ex. P-95 is the withdrawal slip dated 19-12-1989 for Rs. 7,100/- in the name of Battula Nagalah. She paid cash across the counter after obtaining the token No. 6. She also compared the particulars with the name Battula Nagaiah.

29. P. W. 20 (P. Balaraju), who worked as Chief Manager in State Bank of India, Gandhinagar Branch, Vijayawada from 12-5-1993 to 6-7-1996, deposed in his evidence that Ex. P-96 is the reply letter sent by him along with documents as required by the C. B. I. Ex. P-97 is the withdrawal form belonging to Battula Nagaiah dated 2-7-1986 for a sum of Rs. 2,975/- pertaining to Account No. 29/5593. Ex. P-98 is the withdrawal form dated 7-11-1987 for a sum of Rs. 3692/- pertaining to Account No. 6722/36 of Kanagamuri Sreenu. Ex. P-99 is the credit voucher dated 21-11-1989 for a sum of Rs. 17,211/- pertaining to Account No. 6722/36 of Kanagamuri Sreenu. Ex. P-100 is the withdrawal form dated 2-3-1987 for a sum of Rs. 100/- pertaining to Account No. 6722/36 of Kanagamuri Sreenu. Ex. P-101 is the credit voucher dated 7-11-1987 for a sum of Rs. 3692/- pertaining to Account No. 6772/36 of Kanagamuri Sreenu. Ex. P-102 is the ledger sheet of Kanagamuri Sreenu pertaining to A/c. No. 6722/36. Ex. P-94, P-98, P-99, P-100, P-101 are the credit and debit vouchers whose entries are reflected in Ex. P-102 ledger sheet. Ex. P-103 is the ledger sheet belonging to Battula Nagaiah pertaining to Account No. 29/5593. Ex. P-95 and P-97 are the debit vouchers and those entries are reflected in Ex. P-103 ledger sheet. Ex. P-104 is the account opening form of Battula Nagaiah dated 25-6-1985. The said account was introduced by one T. Hanumantha Rao. Ex. P-4 is another account opening form of Kanagamuri Sreenu, which was introduced by T. Hanumantharao. Ex. P-105 is the account opening form of Tanneru Hanumantharao dated 24-5-1980 pertaining to Current Account No. T/44. Ex. P-106 is the ledger sheet of the above account. Ex. P-105 and P-106 were handed over by him to C. B. I. with covering letter (Ex. P-107).

30. P. W. 15 (U. Srinivas), who worked as clerk in Vysy''a Bank, Governorpet Branch, Vijayawada, during the period from 9-4-1987 to 8-6-1997, deposed that Ex. P-83 is the specimen signature card containing the signature of B. Kondaiah

in connection with opening of Account No. 5582. A-8 attested the specimen signature of B. Kondaiah in Ex. P-83. Ex. P-84 is the S.B. Account Opening form of B. Kondaiah. A-8 introduced B. Kondaiah and signed in Ex. P-84. Ex. P-85 is the ledger sheet of B. Kondaiah. Ex. P-86 is the clearing credit voucher pertaining to B. Kondaiah for an amount of Rs. 24,628/-, which bears the signature of B. Kondaiah as depositor. The amount under Ex. P-86 was credited in the ledger on 25-11-1989. Ex. P-87 is the withdrawal form of B. Kondaiah for a sum of Rs. 24,000/- dated 27-11-1989. He was the cashier on that day. Ex. P-87 bears his initial on the ''Cash Paid'' stamp. He also noted the denomination on the back of Ex. P-87. This witness further stated that as per Ex. P-87, amount was paid to B. Kondaiah by him.

31. P. W. 37 (E. Mallikarjuna), who worked as Accountant in Vysya Bank, Governorpet Branch, Vijayawada from November 1979 to June 1997, deposed that Ex. P-83 is the specimen signature card and Ex. P-84 is the account opening form of B. Kondaiah. He signed in Exs. P.-83 and P-84 in his capacity as Accountant where the specimen signature were obtained from B. Kondaiah. Ex. P-83 and P-84 were attested by A-8.

32. P. W. 21 (M. Subrahmanyam), who worked as head Cashier in Union Bank of India, Mylavaram branch from 26-8-1986 to 20-1-1995, deposed in his evidence that Exs. P-108 and P-109 are the collection voucher and schedule belonging to P. Ramaiah for a sum of Rs. 11474/- each. Out of this, bank commission of Rs. 37/- was deducted. The balance amount of Rs. 11,437/- was credited to his account. He was cashier on 6-12-1989. Ex. P.-10 is the withdrawal slip dated 6-12-1989 for a sum of Rs. 11,000/- pertaining to account No. 5670 of one P. Ramaiah. On the reverse of Ex. P-110, there are two signatures of P. Ramaiah. First signature was obtained at the time of presentation of the voucher and second signature was taken at the time of payment of cash, which exceeded Rs. 10,000/-. It is a token transaction. He stated that he knows K. Pullareddy. He can identify A-6. He was having account with their branch.

33. P. W. 22 (P. Narasimha Rao) who worked as Branch Manager of Union Bank of India, Mylavaram Branch, from 1993 to 1996, deposed that Ex. P-111 is the specimen signature card of P. Ramaiah. One Kota Pulla Reddy, who is having account No. 901, introduced the said P. Ramaiah. Ex. P-112 is the reply sent by him to the C. B. I. enclosing documents. Ex. P-l 13 is the ledger sheet of P. Ramaiah pertaining to A/c. No. 5670. The transactions under Ex. P-108 and P-110 are shown in Ex. P-113. Ex. P-114 is the covering letter for handing over of some bank documents pertaining to Kota Pulla Reddy to the C. B. I. Ex. P-115 is the account opening form of Kota Pulla Reddy, bearing Account No. 901. Ex. P-116 is the specimen signature card of Kota Pulla Reddy.

34. P. W. 36 (P. K. V. Khan), who worked as Manager of Union Bank of India, Mylavaram Branch, from 1984 to 1987, deposed that Ex. P-111, bears his signature. He singed in Ex. P-111, in connection with the opening of account by Ramaiah who was introduced by one K. Pullareddy. The said Pullareddy was one

of the oldest account-holders of the branch. He attested the specimen signature of Ramaiah.

35. P. W. 4 (S. Pullarao), who worked as I. T. O. Ward-II in Vijayawada and during the relevant period i.e., from 1-1-1990 to 31-3-1991, he was in charge of I. T. O. Ward-VII. He knows A-1 as he was put in charge of I. T. O. Ward No. VII after the retirement of A-1 on 31-12-1989. A-1 was dealing with salary cases and direct refunds u/s 237 of Income Tax Act. He deposed that whenever any application was made for refund in Form No. 30, they will put the date stamp on the return of income annexed to that form. Later, it will be placed before the Income Tax Officer after being processed by the concerned clerk. Clerk will prepare the Order sheet which will contain all the details until the refund is issued and dispatched to the claimant, to the address given therein. He stated that by the time he took charge, one refund claim relating to one Mr. Anil was pending. On perusal, it was found that T. D. S. Certificate was issued by Executive Engineer, N. S. C. Division-16, Mylavaram and it was enclosed to the file. He deputed his Inspector to find out whether such a Certificate was issued by the Executive Engineer, N. S. Division -16, Mylavaram. The Inspector submitted his report stating that no such Division was in existence. However, it is mentioned therein that there does exist Division No. 24 in Mylavaram. Therefore, when their Inspector contacted Executive Engineer, N. S. Division-24, that engineer stated that he never issued the T. D. S. Certificate. Then, he reported the matter to the Deputy Commissioner of Income Tax, Administration, who is his superior. The Deputy Commissioner directed him to enquire whether such claims were made earlier.

36. On examination of files, P. W. 4 found that 24 claims were made on such T. D. S. Certificates. He submitted all the cases noting in a list to his superior officer i.e., Dy. Commissioner of Income Tax. On instructions from the Dy. Commissioner of Income Tax to enquire how the refunds were encashed, P. W. 4 enquired and found that claimants opened accounts in State Bank of India and Syndicate Bank and the refunds were credited to those accounts and later claimants withdrew the amounts. About the 24 T.D.S. Certificates, when they enquired, the Executive Engineer. N. S. Division-24 stated that no such works were executed. Their Inspector obtained details about the addresses of those contractors who opened the accounts in the above banks and when they tried to find out those persons, with reference to their addresses, those persons were not available there. They perused the flies of (1) P. Raghavaya; (2) B. Anjaneyulu; (3) V. Kondalu; (4) P. Rambabu; (5) K. Ramarao; (6) G. Venkateswarlu; (7) T. Ramulu; (8) K. Ramaiah; (9) K. Srinu; (10) P. Ramaiah; (11) B. Kondaiah; (12) B. Nagaiah. Exs. P-40 to P-51 are the income tax return files of the above persons respectively. The T. D. S. Certificates which are filed in each and every file are also marked in his evidence. P. W. 4 finally deposed that in all the above cases, refund orders were processed and passed by A-1.

37. P. W. 5 (O.V.S. Sarma), who worked as Head Clerk in Income Tax Office at

Vijayawada during the period from 1989 to 1991, deposed that at that time his superior officer was A-1 who was in the capacity of Income Tax officer. His duty was to process the Income Tax returns and place them for orders before the Income Tax officer. In cases where the refund claim exceeds Rs. 10,000/- such claims should be processed by the Income Tax Officer and he will pass orders thereon. He deposed that he processed Exs. P-40 to P-51 and prepared order sheets in each and every income tax return file recommending for scrutiny and for passing appropriate orders by A-1. But, he stated that A-1, endorsed in all those files thus : "Not necessary. Verified refund. Issue refund order."

38. P.W. 6 (M. Radha Rani), who worked in the office of A-7, deposed that she joined the office of A- 7 during May 1991. She used to attend to the duty of maintaining of ledgers and day book. She stated that she has no knowledge about the preparation of income tax returns in the office of A-7 or about his clients. She also does not know ''Kanakamouli Srinu''. She did not sign in income tax returns in the name of any others. Her specimen signatures as ''Kanakamouli Srinu'' were obtained by the C. B. I.

39. P. W. 7 (GollapudI Apparao) deposed that he used to take up contracts of Canal work on contract basis in the year 1983-84. He knows A-8, who is a tax consultant. He used to consult the tax consultant. During the year 1986-87, he received refund order. At that time, A-8 was tax consultant. He also knows A-3. A-3 also used to take contract works of N. S. C. canals during the said period. He knows A-6. He further stated that during that period, one Mr. A. Babu Rao and Appidi Satyanarayana Reddy were big contractors of Mylavaram. He knows one Regala Venkateswara Rao, who used to help contractors for filling up of the income tax returns. He used to introduce the contractors to auditors at Vijayawada. He got an S. B. Account bearing No. 2317 in Central Bank, Mylavaram. He was also having S. B. Account No. LIC 34 of Syndicate Bank, Vijayawada.

40. P. W. 8 (K. V. Nageswara Rao), who is a native of Mylavaram, deposed that he has got brass works and that he owns houses. He stated that he knows A-3. A-3 is his tenant during the year 1988-89 on a monthly rent of Rs. 150/-. A-3 used to stay along with his family. He further stated that A-3 was carrying on contract works.

41. P. W. 9 (R. Venkateswara Rao) deposed that earlier he used to do contract works of R & B and Nagarjuna Sagar Project canal. He stated that contractors used to take him for assistance with regard to tender submissions. A-3 used to reside in the house of P. W. 8 as a tenant and used to do contract works. He further stated that he also knows A-7 and one G. Rajasekhar, an Auditor at Vijayawada. This witness used to visit their office in connection with refund of income tax. On one occasion, in his own case, he obtained income tax refund taking the assistance of A-7.

42. P. W. 10 (P. Sambasiva Rao), who worked as Executive Engineer, N. S. C.

Division-24, Mylavaram, deposed that Exs. P-42-A. P-43-A, P-44A and P-40-A and the statements enclosed thereto were never issued by him. They do not bear his signatures. He further deposed that the particulars mentioned in the statements are also not correct. He also does not know the Executive Engineer by name K. Narasimha Rao of Tiruvur Division and Mylavaram Division in the year 1987-89. He also stated that there is no N. S. C. Canal Division 16 during the years 1986 to 1990.

43. P. W. 11 (K. Dronacharyulu), who worked as Executive Engineer, N. S. C. Division, Tiruvur from July 1989 to September 1990, deposed that during the above period, there was no N. S. C. Division No. 16 in existence. He stated that Ex. P-41-A along with the statement was not issued by him and the signature thereon does not belong to him. He further stated that he does not know the contractor by name B. Anjaneyulu and that during his tenure, there was no Executive Engineer by name K. Narasimha Rao in Tiruvur Division. Ex. P-57 are the two sheets containing specimen signatures.

44. P. W. 23 (B. Vasudeva Rao), P. W. 24 (R. Nageswara Rao) and P. W. 32 (Gaddi Krishna Reddy), who worked as Postmen, Beat No. 19 in Buckingham Post Office, Vijayawada during 1989-90, deposed that the Pay & Accounts Office and P. W. D. Grounds are within the limits of Beat No. 19. They further stated that they did not deliver the registered letters with acknowledgments covered under Exs. P-40 (E), P-41(E), P-42(E), P-45(C), P-46(C) and P-50(C). They also could not say as to who delivered them. They do not know any of the addressees under the above letters.

45. P. W. 25 (M. Nageswara Rao), P. W. 26 (K. Rama Rao), P. W. 27 (B. V. Rajeswara Rao), P. W. 28 (K. C. Prasad), P. W. 34 (Ch, Somasundara Rao) and P. W. 35 (G. Radhakrishna Murthy) deposed that in their presence the specimen signatures of some of the accused and some of the prosecution witnesses were obtained by the C. B. I. In the presence of P. W. 25, the signatures of P. W. 1 (marked as S-79 to S-82) were obtained in Ex. P-3 and also obtained specimen writings of P. W. 1 (marked as S-86 to S-90) in Ex. P-3. It bears the signatures of P. W. 1, the Dy. Superintendent of Police, C. B. I. and this witness.

46. In the presence of P. W. 26, the specimen signatures of P. W. 11 were obtained in two sheets on 8-10-1994 which are marked as S-113 and S-114 in Ex. P-57. It bears the signature of P. W. 11, the Deputy Superintendent of Police and himself.

47. In the presence of P.W. 27, the Dy. Superintendent of Police, C. B. I., obtained the signatures of A-6 which are marked as S-115 to S-119 contained in Ex. P-117 file. A-6 also signed at the bottom. Himself and the Dy. Superintendent of Police, C. B. I., also signed in Ex. P-117 file.

48. In the presence of P. W. 28, the specimen signatures of A-7 were obtained in the C. B. I. Office, Visakhapatnam, which are marked as S-97 to S-101 in Ex. P-118. He signed in all the pages in Ex. P-118 at the bottom. Similarly, the

signatures of P. W. 10 (marked as S-109 to S-112) in Ex. P-56 were also obtained in his presence and he signed at the bottom portion of all the pages.

49. P. W. 29 stated that Ex. P-119 are the sheets containing the specimen signatures of A-8 (S.163 and S.164) which were obtained in his presence. Himself, A-8 and the Dy. Superintendent of Police signed in Ex. P-119. Ex. P-120 are the sheets containing the specimen handwritings of P.W.5 (S-165 to S-168). It was signed by this witness, P. W.5 and the Dy. Superintendent of Police.

50. In the presence of P. W. 30, the specimen writings of A-3 were obtained. He signed in each page. Those papers are marked as Ex. P-121. Those sheets were marked as S-2 to S-4, S-9 to S-11, S-l6 to S-l8, S-23 to S-25, S-30 to S-32, S-39 to S-41, S-16 to S-18, S-23 to S-25, S-30 to S-32, S-39 to S-41, S-46 to S-48, S-53 to S-55, S-62 to S-64, S-70 to S-72, S-93 and S-94. A-3 and the Dy. Superintendent of Police also signed in each page of Ex. P-121.

51. In the presence of P. W. 34, the Dy. Superintendent of Police obtained the specimen signatures of A-3 in different names. The sheets containing those specimen handwritings and signatures are Ex. P-126. A-3 also signed in those sheets. He also signed in those sheets.

52. In the presence of P. W. 35, the Dy. Superintendent of Police, C. B. I. has obtained the specimen writings of A-7. Those are marked as Ex. P-127. He also signed at the bottom.

53. P. W. 36 (P. K. V. Khan), who worked as Manager, Union Bank of India, Mylavaram Branch from 1984 to 1987, deposed that Ex. P-111 bears his signature. He signed therein in connection with the opening of Account by one Ramayya who was introduced by K. Pullareddy. The said Pullareddy was one of the oldest account-holders of the branch. He attested the specimen signature of Ramayya.

54. P. W. 37 (E. Mallikarjuna) who worked as Accountant, Vysya Bank, Governorpet Branch, Vijayawada, from November 1979 to June 1987, deposed that he signed in Exs. P-83 and P-84 in his capacity as accountant when the specimen signatures were obtained from B. Kondaiah. Exs. P-83 and P-84 were attested by A-8. Ex. P-83 is the specimen signature card and Ex. P-84 is the account opening form.

55. P. W. 31 (Sunil Kumar Misra), who worked as Dy. Commissioner of Income Tax, Vijayawada during the relevant period, deposed that he received the report from Superintendent of Police, C. B. I. along with relevant documents. He perused all the documents and after satisfying himself, he accorded sanction. He stated that he applied his mind to the facts and documents of the case and issued sanction order (Ex, P-122) for prosecution of A-5, which bears his signature.

56. P. W. 33 (Amar Singh), who is the Deputy Government Examiner of Questioned documents, Hyderabad, deposed that he received the documents in

this case along With Ex. P-123-letter. He marked the Questioned writings and signatures in ''Q'' series and the specimen writings and signatures in ''S'' series. After careful examination and comparison of those writings and signatures, he came to the conclusion thus ;

1. The person who wrote the blue enclosed writings marked as S-1 to S-58, S-62 to S-78 and S-91 to S-94 marked in Ex. P-121, P-125 and P-126 (Specimen writings of A-3) also wrote the red enclosed writings marked in ''Q'' series in Exs. P-40 (D), P-40(E), P-40(B), P-6, P-10, P-41(D), P-41 (C), P-41 (B), P-11, P-14, P-42 (D), P-42(C), P-42 (B), P-15, P-19, P-23, P-20, P-30, P-28, P-45(B), P-45(C), P-31, P-34, P-35, P-46)C). P-46(B), P-l, P-38, P-39, P-10, P-14, P-19, P-23, P-30, P-47 (D), P-47(C), P-24, P-27, P-49(C), P-111, P-108, P-110, P-50(B), P-50(C), P-83, P-84, P-86, P-87, P-4, P-104, P-51(H) and P-51(G).

2. The person who wrote the blue enclosed writings in Ex. P-5 (specimen writings of S. K. Basha) also wrote the red enclosed writings marked in Exs. P-98. P-94, P-99. P-101 and Ex. P-4.

3. The person who wrote the blue enclosed writings marked in Ex. P-3 (Specimen writings of E. Subash) also wrote the red enclosed writings marked in Ex. P-1, P-124 and P-2.

4. The person who wrote the blue enclosed writings marked in Ex. P-55 (specimen writings of Smt. E. Adharani) also wrote the red enclosed writings marked in Ex. P-48.

5. The person who wrote the blue enclosed writings marked in Ex. P-l 17 (Specimen writings of K. Pullareddy) also wrote the red enclosed writings marked in Ex. P-111.

6. The person who wrote the blue enclosed writings marked in Ex. P-118 (specimen writings of A. Nageswara Rao) did not write the red enclosed writings marked in Ex. P-47.

7. The person who wrote the blue enclosed writings marked in Ex. P-56 (specimen signature of Sambasiva Rao) did not wrote the red enclosed writings marked in Ex. P-40 (A), P-42 (A), P-43 (A) and P-44(A).

8. The person who wrote the blue enclosed writings marked in Ex. P-57 (specimen signature of Dronacharyulu) did not wrote the red enclosed writings marked in Ex. P-41 (A). Exs. P-125 & P-126 are the sheets containing the specimen writings of A-3. Exs. P-127 and P-128 are the sheets containing the specimen writings of A-7, Ex. P-129 is the Opinion given by this witness. The detailed reasons (Ex. P-130) for the opinion.

57. P. W. 38 (S. Jagadeesh), who worked as Dy. Superintendent of Police, C. B. I., Visakhapatnam from 11-1-1991 to 30-5-1995, deposed that he took up investigation in this case on 8-11-1993. The F. I. R. (Ex. P-133) was registered by Sri S. B. Shankar, Inspector of Police, C. B. I. on 30-4-1993, on the basic

source of information. He deposed that in between 5-1-1994 to 21-3-1995, he collected relevant documents in this case. He questioned the accused as well as the prosecution witnesses. He obtained specimen signatures of A-3 on 16-7-1994. On 17-7-1994, he arrested A-3 and P. W. 2 and produced them before the Court on the next day and requested the Court for police custody. On 19-7-1994, he obtained the specimen signatures of A-3. He obtained specimen writings of A-7 and P. W. 6 on 26-7-1994. Again on 29-7-1994, he obtained the specimen writings of A-3. On 3-9-1994, he received a letter from Branch Manager, Syndicate Bank, containing the letter given by P. W. 1. On 13-8-1994, he obtained the specimen writings of A-7. Again on 28-8-1994, he obtained the specimen writings of A-7 and P.W. 6. On 15-9-1994, he obtained the specimen writings of A-6. On 21-10-1994, he obtained the specimen writings of P. W. 5 and A-8. On 26-10-1994, he sent the questioned documents and standard documents to P. W. 33, On 26-12-1994, he received opinion from P. W. 33. On 14-2-1995, he arrested P. W. 1. On 25-2-1995, the 164 Cr. P. C. statements of P. Ws. 1 and 2 were recorded by the Metropolitan Magistrate, Viskhapatnam. On 18-3-1995, tender of pardon was granted to P. Ws. 1 and 2 by the Chief Judicial Magistrate, Visakhapatnam. He also examined the accused, P. Ws. 1 to 3 and other prosecution witnesses. On 24-5-1995, he handed over the further investigation to Y. T. R. Prasad. On 3-5-1993, Sri A. Venkata Rao, Inspector of Police, C. B. I. had seized 8 documents from Syndicate Bank. Gandhinagar branch under seizure memo (Ex. P-134).

58. P. W. 39 (Y. T. R. Prasad), who worked as Inspector of Police, C. B. I. Viskhapatnam, deposed that on 25-5-1995, he took over the investigation from P. W. 38 as per the orders of Superintendent of Police, C. B. I., Visakhapatnam. He further examined P. W. 6 on 28-8-1995 and recorded her statement. He obtained sanction orders for the prosecution of A-2/A-4 and A-5. On completion of investigation, he filed charge sheet in this case.

59. Before adverting to the facts on hand and decide as to whether the accused persons are responsible for the alleged offences, it is necessary for this court to discuss the law on circumstantial evidence as well as the evidence of approvers.

60. It is a case which rests solely on the circumstantial evidence. It is well settled by the Apex Court that the principles governing the appreciation of evidence in a case of circumstantial evidence are that each circumstance relied on by the prosecution must be established by cogent, succinct and reliable evidence, that the circumstances relied on by the prosecution must be such as cannot be explained on any hypothesis except the guilt of the accused. In other words, the circumstances must be of an incriminating character. All the proved circumstances must provide a complete chain, no link of which must be missing and they must unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence. In order to prove criminal conspiracy punishable u/s 120-B there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit the

offence. This clearly envisages that there must be a meeting of minds resulting in an ultimate decision taken by the conspirators relating to the commission of an offence. In most cases it will be difficult to get direct evidence but a conspiracy can be inferred even from the circumstances giving rise to a conclusive or irresistible inference of an agreement between the two or more persons to commit an offence.

61. Now I will refer to the case law with reference to the approver''s evidence and how to evaluate the same.

62. In Piara Singh Vs. The State of Punjab, , the Apex Court while dealing with Section 133, 114 Illus(b) of Evidence Act held that "an accomplice is undoubtedly a competent witness under the Indian Evidence Act. There can be however, no doubt that the very fact that he has participated in the commission of the offence introduces a serious taint in his evidence and courts are naturally reluctant to act on such tainted evidence unless it is corroborated in material particulars by other independent evidence. It would not, however, be right to accept that such independent corroboration should cover the whole of the prosecution case or even all the material particulars of the prosecution case. If such a view is adopted it will render the evidence of the accomplice wholly superfluous. On the other hand, it will not be safe to act upon such evidence merely because it is corroborated in minor particulars or incidental details because, in such a case, corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true. It is well settled that the appreciation of approver''s evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all the witnesses. If this test is satisfied the second test which still remains to be applied is that the approver''s evidence must receive sufficient corroboration."

63. In Saravanabhavan v. State of Madras AIR 1966 SC 1473 : (1966 Cri LJ 949), the Supreme Court while dealing with the scope of Section 337 Cr. P. C. and Section 114, Illus. (b) and 133 of the Evidence Act held that "Ordinarily the Court seeks for corroboration of evidence of approver before convicting the accused person on that evidence. Generally speaking this corroboration is of two kinds. Firstly, the Court has to satisfy itself that the statement of the approver is credible in itself and there is evidence other than the statement of the approver that the approver himself had taken part in the crime, secondly, after the Court is satisfied that the approver''s statement is credible and his part in the crime is corroborated by other evidence, the Court seeks corroboration of the approver''s evidence with respect to the part of other accused person in the crime, and this evidence has to be of such nature as to connect the other accused with the crime. But it must be never forgotten that before court reaches the stage of considering the question of corroboration and its adequacy or otherwise, the first initial and essential question to consider is whether even as an accomplice the approver is a reliable witness. If the answer to this question is against the

approver then there is an end of the matter, and no question as to whether his evidence is corroborated or not falls to be considered. In other words, the appreciation of an approver''s evidence has to satisfy a double test. His evidence must show that he is a reliable witness and that is a test which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver''s evidence must receive sufficient corroboration. This test is special to the case of weak or tainted evidence like that of the approver. This is not to say that the evidence of an approver has to be dealt with in two watertight compartments; it must be considered as a whole along with other evidence. Even so, the Court has to consider whether the approver''s evidence is credible in itself and in doing so it may refer to such corroborative pieces of evidence as may be available. But there may be cases where the evidence of the approver is so thoroughly discrepant and so inherently incredible that the Court might consider him wholly unreliable."

64. In Khagendra Gahan Vs. The State, the Orissa High Court while dealing with Ss. 133 and 27 of Evidence Act held that an approver''s evidence has to satisfy double test. Firstly, the evidence must show that he is a reliable witness. Second test to be applied is as to whether his evidence has received sufficient corroboration in material particulars. Normally, the Court looks with some amount of suspicion on the evidence of accomplice witness which is tainted witness and even Section 133 of Evidence Act provides the evidence of accomplice witness should not be accepted unless it is corroborated. Corroboration must, however, be in respect to material particulars and not with respect to each and every item however minor or significant it may be. Actually the requirement of corroboration is a rule of prudence which the Courts have followed for satisfying the test of reliability of an approver and has now been crystallized into a rule of law.

65. In the light of the above evidence let in by the prosecution witnesses during the course of trial and keeping in mind the established principles of law, I will now proceed with the case. First I will discuss the evidence adduced against A2 and A4, A6 and A8. A3 and then A1 in respect of charge u/s 120-B of IPC.

66. Charge u/s 120-B I.P.C. :--All the accused are charged u/s 120-B I. P. C. The case of the prosecution is that all the accused along with one E. Subhash and Sk. Basha (P. Ws. 1 and 2), agreed to do an illegal act viz.. to cheat the Income Tax Department to a tune of Rs. 3,92,552/- by illegal means viz., filling bogus Income Tax returns in the names of fictitious persons (12 in number) and fraudulently claiming tax refunds by enclosing false and forged T. D. S. certificates purported to have been issued by the Executive Engineer, N. S. C. Division at Tiruvur and Mylavaram and in pursuance of the said agreement, it is alleged that-

(i) A-3 with the help of A-7 and A-8 filed bogus Income Tax returns in the name of fictitious persons by fabricating T. D. S. Certificates;

(ii) A-7 and A-8 dishonestly and fraudulently helped A-3 in fabricating T. D. S. Certificates in filling the Income Tax returns in the office of A-1;

(iii) E. Subhash (P. W.1) introduced A-3 to A-1, A-2 and A-7 and also to Syndicate Bank, Gandhinagar Branch, to open S. B. Account the fictitious name of T. Ramulu;

(iv) Sk. Basha @ Kanagamuli Srinu (P. W.2) helped A-3 in claiming T. D. S. refund order of Rs. 17,211/- and getting sanctioned from A-1 and in withdrawing Rs. 17,000/-on 21-11-1987 from S. B. I., Gandhinagar Branch;

(v) A-3 withdrew Rs. 24,000/- on 27-11-1989 from Vysya Bank, Governorpet Branch and Rs. 11,000/- on 6-12-1989 from U.B.I., Mylavaram Branch by impersonating fictitious claimants;

(vi) A-1 dishonestly and fraudulently processed and sanctioned refunds for T.D.S. claims in the names of the fictitious persons to a tune of Rs. 3,92,552/- knowing them to be bogus;

(vii) A-5 dishonestly dispatched the refund orders to the addresses other than those mentioned in refund claim forms and facilitated their encashment by A-3 and others;

(vii) A-6 and A-8 fraudulently introduced A-3 in the guise of fictitious claimants of T.D.S. refunds to open S. B. Account with Syndicate Bank, Gandhinagar Branch, U.B.I., Mylavaram Branch, S.B.I., Gandhinagar Branch, Vysya Bank, Governorpet Branch and facilitated A-3 to impersonate the fictitious persons and to encash the alleged refund orders; and

(ix) A-2 and A-4 dishonestly helped A-3. in getting credited the amounts of the said refund orders into the S. B. Accounts purposefully in the names of different fictitious persons within a short span of period and thereby to withdraw the funds by A-3.

67. The charge against A-2 and A-4, who are the employees of Syndicate Bank, Gandhinagar Branch, Vijayawada, is that as part of the conspiracy, they dishonestly helped A-3 in getting credited the amounts of the said refund orders into the S. B. Accounts purposefully in the names of different fictitious persons within a short span of period and thereby facilitated to withdraw the funds by A-3.

68. The alleged approvers PWs 1 and 2 did not speak anything about the complicity of these persons, i.e. A2 and A4. But there are some circumstances, such as consistency in the opening of the accounts of the alleged fictitious persons to hold that they had a role in the said conspiracy. According to the case of the prosecution, A3 opened about eight accounts in the names of fictitious persons and the same are marked as Exs. P6, P11, P15, P20, P24, P28, P31, and P1 and all these exhibits were filled in by A4. This circumstance of consistency in filling up of various forms such as introductory forms, vouchers etc., no doubt creates a doubt in the mind of the Court, but, however, it has to be seen the

other evidence spoken to by the other prosecution witnesses. The specimen signature of A4 was not obtained by the prosecution in the presence of the Presiding Officer and even if the specimen signature obtained by the police tallies with that of the signature of Ex. P6, P11, P15, P20, P24, P28, P31 and P1, it is not safe to convict him as held by the Madras High Court in "T. S. Anthony v. State of Tamil Nadu rep. By Public Prosecutor (1993)1 ALT 493. The relevant portion is extracted hereunder :

"Ex. P27 is the specimen signature obtained by police from PW5. Ex. P27 cannot be accepted since it was obtained by the police and not in the presence of the Presiding Officer. This sort of practice has to be avoided in future since if the prosecution wants to help the accused, there is possibility of taking the specimen signature or thumb impression of somebody else instead of the accused, complainant or relevant witness and get the opinion on the same and produce before the trial Court and defeat the ends of justice."

Further there is a possibility of A4 signing the above documents believing that they wanted some assistance. It is not uncommon in the banks that the bank staff will assist the account holders at the time of filling up of vouchers, introductory forms, withdrawal forms, deposit forms etc. From this circumstance alone it is not safe to convict A4 as if he has committed offence u/s 120B IPC and accordingly he is acquitted of the said charge.

69. Coming to the case of A2, there is only one instance, i.e. filling in of Ex. P31 and the evidence about his complicity is spoken to by only PW3. As already stated, the evidence of PWs 1 and 2 the alleged approvers is of no help to convict A2. When the evidence of PW3, the Branch Manager, is taken into consideration, he speaks that Ex. P31 is the specimen signature card of one Grunja Venkateswarlu bearing A/c No. 15361 and the same was filled in by A2. Excepting this, there is no other evidence to establish the complicity of A2. Simply because A2 happened to sign on Ex. P31 introductory application, which happens to be a solitary instance, it cannot be said that he had conspired and dishonestly helped A3 in getting the refund orders by A3. Therefore I acquit him of the charge u/s 120-B IPC.

70. The charge against A-6 and A-8 is that they fraudulently introduced A-3 in the guise of fictitious claimants of T. D. S. refunds to open S. B. Account with Syndicate Bank, Gandhinagar Branch, U. B. I., Mylavaram Branch, S. B. I. Gandhinagar Branch, Vysya Bank, Governorpet Branch and facilitated A-3 to impersonate the fictitious persons and to encash the alleged refund orders.

71. The alleged approvers, i.e. PWs 1 and 2 did not speak about the participation of A6 and A8. However, there is evidence of PWs 7, 8, 9, 10, 21, 22, and 27 of whom PW 21 is the main witness who spoke about A6. The evidence of PW 21 who was working as Head Cashier in Union Bank of India, Mylavaram at the relevant point of time is to the effect that A6 introduced P. Ramaiah and the specimen signature card of P. Ramaiah was marked as Ex. P111. However,

according to the prosecution, the said opening of account by Ramaiah was in the year 1986. But the actual offence, even according to the prosecution, happened during 1989/1990. Further even if it is accepted that he introduced Ramaiah and he signed the specimen application as an introducer, it cannot be inferred that A6 and P. Ramaiah as early as in 1986 have conspired to cheat the bank at a later date. If really it is their intention to cheat the bank, they would not have waited till 1989 as happened in this case. Hence I am of the considered view that A6 cannot be by his introduction of Ramaiah and signing the introduction form, found fault with the alleged offence punishable u/s 120-B IPC. The case against A8 also is similar to A6. Even in the case of A8 it was a solitary incident of signing the introduction application form and by the said act, it cannot be held that A8 connived with the other accused and thus committed the offence punishable u/s 120-B IPC. In the light of the above discussion, this court is of the view that there is no justification to convict A7 and A8 for the offence punishable u/s 120-B IPC. and the circumstances relied on by the prosecution to base a conviction on these accused are not justified and hence A6 and A8 are acquitted of the said charge.

72. Now comes the allegation of conspiracy against A-3. The allegation is that in furtherance of his dishonest intention to cheat the Income Tax Department A-3 hatched up a plan, and with the help of A-7 and A-8, A-3 filed bogus Income Tax returns in the names of fictitious persons by fabricating T. D. S. Certificates and withdrew a sum of Rs. 24,000/- on 27-11-1989 from Vysya Bank, Governorpet Branch; Rupees 11,000/- on 6-12-1989 from Union Bank of India, Mylavaram branch by impersonating fictitious claimants. As a matter of fact, it is the case of the prosecution that A-3 hatched up the entire plan; that he fabricated T. D. S. certificates with the help of A-7 and A-8, got opened bank accounts in the names of fictitious persons with the help of A-2 and A-4, filed Income Tax returns before A-1 on the basis of such certificates and claimed refunds in the names of fictitious persons, deposited cheques which were received towards Income Tax refund and, more importantly, withdrew the said cheque amounts from the accounts of the fictitious persons. In order to prove the said allegations, apart from examining the Bank employees of Syndicate Bank, Gandhinagar Branch, Vijayawada (P. Ws. 3, 12, 13, 14. 16 to 18), Vysya Bank, Governorpet, Vijayawada (P. Ws. 15 and 37), State Bank of India, Gandhinagar, Vijayawada (P. Ws. 19 and 20) and Union Bank of India, Mylavaram (P. Ws. 21, 22 and 36), the prosecution also relied on the evidence of P. Ws. 1 and 2, the approvers. The evidence of the bank employees, except showing that some accounts were opened in the names of the alleged fictitious persons and amounts were withdrawn by the account-holders with the help of A-2 and A-4, there is no evidence worth mentioning to prove that the entire plan was hatched up only by A-3 or that A-3 had ever met A-2 or A-4 or even A-1.

73. However, there is the evidence of P.Ws. 1 and 2, the accomplice witnesses, who spoke about A-3''s alleged involvement. The prosecution sought to lay strong reliance upon the evidence of these two accomplice witnesses to prove

the guilt of the accused. The question is whether the evidence of accomplice witnesses i.e., P. Ws. 1 and 2 satisfied the double test as held the Apex Court and whether it can be relied upon or not. An accomplice is undoubtedly a competent witness under the Indian Evidence Act. Having gone through the evidence of P.Ws. 1 and 2, I am of the opinion that their evidence does not satisfy even the first test, leave alone the second test, inasmuch as the said evidence does not inspire any confidence. As a matter of fact, their evidence fails to satisfy even the second test and hence the evidence of P. Ws. 1 and 2 must be thrown out, I shall now proceed to examine the evidence of P.Ws. 1 and 2 hereunder.

74. As seen from the evidence, P.W. 1 is an employee working in Income Tax Department and that at the relevant point of time he worked under A-1 as an Attender. He stated that he introduced one Ramulu of Mylavaram to the Syndicate Bank, Vijayawada. The specimen signature card of the said Ramulu is marked as Ex. P-l, which bears the signature of P. W. 1 as an Introducer. P. W. 1 identified-A-3 (namely, T. Hanumantha Rao) in Court stating that "A-3 in this case who is present in the Court is the said T. Ramulu". In Ex. P-1 he (A-3) put his specimen signatures as "T. Ramulu" in his presence. P. W. 1 further stated that at that time he was informed that his name was T. Ramulu. By then, he did not know that his name was T. Hanumantha Rao and later he came to know that his name was T. Hanumantha Rao but not T. Ramulu. It is necessary to reproduce the evidence of P.W.1 in his chief examination hereunder :

"I introduced one Ramulu of Mylavaram to the Syndicate Bank, Vijayawada. Ex. P-1 is the specimen signature card of the said Ramulu which bears my signature as Introducer. A-3 in this case who is present in the Court is the said T. Ramulu. At that time I was informed, that his name was T. Ramulu. By then I did not know that his name was T. Hanumantha Rao. Later I came to know that his name was T. Hanumantha Rao but not T. Ramulu."

The above evidence of P. W. 1 is not at all convincing for more than one reason. Having stated that he came to know subsequently that A-3''s name was T. Hanumantha Rao but not T. Ramulu, P. W. 1 did not choose to give any explanation in his evidence as to how and under what circumstances and when exactly he came to know that A-3''s name was T. Hanumantha Rao. Except merely stating that he came to know the name of A-3 as T. Hanumantha Rao, P. W. 1 could not disclose the source of information. Even the prosecution did not bother to elicit from this witness the source of his information. Even Ex. P-2 letter which was admittedly written by P. W. 1 is silent about the source of information. Thus, the oral assertion made by P. W. 1 in this respect without any supporting evidence cannot be believed as gospel truth. Further, even if it is assumed that the evidence of P. W. 1 to the effect that initially he did not know A-3''s real name as T. Hanumantha Rao, is true, his further statement that he introduced such a person to the bank is unbelievable because nobody would venture to introduce such a person whose name is not correctly known to him.

This attitude on the part of P. W. 1 is somewhat unnatural and his evidence in that regard appears to be highly artificial.

75. The evidence of P. W. 1 is also falsified by his own version which was given in Ex. P-2, Ex. P-2 is the letter, admittedly, addressed by P. W. 1 to the Manager Syndicate Bank, Vijayawada, on 25-7-1994 stating that by mistake he introduced A-3 as T. Ramulu but later, he came to know that his name was T. Hanumantha Rao. The translated version of the relevant portion in Ex. P-2 is produced hereunder :

"My name is E. Subhash. I am having S. B. Account in your Bank, I am working as Group D employee in Income Tax Department. In 1987, I introduced one T. Ramulu to open S. B. Account in your bank. He opened S. B. Account No. 12692 in your bank. I knew that the original name of T. Ramulu is T. Hanumantha Rap. When he came to our office with an I. T. refund order in the year 1987, he introduced himself to me. T. Hanumantha Rao told me that he is doing contracts in Mylavaram. I introduced T. Hanumantha Rao to Attili Nageswara Rao who is dealing with Income Tax cases in Vijayawada, Subsequently, after some days, T. Hanumantha Rao came to me and requested me to open an S._B. account in the name of T. Ramulu in Syndicate Bank. Gandhinagar Branch. He told me that he received refund order in the name of T. Ramulu and in order to encash the same, opening of an account in Syndicate Bank is necessary."

The above statement of P. W. 1 (Ex. P-2) is self explanatory. In the said statement, P.W. 1 clearly stated that he knows A-3 right from the year 1987; while so, when it came to evidence he spoke as if A-3 was a stranger to him. P. W. 1 deposed in his evidence that by then he did not know that his name was T. Hanumantha Rao. This circumstance alone is sufficient to hold that P. W. 1 is not a reliable witness and that he is a man of straw; he can speak versions according to his own convenience.

76. Further, as seen from the First Information Report, P. W. 1 was shown as 2nd accused in the crime. The investigating officer arrested P. W. 1 on 14-2-1995. Thereafter, during the course of investigation by C. B. I., the statement of P. W. 1 u/s 164 Cr. P. C. was recorded by the metropolitan Magistrate, Visakhapatnam on 25-2-1995. Thereafter, upon an application filed u/s 306 Cr. P. C., the Chief Metropolitan Magistrate, Visakhapatnam, granted tender of pardon to P. W. 1 on 18-3-1995. The above incidents would be sufficient to presume that P. W. 1 was shown as an accused in the crime and that he was very much aware of the said factum that he was shown as one of the accused and that he continued to be an accused person during the pendency of investigation until he was granted pardon u/s 306 Cr. P. C. While so, P. W. 1 made an unabashed statement in his cross-examination that until the date of his examination in Court he was not aware that he was an accused. This attitude on the part of P. W. 1 clearly speaks volumes of his character. Having carefully gone through the evidence of P.W. 1, I am of the considered opinion that P. W. 1 is not at all reliable witness and that he is only a man of straw. It appears to me that after arrest on 14-2-1995 and

having been granted pardon u/s 306 Cr. P. C. on 18-3-1995, only to help the prosecution probably Ex. P1 must have been pressed into service as if it was written to the Branch Manager on 25-7-1994. It is, therefore, highly unsafe to base conviction by placing solely relying upon the evidence of such a witness. Apart from that, there is no corroboration to the solitary testimony of this witness. In the light of the above, this Court is not inclined to attach any credence to the testimony of P. W. 1.

77. The next important witness is P. W. 2, another approver. He deposed that in the year 1986, A-3 asked P. W. 2 to accompany him to State Bank of India, Vijayawada. They went together for the purpose of opening of an account in the name of "Kanakamuli Srinu". Accordingly, an account was opened in the name of Kanakamuli Srinu. At the request of A-3, he (P. W. 2) signed the account opening form (marked as Ex. P-4) as "Kankamuli Srinu". Ex. P-4 bears the two signatures subscribed by P. W. 2 as "Kankamuli Srinu". P. W. 2 further state that those signatures were identified and introduced by A-3. A-3 signed in his presence. Thus, as per the version of P. W. 2, at the request of A-3, he opened an account in State Bank of India, Vijayawada, in the name of a fictitious person called "Kanakamuli Srinu" and that A-3 introduced him to the Bank. Admittedly, the account was opened by P. W. 2 in the year 1986 whereas the tax returns in question were filed some time in the year 1989 and the refund was ordered by A-1 on the Income Tax return pertaining to Kanakamuli Srinu (Ex. P-48) on 20-11-1989. As seen from the record, refund orders in the return filed in question were passed on different dates in the months of November and December 1989. It is not the case of the prosecution that A-3 hatched up the plan in the year 1986 itself and that as part of the said plan he had first approached P. W. 2 and requested him to open an account in the name of fictitious persons. The evidence of P. W. 2 thus appears to be artificial. Having gone through the evidence of P. W. 2, a genuine doubt would arise in the mind of the court about the creditworthiness of the evidence of this witness. Above all, it has to be noted that, the testimony of P. W. 2 to the effect that he was asked by A-3 to open an account in the name of fictitious person and that he obliged A-3 after hearing his financial problems, stood uncorroborated by any independent evidence. The evidence of P.W.2 can, therefore be eschewed from consideration.

78. Further, as seen from the record, the crime was registered on 30-4-1993. While so, the investigating officer arrested P. W. 2 on 17-7-1994 and P. W. 1 on 14-2-1995. P. Ws. 1 and 2 were examined u/s 164 Cr. P. C. On 25-2-1995 and tender of pardon was granted to them u/s 306 Cr. P. C. on 18-3-1995, i.e.. about two years after the registration of the crime. Thus, there is a long gap between the registration of the crime and recording of the statements of P. Ws. 1 and 2 and during this long gap, the possibility of P. Ws. 1 and 2 changing versions cannot be ruled out. Further, as seen from the evidence of P. W. 3, the Sub-Manager of Syndicate Bank, Gandhinagar, Vijayawada, in which bank A-4 and A-5 worked and further A-3 was allegedly introduced by P. W. 1, the investigating officer examined P. W. 3 and recorded his statements on 17-2-1994 and

7-1-1995. Thus, after examination of P. W. 3 by the investigating officer, P. Ws. 1 and 2 allegedly made confession statements on the basis of which they were treated as approvers. This event viz., the investigating officer arrested P. Ws. 1 and 2 after examining P. W. 3, gives rise to a suspicion over the veracity of the statements made by P. Ws. 1 and 2 and thus I am of the considered view that the evidence of these accomplice witnesses does not satisfy the double test prescribed by the Apex Court. When the evidence of both P. W. 1 and P. W. 2 is eschewed from consideration, there remains nothing which points towards the guilt of A-3.

79. However, the prosecution tried to rely on the evidence of PWs. 23 and 24, the postmen, to prove the factum of fictitious persons and those persons were not in existence. The prosecution alleged that in the names of fictitious persons, bank accounts were opened, refund claims were filed, refund orders were obtained and cheques received in the names of such fictitious persons were deposited into the respective banks and cash was withdrawn. But, the said allegation remained as only an allegation. Except saying that all these clandestine acts were done in the names of fictitious persons, no proof was shown by the prosecution in support of its contention that all those persons are really fictitious persons and no such persons was in existence at all. The prosecution ought to have adduced positive evidence to prove that those persons are not at all in existence, by examining the authorities of the Municipality/Gram Panchayat and by marking the official records. No such attempt was made by the prosecution. Although the prosecution made a very meek attempt in trying to place reliance upon the evidence of the postmen (P. Ws. 23 and 24) and thereby seeking to draw an inference that letters were delivered to fictitious persons, in my considered opinion, the evidence of P. Ws. 23 and 24 is not of much help to the case of the prosecution. From the evidence of P. Ws. 23 and 24, it is no doubt clear that registered letters were delivered. But, is it sufficient to hold that A-3 had received those registered letters ? Simply because P. Ws. 23 and 24 stated that they do not know the addresses, can it be inferred that the persons to whom the letters were addressed are fictitious persons ? Further, can it be said that P. Ws. 23 and 24 are competent to speak about the existence or non-existence of any person ? The answers to all the above questions must be in the negative. As already stated above, the prosecution did not make any attempt to examine any responsible officer of the local municipality/Gram Panchayat, as the case may be, to establish the said allegation. In the absence of any such proof, it can be held that the said allegation remained unproved.

80. As far as the charge framed against A-12 is concerned, the allegation is that as part of the conspiracy, he dishonestly and fraudulently processed and sanctioned refund orders for T. D. S. claims in the names of the fictitious persons to a tune of Rs. 3,92,552/- knowing them to be bogus. Though the prosecution examined P. Ws. 4 and 5 to prove the factum of the alleged involvement of A-1, the evidence of PW5 is alone helpful to the case of the prosecution to some extent. According to the prosecution, the alleged conspiracy came to light only at

the instance of P. W. 4. PW4 took charge of I. T. O., Ward No. 7 after the retirement of Al. He stated that A-1 being the Income Tax Officer processed the Income Tax returns (Exs. P-40 to 51). allegedly filed in the names of fictitious persons and passed orders for refund of the amounts in favour of those fictitious persons. In his cross-examination, he stated that there are two kinds of assessments (i) Scrutiny Assessment and (ii) Summary Assessment. After verifying the arithmetical accuracy of computation of total income, the assessment will be arrived at by summary manner. He further stated that usually all direct refund cases will come under the category of ''Summary Assessment Scheme''. P. W. 4 admitted that the returns of income or refund claims need not be filed personally by the assessees and that they can be sent by registered post also. He further admitted that assessees need not be present personally for hearing and that they can be represented by any authorized person. The evidence of PW4 is not helpful to the prosecution as nothing can be inferred from his evidence that A1 conspired with other accused so as to enable A3 to get refund orders. However, there is evidence of PW5 which goes against Al.

81. P. W. 5, who worked as Head Clerk under A-1 at the relevant point of time. stated that in cases where refund claim exceeds Rs. 10,000/-. such claim should be processed by the Income Tax Officer and orders will have to be passed by him alone. He further stated that in order to find out the correctness of the return, scrutiny should be made and that at the time of the scrutiny the applicant will be required to be present along with his documents. He deposed that he processed the Income Tax Return files in question (Exs. P-40 to P-51) and prepared order sheets in each and every file recommending for scrutiny by A-1 and that A-1 issued refund orders without verifying the files. But A-1 processed the files without proper scrutiny. When once the files relating to T. D. S. Certificates were submitted to A-1 with an endorsement that the files require scrutiny, A-1 being a responsible Income Tax Officer ought not to have simply processed the same and released T. D. S. Certificates without there being any scrutiny as recommended by PW 5. The further case of the prosecution is that that A-1 was to retire at the end of the month and he did it with some intention. The circumstances under which A1 acted creates a suspicion about his involvement and hence I am of the opinion that the prosecution was able to establish the guilt against A1 to some extent. But, however, in view of my finding that A3, the main culprit and who is alleged to have played the entire role with the help of A1 and others, and the other accused are not guilty of the offence punishable u/s 120-B of IPC, it is not safe to convict A1 alone as if he has committed the said offence.

82. Now I will deal with charge u/s 420 IPC.

Charge u/s 420 I.P.C. :-- The trial Court charged all the accused for the offence punishable u/s 420 I.P.C. The essential ingredients of the offence of ''cheating and dishonestly inducing the delivery of property'', punishable u/s 420 I. P.C., are as follows :

(a) A person cheats;

(b) He thereby dishonestly induces the person deceived -

(i) to deliver any property to any person, or

(ii) to make other or destroy the whole or any part of a valuable security or anything which is signed or sealed and which is capable of being converted into a valuable security.

83. From a reading of the above ingredients, it is obvious that for basing conviction for an offence u/s 420 I. P. C., the prosecution must be able to prove that the complainant parted with his property acting on a representation which was false to the knowledge of the accused; that the accused had dishonest intention from the outset and that the property in the hands of the person cheated must have passed on to the person who cheats. In other words, the offence of cheating and dishonestly inducing the delivery of property was complete as soon as the property was handed over to the accused.

84. It is the case of the prosecution that all the accused cheated the Income Tax Department by dishonestly inducing the said Department to deliver refund orders to a tune of Rs. 3,92,552/- in the names of fictitious persons, which is the property of the Income Tax Department, and thereby committed the offence punishable u/s 420 I. P. C. It is no doubt true that the Income Tax Department had parted with the property to a tune of Rs. 3,92,552/- and the said amount was credited into various banks but in the names of fictitious persons. In order to prove the said charge, the prosecution mainly relied on certain circumstances that with a dishonest intention to cheat the Income Tax Department, T. D. S. certificates are forged; Income Tax returns are filed on the basis of such forged T. D. S. certificates and claims for refund were made; Bank Accounts were opened in the names of fictitious persons; Cheques were issued in the names of fictitious persons; Those cheques were dispatched to the addresses other than those which are mentioned in the income tax returns; and those cheques were encashed by the accused in various banks. Now, the question is whether all those circumstances have been proved by the prosecution by adducing cogent evidence.

85. The first circumstance that T. D. S. certificates are forged by the accused with a dishonest intention to cheat the Income Tax Department, was not spoken to by any of the witnesses examined by the prosecution. There is no iota of evidence to show that any of the accused did the act of forgery. The prosecution did not examine any witness to prove that those T. D. S. Certificates have been forged and fabricated by the accused and accused alone. Even though the prosecution made an attempt in that regard by examining P. Ws. 10 and 11, they only deposed that Exs. P-40(A), P-41(A), P-42(A), P-43(A), P-44(A) (T. D. S. Certificates) were not issued in Division 16 of Nagarjuna Sagar Canal Division and that the signatures therein do not belong to them. They did not speak anything about the other T. D. S. Certificates which are marked in this case, namely Exs. P-45(A), P-46(A), P-47(A), P-47(B), P-48(A), P-49(A), P-49(B), P-50(A), P-51(A), P-51(B) and P-51(C). No other witness spoke anything about

these T. D. S. Certificates. A mere allegation that the accused forged the T. D. S. Certificates without there being any evidence in that behalf does not amount to sufficient proof. Thus, the first circumstance could not be proved by the prosecution. Consequently, the first ingredient that the accused had dishonest intention to cheat the Income Tax Department could not be proved by the prosecution.

86. The other circumstance is that bank accounts are opened in the names of fictitious persons and refund amounts were withdrawn by the accused. The evidence in this regard is that of the bank employees. But, as already observed by me hereinabove, those bank employees, except stating that A-2 and A-4 filled up specimen signature cards, cash vouchers withdrawal forms and accounts were opened in the names of the alleged fictitious persons and that amounts were withdrawn could not state anything involving the other accused nor is there any evidence which shows that amounts were withdrawn by the accused, much less by the 3rd accused, who is the alleged prime accused. On the contrary, all the bank employees in one voice stated that accounts were opened in the names of fictitious persons and amounts were withdrawn only by the account-holders and none else. Similarly as already discussed the prosecution miserably failed to establish that the accounts are in the names of fictitious persons. PWs. 23 and 24 are only the witnesses, who are the postmen to speak about this factum who in my considered view are not all competent to speak about it.

87. In this connection, the categorical statement made by the investigating officer (P.W. 38) in his cross-examination regarding A-3, assumes importance. It reads thus : "I was not informed by any Branch Manager that A-3 himself had withdrawn the amount in any bank including Syndicate Bank, Vijayawada." P. W. 38 in the next sentence volunteered that he has been informed that the said account-holder has withdrawn the amount. To a specific question put to P. W. 38 as to whether his investigation reveal that cash was paid to A-3 impersonating Ramulu, P. W. 38 replied thus :

"My investigation reveal, when the token number was called, somebody went there and received the cash on behalf of the A/c holder. It was never stated to me but my investigation revealed, A-3 was that some person, but the name is one Durga Prasad known to P. W. 14.

Thus, none of the witnesses examined on behalf of the prosecution could speak about the direct involvement of A-3, who is the prime suspect in this case. Even though P. Ws. 1 and 2 spoke about A-3 stating that at the instance of A-3 bank accounts were opened in the names of fictitious persons, their evidence, for the reasons which are already set out supra, is not of much use for the case of the prosecution. Coming to A-2 and A-4, as already stated, the allegation that they filled up some specimen signature cards or other forms, without establishing the guilty intention or mens rea on the part of A-2 and A-4 to cheat the Income Tax Department, does not constitute any offence. Therefore, there is absolutely no evidence to prove this circumstance too. Consequently, it must be held that the prosecution utterly failed to prove the delivery of property to the accused.

88. The other circumstance is that whether the refunds were ordered by A-1 clandestinely in the names of fictitious persons. A-1 is the Income Tax officer. He is assisted by his subordinates i.e., P. W. 5 and others. As an Income Tax Officer, his duty was to verify whether there are any errors in the returns filed by the assessees on the basis of the notes/order sheets put up by his subordinates. If, on a formal examination of the returns, it was found that the returns filed by the assessees were in order and duly supported by the requisite documents, then there was no necessity for the Income Tax Officer to further probe the return file by conducting enquiry to find out the genuineness or otherwise of the return filed or the documents filed along with such return. In such cases, the Income Tax Officer simply passes orders basing on the order sheet put up by his subordinate for the refund. It has come in the evidence of PW5 that he had circulated the Income Tax Return Files in question (Exs. P-40 to P51) to A1 with an endorsement that the files require scrutiny, but in spite of the said endorsement, A1 did not scrutinize the said files and simply passed the refund orders in favour of A3. Had A1 acted diligently per haps the genuineness of the TDS Certificate would have come to light, Thus the prosecution was able to establish guilt of A1 in this regard, but, however, it miserably failed to prove that there was dishonest intention on the part of A3, the prime suspect and who is behind the entire episode, and other accused and they are entitled for acquittal. Since A3 and others was acquitted though A1 is guilty of the offence, it is not safe to convict A1 alone. Therefore, I acquit all the accused of the charge u/s 420 IPC.

89. Now coming to the Charges u/s 465 and 471 I. P. C. the prosecution case is that A-3 fraudulently used forged and false T. D. S. Certificates, which were procured by A-3 with the assistance of A-7 and A-8 and that A-3 claimed Income Tax refund from A-1 on the basis of such forged documents by opening bank accounts, forging some signatures. Except the bald allegation, no concrete evidence is placed before this Court to show that A-7 and A-8, fabricated documents and A-3 used those documents. The fact that T. D. S. certificates were forged or that bank accounts were opened by forging the signatures was not established by direct evidence. The prosecution tried to prove the said factum by adducing circumstantial evidence, by examining the bank employees and also P. Ws. 10, 11 and 26, who are the Engineers working in Nagarjuna Sagar Canal. P. W. 10, the then Executive Engineer,. Nagarjuna Sagar Canal, Division-24, Mylavaram, stated that Exs. P.-42(A), P-43(A), P-44(A), P-40(A) (T. D. S. Certificates) were not signed by him; that he does not know the Executive Engineer by name K. Narasimha Rao of Tiruvur Division & Mylavaram Division and that there is no N. S. C. Canal Division No. 16 during the period from 1986 to 1990. P. W. 11, the then Executive Engineer, N. S. C. Division, Tiruvur, stated that during the relevant period there was no Division No. 16 in existence and that Ex. P-41-A (T. D. S. Certificate) was not issued by him. By examining them, the prosecution wanted to prove that T. D. S. certificates which were filed in the Income Tax Department were forged and that A-3 with the assistance of A-7 and

A-8 was responsible for the said forgery. Their evidence no doubt shows that those T. D. S. certificates were not singed by them and that the so called Division 16, from where the alleged T. D. S. Certificates purported to have been emanated, was not in existence at all. But the said evidence is not sufficient to presume and hold that it was the accused who alone forged those T. D. S. certificates as alleged by the prosecution. Even though the prosecution examined P.W. 6, who worked in the office of A-7 for some time, P. W. 6 did not speak anything which would corroborate the testimony of P. Ws. 10 and 11. Apart from the occular evidence as stated above, the prosecution strongly relied upon the evidence of the Handwriting expert (P. W. 33) and also his opinion given on a comparison of the alleged signatures of the accused appearing on various T. D. S. certificates, specimen signature cards, credit vouchers/withdrawal slips etc., with the admitted signatures taken from the accused. On the basis of the evidence of the expert, according to whom the signatures in the documents marked in ''Q'' series are tallying with the specimen signatures alleged to have been obtained from the accused, it is contended by the prosecution that inasmuch as the testimony of the expert clinchingly establishes that it was the accused who had fabricated the documents in question i.e., T. D. S. certificates by forging the signatures of a fictitious Engineer and filing them along with Income Tax returns, the prosecution successfully proved the involvement of the accused in the commission of offence.

90. But, it should be borne in mind that the opinion of an expert in writing is the weakest and the least reliable evidence and that it is not at all safe to base conviction upon the opinion of writing expert alone. Courts have refused to act upon the evidence of expert unless it is corroborated by independent evidence. In a catena of decisions, it was ruled by the Apex Court that it would be highly unsafe to convict a person on the sole testimony of an expert. Therefore, the evidence of the expert (P. W. 33) who deposed in court basing on the opinion given by him earlier, cannot be said to be a con-elusive proof. It is so more particularly because of the fact that the said evidence is not corroborated by any independent evidence. Apart from that, as seen from the evidence on record the specimen signatures which were sent to the expert for examination were not obtained in open Court and they were obtained during the course of investigation by the C. B. I. Such an opinion based on the specimen signatures which are not taken in open Court, cannot be relied upon by the Court as it is not a valid opinion. Therefore, conviction cannot be based solely placing reliance cm such opinion. Thus, the evidence on record is not sufficient to hold that A-3, A-7 and A-8 have fabricated and forged the documents, as alleged by the prosecution. However, the prosecution was able to establish the guilt of A1 as he did not scrutinize the relevant file in spite of the endorsement by PW5 for scrutiny and thereby enable A3 to obtain refund orders from him. But since the very charge against A3 is held as not proved, it is not safe to convict A1 for the said offence. Accordingly, Al, A3, A7 and A8 are acquitted of the charges u/s 465 and 471 I.P.C.

91. Coming to the offence under provisions of the Prevention of Corruption Act;

A-1, A-2, A-4 and A-5 have been charged u/s 13(1)(d)(ii) read with 13(2) of the said Act. The case of the prosecution is that the above accused being public servants abused their official positions and obtained pecuniary advantage to a tune of Rs. 3,92,552/- to the 3rd accused. In order that the charge is established, the prosecution must be able to show that the accused abused their official position by obtaining pecuniary gain either for themselves or for others.

92. As has already been held by me in the foregoing paragraphs that to some extent A-1 was responsible for passing refund orders without proper scrutiny. But the entire case as against A3, the prime accused, falls to the ground, it is not at all safe to base a conviction on him.

93. Coming to A-2 and A-4, as seen from the evidence, they merely filled up specimen signature cards/vouchers etc., in good faith and further none of the witnesses examined by the prosecution to prove the guilt of A-2 and A-4 could state any thing which incriminates A-2 and A-4 or which leads to an inference that A-2 and A-4 had ever abused their official position by obtaining any pecuniary gain to themselves or to A-3 or to any other person. On the contrary, the evidence shows that they had only discharged their official duties in good faith and nothing beyond that. Therefore, I am of the view that the prosecution failed to prove the charge against A-2 and A-4.

94. Similarly, the prosecution had failed to prove even the participation of A-5 in the commission of offence, therefore, A-5 was rightly acquitted by the trial Court itself.

95. Although this is not a case of no evidence but a case of insufficient evidence. The case of the prosecution which was built up on circumstantial evidence, the prosecution though succeeded to some extent to prove some circumstances in the chain of events but failed to establish the crucial link of A-3''s complicity, in the said chain of events. The main culprit, according to the prosecution, is A-3 who is alleged to have hatched up the entire conspiracy. But the prosecution utterly failed to prove beyond reasonable doubt the involvement or complicity of A-3 in the commission of offence. There is no lot a of evidence which shows that the refund amounts, which were allegedly credited to the bank accounts of the so called fictitious persons, reached the hands of A-3. There is also no evidence to prove that it was A-3, and A-3 alone, who had clandestinely done all the illegal acts which were attributed to him by the prosecution. Further, no doubt it is true that there is some evidence against A-1 who knowingly or un-knowingly passed orders of refund and thereby became liable for punishment under the provisions of the Indian Penal Code, but as the prosecution failed to prove the charge against the main accused i.e. A-3, who allegedly hatched up the entire plan and cheated the Income Tax Department, I am inclined to take a lenient view and extend benefit of doubt to A-1 also. For the foregoing reasons, I am of the considered view that all the accused are entitled for benefit of doubt.

96. In the result, all the appeals are allowed and the judgment of conviction and

sentences passed by the learned Special Judge for C. B. I. Cases, Visakhapatnam, in C. C. No. 8 of 1995 dated 19-1-1998 is hereby set aside. All the accused are acquitted of the offences with which they were charged. The fine amounts paid by the accused shall be refunded to them. The bail bonds shall be cancelled forthwith.

