**(2008) 10 GUJ CK 0058**

**In the Gujarat High Court**

**Case No :** Criminal Appeal No''s. 253, 324 and 360 of 1987

Shantilal Maganlal Pandya APPELLANT

Vs

State of Gujarat and Another RESPONDENT

**Date of Decision :** 16-10-2008

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120B, 161, 165, 420, 467
Prevention of Corruption Act, 1947 — Section 5(1), 5(2), 6

**Citation :** (2008) 3 GLH 573

**Hon'ble Judges :** M.B. Shah, J

**Bench :** Single Bench

**Advocate :** D.I. Desai, in Criminal Appeal No. 360/1987, Bhargav Hasurkar, for S.V. Raju, in Criminal Appeal No. 253/1987 and Renu R. Singh, in Criminal Appeal No. 324/1987, for the Appellant; L.R. Pujari, APP for opponent No. 1 and Y.N. Ravani, for opponent Nos. 1 and 2, for the Respondent

**Final Decision :** Dismissed

## Judgement

M.D. Shah, J.—This batch of three appeals arise out of the judgment and order of conviction and sentence dated 2-4-1987 rendered by the learned Special Judge, Ahmedabad in Special Case No. 13 of 1979 whereby the appellant-original accused No. 1 was sentenced to suffer R.I. for a period of two years and to pay fine of Rs. 5000/-, in default, R.I. for a period of six months for the offence punishable u/s 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 ("the Act" for short). He was also sentenced to suffer imprisonment for a period of one year and to pay a fine of Rs. 2000/-, in default, to suffer R.I. for a period of three months for the offence punishable u/s 165 of the Indian Penal Code ("SIPC" for short). No separate sentence was imposed for the offence punishable u/s 161, IPC. The substantive sentences against the appellant-original accused No. 1 were also ordered to run concurrently. Similarly, the accused No. 2 was sentenced to suffer R.I. for a period of two years for the offence punishable u/s 120B read with Section 161 165 420 471 of the IPC and also read with

Section 5(1)(d) read with Section 5(2) of the Act. He was also sentenced to suffer R.I. for a period of five years and to pay fine of Rs. 25,000/- in default, to suffer R.I. for one year for the offence punishable u/s 420 read with section 120B of the IPC. He was also sentenced to suffer R.I. for a period of one year and to pay fine of Rs. 2,000/-in default, to suffer R.I. for a period of three months for the offence punishable u/s 471 read with Section 468 of the IPC. He was also sentenced to suffer R.I. for a period of one year and to pay fine of Rs. 2,000/-, in default, to suffer R.I. for a period of three months for the offence punishable u/s 471 read with Section 468 as well as read with Section 120B of the IPC. Likewise, the appellant-original accused No. 3 was sentenced to suffer R.I. for a period of two years for the offence punishable u/s 120B read with Sections 161 165 420 and 471 as well as read with Section 5(1)(d) and 5(2) of the Act. He was also sentenced to suffer R.I. for a period of five years and to pay fine of Rs. 25,000/-, in default, to suffer R.I. for a period of one year for the offence punishable under Sections 420 read with Section 120B of the IPC. He was also sentenced to suffer R.I. for a period of one year and to pay fine of Rs. 2,000/-, in default, to suffer R.I. for a period of three months for the offence punishable under Sections 471 read with Section 468 as well as 120B of the IPC. Similarly, the appellant-original accused No. 4 was sentenced to suffer R.I. for a period of two years for the offence punishable u/s 120B read with Sections 161 165 420 and 471 as well as read with Section 5(1)(d) and 5(2) of the Act. He was also sentenced to suffer R.I. for a period of two years and to pay fine of Rs. 5,000/-, in default, to suffer R.I. for a period of six months for the offence punishable under Sections 420 read with Section 120B of the IPC. He was also sentenced to suffer R.I. for a period of one year and to pay a fine of Rs. 2,000/-, in default, to suffer R.I. for a period of three months for the offence punishable under Sections 471 read with Section 468 of the IPC. He was also sentenced to suffer R.I. for a period of one year and to pay a fine of Rs. 2000/-, in default, to suffer R.I. for a period of three months for the offence punishable under Sections 471 read with Section 468 of the IPC as well as read with Section 120B of the IPC. However, the appellant-original accused No. 5 came to be acquitted by the learned Special Judge.

1.1 In Criminal Appeal No. 360 of 1987 the appellant-original accused No. 1-Shantilal Maganlal Pandya challenges his conviction and sentence as stated above. In Criminal Appeal No. 253 of 1987 the appellant-original accused No. 2-Khalid I. Bey and the appellant-original accused No. 3-Muzaffar I. Bey challenge their conviction and sentence as stated above. In Criminal Appeal No. 324 of 1987 the appellant-original accused No. 4 "Mayank N. Shah challenges his conviction and sentence as stated above.

2. The facts giving rise to these proceedings as emerging from the record of the case can be summarized as under:

2.1 On 21-7-1976, a complaint came to be lodged by Shri R.S. Pandya, who was serving as Divisional Manager, Central Bank of India, Ahmedabad with the

 

Superintendent of Police, Central Bureau of Investigation, Ahmedabad against the aforesaid accused as well as Salauddin and Vazirbegum which came to be registered as C.R. No. 43 of 1976. It was alleged in the said complaint that M/s. New Russian Automobiles is a registered partnership firm situated at Mirzapur Road, Ahmedabad and that the said firm was engaged in the business of manufacturing crank- shafts for jeep, ambassador cars, tractors and diesel engines etc. According to the complaint, the firm acquired a plot of land bearing No. 155, C1-B/3 Industrial Area, Naroda Taluka City District Ahmedabad and constructed industrial shed thereon. It was further the case of the complainant that the appellant- original accused No. 1 was at the relevant time, serving as Branch Manager, Central Bank of India, Ghee Kanta Road, Ahmedabad whereas the appellants- original accused Nos. 2 and 3 were partners of the said firm along with two other partners, namely Salauddin and Vazirbegum. According to the complainant, the appellant-original accused No. 4 was at the relevant time, serving as Chief Manager (Operations) with the said firm while the appellant-original accused No. 5 was serving as Office Superintendent with the said firm. It is further the case of the complainant that the appellant original accused No. 2 applied to the Central Bank of India, Ghee Kanta Branch, Ahmedabad for availing of certain facilities for the firm and accordingly various facilities, namely, Term Loan Facility, Cash Credit Open Loan Facility, Usuance Bills Facility, Clean Endorsed Out-stationed Third Parties Cheques Discounting etc. to the tune of certain amount limits, which were extended from time to time and on certain occasions at the instance of the appellant-original accused No. 1. According to the complainant, the accused No. 2 apart from being partner of the aforesaid firm, had also floated three other fictitious sole proprietary firms at Bombay being (i) Messrs Technical Export Import Association, (ii) Messrs. Alloy Steel Corporation and (iii) Messrs Auto Parts Centre. It is further the case of the complainant that under the Usuance Bills Facility, the said firm used to offer its bills drawn on different out-stationed parties and along with these bills were produced before the bank, railway receipt or motor receipt, the invoices for the value of the goods sold to the parties and also the hundis drawn upon the purchases and all these documents presented before the bank on behalf of the firm were signed by the accused Nos. 2 to 5. On such presentation before the bank, the bank used to grant the credit of the value of the bill and credit the account of the said firm with the amount for which the bills were drawn. The bank used to forward those bills with necessary documents to the out-stationed bankers named in the bill and out-stationed parties used to accept the hundis for the value of the goods sent along with the bill and the out-stationed bank used to deliver to the said party railway receipt or motor receipt along with the invoices. According to the complainant, the out-stationed parties then used to pay up the amount of the hundis o their banker within the time fixed by the hundis and such bankers used to send the necessary amount to the Central Bank of India, Gheekanta Branch, Ahmedabad.

3. It was further alleged in the complaint that all the accused persons hatched a

 

conspiracy to cheat the said bank and they managed to get presented to the said bank certain fake motor transport receipts alleged to have been issued by one Bombay General Freight Carriers Private Limited, Bombay and having its branch office at Ahmedabad along with bills. According to the complainant, the accused Nos. 4 and 5 presented to the said bank 25 bills for the total amount of Rs. 18,57,064.40ps. during the period from October, 1975 to March, 1976 and in this manner, the firm availed the credit facility from the said bank against these bills by presenting fake transport receipts. On certain occasions, forged receipts were produced with Out-stationed Bills Discounted (O.B.D.) and Bills Purchased (B.P.). In all about 25 bills were presented with forged motor transport receipt and out of the said bills, 11 bills totaling to Rs. 6,02,160/- were drawn upon a fictitious firm named M/s. Auto Parts Centre wherein the accused No. 2 was the sole proprietor. Thus, the accused No. 2 to 5 by making a false or misleading representation with fraudulent and dishonest inducement cheated the bank to the tune of Rs. 18,57,064.40. According to the complainant the accused Nos. 2 to 5 had also made false declaration about the value of the goods by drawing bills in favour of fictitious firms. Again, M/s. Alloy Steel Corporation a fictitious firm floated by the accused No. 2 though never sold and dispatched forging to the firm, raised 11 invoices in the name of the said firm amounting to Rs. 44,19,000/- and fraudulently and dishonestly induced the said bank to advance amount of Rs. 30,93,300/- to the said firm against the goods of the aforesaid 11 invoices which constitutes an offence of the cheating the said bank. It is further the case of the complainant that despite this position, the accused No. 1 made false representation to the bank that the dealings of the firm with the bank were satisfactory and the account is operated satisfactorily. It is also the case of the complainant that the accused No. 2 made application to the bank for enhancement of the amount of various facilities granted to it and the accused No. 1 favoured the accused No. 2.

4. It is further alleged in the complaint that the accused No. 1 being a public servant, managed to get credited at the instance of accused No. 2 an amount of Rs. 9,500/- on 28-11-1975 in the joint Home Account of his sons namely Ajit and Bharat. Again on 11-2-1976 another amount of Rs. 5,400/- was got credited in the said account at the instance o the accused No. 3. In this fashion, the accused No. 1 accepted these two amounts from the accused Nos. 2 and 3 as illegal gratification other than his legal remuneration. It is also the case of the complainant that the accused No. 1 accepted a wrist-watch, Crown T.V. set and enjoyed a trip to Bombay at the expenses of the accused Nos. 2 and 3, and hence committed offence punishable under Sections 161 and 165 of the Indian Penal Code. Mr. Gill , Investigating Officer carried out the investigation and during the course of investigation searched the house of the accused No. 1 on 21-11-1976 and seized various muddammal articles such as Crown T.V., Warranty Card, wrist-watch, Metal Tea-set, passbook of the bank etc. The Investigating Officer also visited the business premises of the above referred to firms and attached necessary documents. On completion of the investigation, the

 

accused No. 1 being a public servant, necessary sanction was sought u/s 6 of the Act from the competent authority of the bank, which was granted by a sanction order dated 12-7-1979. Thereafter, charge-sheet came to be submitted on 6-11-1979 to the Court of the learned Special Judge, City Sessions Court, Ahmedabad against the appellants-accused Nos. 1 to 5. The learned Special Judge framed charge Exh.14 against all the accused for the offence punishable u/s 120B read with Sections 420 161 and 165 of the IPC and also read with Sections 5(1)(d) and 5(2) of the Act as well as for the substantive offences punishable under Sections 420 161 165 467, 577 IPC and Section 5(2) read with Section 5(1)(d) of the Act. The charge was read over and explained to all the accused. The accused pleaded not guilty to the charge and claimed to be tried.

5. To prove its case against the appellants-accused the prosecution has examined in all 44 witnesses ? (1) Chief Vigilance Officer Shri Mayuram Dandapani, PW 1, Exh.28, (2) Bank?"s Investigating Officer Shri Pundlik Lotanrao Patil , PW 2, Exh.34, (3) Branch Manager Shri Sam Bashemji Aibara, PW 3, Exh.51, (4)Manager of Advances Department of Bank Shri Barjorji Sorabji Lahewala, PW 4, Exh.56, (5) Kiritkumar Laxmichand Shah PW 5, Exh.142, (6) Babulal Gordhandas Sagar, PW 6, Exh.148, (7) Karimbhai Fanubhai Shaikh, PW 7, Exh.152, (8) Sub- Accountant of the Bank Shri Sharadkumar Lalshanker Oza, PW 8, Exh.570, (9) General Manager of the Bank Shri Ramesh Mukund Pradhan, PW 9, Exh.1167, (10) Nazmuddin Ibrahim Lokandwala, PW 10, Exh.1202, (11) Mulchand Jamanlal Sharma, PW 11, Exh.1208, (12) Sub- Accountant Nausir Baheramsha Mistri, PW 12, Exh.1209, (13) Vibhakar Vasantro Samel, PW 13, Exh.1259, (14) Hanif Abdulrazak Motorwala, PW 14, Exh.1291, (15) Zikar Hamid Darvesh, PW 5, Exh.1329, (16) Shanker Siddheya Gajeli, PW 16, Exh.1331, (17) Sailendraprasad Suryamanisinh, PW 17, Exh.1414, (18) Additional Relieving Officer Shri Jahanbux Ratansha Postwala, PW 18, Exh.1432, (19) Internal Auditor Shri Sudharshankumar Jashvantrai Sharma, PW 19, Exh.1433, (20) Pravinchandra Jaishanker Upadhyay, PW 20, Exh.1459, (21) Mohmad Yusuf Husenmiya Shaikh, PW 21, Exh.1456, (22) Mangesh Dhundira Kothari, PW 22, Exh.1458, (23) Sadanand Majaya Shetti, PW 23, Exh.1462, (24) Chief Cashier Shri Ramanlal Jugaldas Soni, PW 24, Exh.1469, (25) Shri Ashok Mangaldas Gandhi, PW 25, Exh.1470, (26) Anishusain Ismail Saiyed, PW 26, Exh.1472, (27) Farukh Gulamhsain Merchant, PW 27, Exh.1475, (28) Siv Atmaram Mulchandani, PW 28, Exh.1504, (29) Chandrakant Gedba Kamle, PW 29, Exh.1506, (30) Maheshbhai Chhotalal Joshi, PW 30, Exh.1507, (31) Bhupendra Ishwarlal Dave, PW 31, Exh.1514, (32)Ashvinkumar Popatlal Shah, PW 32, Exh.1516, (33) Harish Ramsundar Dasji Mahant, PW 33, Exh.1520, (34) Cashier Cum Godown Keeper Shri Bansilal Maganlal Barot, PW 34, Exh.1540, (35) Advocate Shri Rushikumar Nathalal Bhatt, PW 35, Exh.1541, (36) Onali Shamshubhai Lokhandwala, PW 36, Exh.1543, (37) Kujapan Aipan Kodapulli, PW 37, Exh.1557, (38) Investigating Officer Shri Baldevsing Kapursing Gill, PW 38, Exh.1558. (39) Miss Sabrine Shahid Latif, P.W. 39 Exhibit 1569. (40) Handwriting Expert Shri Madhusdan Lal Kirshorilal Sharma P.W.40 exhibit 1590. (41) Ashokkumar Mangal Tripathi P.W. 41

 

Exhibit 1601. (42) Ramnath Choksarai P.W. 42 Exhibit 1628. (43) Kundanlal Jagirilal Joshi P.W. 43 Exhibit 1629 and (44) P.I. Shri Balkrushna Kundanlal Sharma, P.W. 44 Exhibit 1639. The prosecution has also produced certain documentary evidence. Before the trial Court none of the appellants-accused has stepped into the witness box. The appellants-original accused Nos. 2 to 5 have not led any evidence while the appellant-original accused No. 1 has examined three defence witneses, namely, (1) Shri Rajesh Babulal Bhavsar, DW 1, Exh.1654, (2) Shri Ajit Shantilal Pandya, DW 2, Exh.1655 and (3) Shri Nyalchand Popatlal Shah, DW 3, Exh.1662. After recording the evidence of prosecution witnesses closing Purshis was filed by the prosecution. The learned Special Judge explained the circumstances appearing against the appellants-accused in the evidence led by the prosecution and the further statement of the appellants-accused u/s 313 of the Criminal Procedure Code came to be recorded, the sum and substance of which is to the effect that they were falsely involved in the case and their case was of total denial.

6. On appreciation, evaluation, analysis and scrutiny of the evidence adduced by the prosecution both oral as well as documentary, the learned Special Judge held that the accused No. 1 and 5 were not guilty for the offence punishable u/s 120B, IPC read with the other provisions of law for which they were charged and that the accused No. 5 was not guilty for any of the offences with which he was charged. The learned Judge further held that the accused Nos. 2 ,3 and 4 were guilty of the offence punishable u/s 120B read with Section 161 165 420 and 471, IPC and also read with Section 5(1)(d) further read with Section 5(2) of the Prevention of Corruption Act, 1947. The learned Judge further held that the appellant-accused No. 1 was guilty for the offence punishable under Sections 161 and 165, IPC, and also for the offence punishable u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act. The learned Judge further held that the appellants-original accused Nos. 2, 3 and 4 were guilty of the offence punishable u/s 420, IPC and also Section 420 read with 120B, IPC. The learned Judge also held that the appellants-original accused Nos. 2 and 4 were guilty of the offence punishable u/s 471 read with Section 468, IPC while accused No. 3 was guilty of the offence punishable u/s 471 read with Section 468 and further read with Section 120B, IPC, and therefore, passed the judgment and order of conviction and sentence as stated in para-1 of this judgment.

7. I have heard the learned Counsel Mr. D.I. Desai for appellant-original accused No. 1, learned Counsel Mr. Bharga Hasurkar for Mr. S.V. Raju for the appellants original accused Nos. 2 and 3, learned Advocate Ms. Renu Singh (appointed Amicus curiae on behalf of the original accused No. 4 and learned A.P.P. Mr. L.R. Pujari for the respondent-State at length and in great details and have also perused the record with great care and caution.

8. Learned Counsel Mr. Raju for the appellants-accused while taking me through the entire evidence on record as also the reasons assigned and the conclusions reached by the learned Special Judge have submitted that the whole case of the

 

prosecution is improbable, highly exaggerated and prayed that the appeal be allowed, the order of conviction and sentence passed by the learned Special Judge be set aside and the appellants-accused be acquitted of the offence in question. In support of his submission, he has raised several contentions.

9. I may state here, that since I am in complete agreement with the views expressed by the learned Special Judge, I do not deem it necessary to discuss the evidence of all the witnesses in great details and burden the record, but would only discuss the evidence and documents as are necessary for the disposal of these appeals on merits.

10. It is necessary to mention here that pending the trial the accused No. 1 preferred Criminal Revision Application No. 342 of 1981 whereas the accused Nos. 2 and 3 preferred Criminal Revision Application No. 289 of 1981 before the Hon''ble High Court of Gujarat challenging the charge framed against them as also the legality and validity of the sanction accorded by the Central Bank of India u/s 6 of the P.C. Act . However, both these Criminal Revision Applications were rejected by judgment and order dated 7-2-1984. The accused No. 1 also preferred Criminal Revision Application No. 123 of 1985 challenging the order of the trial Court granting permission to the prosecution to examine 11 additional witnesses, however, the same was withdrawn by the accused No. 1 on 8-8-1985. Pending the trial, on 8-3-1977 even the Central Bank of India moved a suit being Civil Suit No. 707 of 1977 against the firm and its partners for recovery of Rs. 40,70,043.84 paise joinging them as defendants wherein all the defendants filed admission Purshis on 2-12-1980 and a decree for the said amount was passed.

11. Here, in the instant case, the learned Counsel for the appellants-accused had not made any submission on the point of sanction to prosecute the accused No. 1. It may be noted that the legality and validity of the sanction Exh.31 was challenged by the defence by way of an application Exh.48 dated 2-12-1980 before the trial Court which came to be rejected on 25-3-1981. This order was also confirmed in revision by this Honourable Court. Under the circumstances, it cannot be disputed that there is a legal and valid sanction so far as the accused No. 1 who is admittedly a public servant is concerned.

12. The learned Counsel Mr. Raju for the appellants has firstly contended that the learned Special Judge has erred in holding that the accused No. 1 has accepted and obtained valuable articles towards illegal gratification, other than his legal remuneration , namely, Crown TV Set of the value of Rs. 4000/-, an amount of Rs. 9500/-for his sons Ajit and or Bharat an amount of Rs. 5400/- paid by accused No. 3 and trip to Bombay by train by First Class from Bombay to Ahmedabad and return trip to Ahmedabad by plane and stay at Oberoi Sheraton Hotel from 30-10-1974 to 2-11-1974 at the expenses of accused No. 2 as a motive or reward for showing a favour to the firm M/s. New Russian Automobiles and or for forebearing to do an official act of reporting to his higher authorities the unsatisfactory accounts run by the said firm in respect of different facilities, namely, (i) Rs. 5,00,000/- Cash Credit (Key) Loan-Cum-Non Automatic Revolving

 

Leeter of Credit, (ii) Rs. 5,00,000/- Documentary Demand Bills, (iii) Rs. 10,00,000/-Usuance Bills and (iv) Rs. 10,00,000/-Cash Credit Open Loan given to the said firm by the Central Bank of India.

13. The accused No. 1 in his statement Exh.42 has admitted that he received wrist watch, T.V. Set, metal tea-set, enjoyed the trip to Bombay at the expenses of the accused No. 2 and also got transferred certain amounts in the joint account of his sons. The accused No. 1 also admitted that he does not know the price of the TV set and that he does not have the purchase invoice or payment receipt for the same. Shri Kiritkumar in his evidence at Exh.142 has in clear terms stated that the Muddamal Crown TV set was sold by his firm under invoice-bill copy Exh.143 on 27-10-75 for an amount of Rs. 4000/- and that the firm had received payment for the same by way of cheque Exh.919 which has been realized. It is worthwhile to note that cheque Exh.919 has been drawn by the accused No. 2 as partner of M/s New Russian Automobiles; that the cheque has been signed by the accused No. 2 is admitted by both the accused No. 1 and the accused No. 2 in their respective statements before the Court. Admittedly, the bill Exh.143, the warranty card Exh.146 are in the name of the said firm. Even the khata Exh.144 has been opened by Kalpana Electronics in the name of the said firm and the firm had paid the price of the TV set by cheque, however, the accused No. 1 has put his signature Exh.910 in the column of ''customers signature'' in warranty card Exh.146 which specifically describes the purchaser as M/s. New Russuan Automobiles. All these facts go a long way to show that the TV set was purchased by the said firm with a view to giving the same to the accused No. 1. As rightly pointed out by the trial Court the evidence of Ajitkumar Exh.1655 is full of inconsistencies and cannot be believed to the effect that the TV set was given by accused No. 2 in lieu of the amount which the accused No. 2 owed to him. It can therefore be safely concluded that the accused No. 1 accepted the Muddamal TV set from accused No. 2 the partner of the said firm of Ms. New Russian Automobiles without any consideration.

14. So far as the acceptance of the amount of Rs. 5400/- towards illegal gratification, it would be relevant to refer to the evidence of Shri Ramanlal Jugaldas Soni PW 24 at Exh.1469, the Senior Cashier of the bank as well as the documentary evidence produced at Exhibits 907 and 908, the paying in slip and the cheque for Rs. 6000/-. This witness has deposed that on instructions received from the accused No. 1, he took the amount of Rs. 6000/- and deposited the amount of Rs. 5400/- in the joint account of Ajit and Bharat as can be seen from the paying in slip. He further deposed that the remaining amount of Rs. 600/- was paid to the accused No. 3 also on the instructions of the accused No. 1. If we peruse the cheque exh.907 there is an endorsement on the reverse of this cheque showing figures of 600 and 5400 with the initials of the accused No. 1 as ?SS. M.P." This clearly establishes that the evidence of this witness is quite natural and believable more so when this witness is a Senior Cashier working with the bank since about 28 years. The defence of the accused No. 1 that the said amount of Rs. 5400/- was the amount which was received as

 

Chandla on the occasion of marriage of his son Ajit and that Ajit had given the said amount to him for depositing in the joint account of Bharat and the accused No. 1 himself cannot be accepted as he had neither produced any documentary evidence to show how much Chandla was received nor had he(accused No. 1) given any satisfactory explanation in his statement recorded at Exh.42, more particularly, as this fact would have been very fresh in his mind at that time. The accused No. 1 has also admitted that on his instructions an amount of Rs. 5400/- was credited to the account of his son Ajit from the amount withdrawn by the accused No. 3-partner of the firm of M/s.New Russian Automobiles which fact is mentioned on the reverse of the cheque No. GRA/TO 5636 dated 11-2-76. There is therefore sufficient evidence and that too from the Senior Cashier of the bank who has no axe to grind against the accused No. 1 which establishes that the accused No. 1 accepted an amount of Rs. 5400/- from the accused No. 3 on 11-2-76.

15. So far as the amount of Rs. 9500/- is concerned, the accused No. 1 does not admit to have himself received the amount of Rs. 9500/- by cheque exh.905 dated 27-11-75 drawn by accused No. 2 as the partner of the said firm but simply admits that the said cheque was deposited in the Home Savings Account No. 3181 of his son Ajitkumar and Bharatkumar and went on to explain that it was by way of repayment by accused No. 2 of the amount of Badla paid by Ajit who is working as a sub-broker, on behalf of the accused No. 2. In this connection, it may be noted that the Investigating Officer Shri Gill Exh.1558 had attached alongwith other documents the draft receipt Exh.909 from the house of accused No. 1 under Panchnama Exh.1210 dated 27-11-76 which bears the handwriting of the accused No. 1. This fact is admitted by the accused No. 1 in his statement recorded before the Court. This draft receipt reflects the cheque No. GRT/T 056007 dated 27-11-75. Now, the cheque Exh.905 deposited in the joint savings account of Ahjitkumar and Bharatkumar bears No. GRA/T 056007 dt.27-11-75. So the draft receipt Exh.909 relates to the very cheque Exh.905. Now, the accused No. 1 in his statement recorded by the Court has admitted that he had sold his Fiat Car No. GJD746 to Shri R.N.Bhatt Exh.1541 for an amount of Rs. 6000/- in the month of September 1976 and he had also passed receipt Exh.1542 in favour of Shri R.N.Bhatt. This reflects the criminal mind of the accused No. 1 in making a show that he had passed original receipt to the firm of M/s. New Russian Automobiles for having received cheque Exh.905 for Rs. 9500/- from the said firm for the sale of his Fiat Car to the said firm. All these circumstances clearly indicate that the accused No. 1 a public servant obtained from the said firm for himself or for his sons Ajit and Bharat pecuniary advantage and illegal gratification by accepting an amount of Rs. 9500/-from the accused No. 2, the partner of the said firm. Panchwitness Shri Mulchand Jamanlal Sharma, PW 11 in his deposition at Exh.1208 has stated that in his presence the Investigating Officer Shri Gill seized the said articles from the house of the accused No. 1. This fact was neither disputed by the accused No. 1 nor any argument was raised by the learned Advocate for the accused No. 1. Now, the

 

the accused No. 1 in his further statement recorded u/s 313 of the Cr.P.C. has denied the contents of the statement (Exh.42) made by him and that the statement was not voluntary. Nothing has come out from the evidence or even in cross-examination of Shri Patil PW 2 at Exh.34 who had recorded the said statement (Exh.42) which would even remotely suggest that there was compulsion on the accused No. 1 to make and sign the statement Exh.42 or that this witness had any enmity with the accused No. 1. This witness can also not be termed as an interested witness. On the contrary, a perusal of statement Exh.42 shows that the accused No. 1 had put initial in the statement wherever corrections were made. Every page of Exh.42 was signed by the accused No. 1 and he had also made an endorsement therein to the effect that he had read the statement which clearly shows that subsequent additions were also not possible. In view of this overwheliming evidence on record,the statement Exh.42 made by the accused No. 1 stands duly proved, and therefore, it is proved beyond doubt that the accused No. 1 accepted an amount of Rs. 9500/- from the accused No. 2 towards pecuniary advantage and illegal gratification.

16. So far as the acceptance of Muddammal tea set, the learned trial Judge has held that this article being an article of presentation without any substantial value, it is possible that such an article be gifted by the business companies for publicity, as according to the learned Judge in this metal tea set were found the words ?SWith Best Compliments from New Russian, Ahmedabad with the emblem of the said firm engraved on it. The learned trial Judge, therefore, has rightly held that acceptance of Muddammal tea set would not amount to corrupt practice. Similarly, on the point of acceptance of Muddammal wrist watch the learned trial Judge extended benefit of doubt to the accused No. 1 since there was no other evidence lending corroboration to the confession of the accused No. 1 made before Shri Patil Exh.34 in his statement Exh.42 and rightly so.

17. As regards the trip of the accused No. 1 by train to Bombay by first class and return journey to Ahmedabad by plane and enjoying costly hospitality by staying at Oberoi Sheraton Hotel for three days all at the cost of the accused No. 2 is concerned, the fact that the accused No. 2 has borne the expenses for the said trip and stay is not disputed by the accused No. 1 at all as the same is admitted by the accused No. 1 in his statement before the Court as well as the statement recorded at Exh.42. The accused No. 1 has tried to explain by saying that it is customary duty of the bank officers to attend exhibitions arranged by the firms to which loan is advanced. Even if it is believed that the bank officers are required to attend such exhibitions, they would be entitled to travelling allowance , daily allowance etc. as he would be treated on official duty. If that was so, the accused No. 1 ought to have brought on record documents to show the receipt of such allowances. On the contrary, it has come on record that the accused No. 1 had taken sick leave for said period. There is the also evidence of Jahanbux Postwala, PW 18 at Exhibit 1432, the Additional Relieving Officer in the bank. According to this witness he knew the accused No. 2 right from the school days and both of them studied together. This witness has deposed that the

 

accused No. 2 invited him to visit the exhibition of crankshafts. He has further deposited that he and the accused No. 1 went to Bombay together and stayed at Oberoi Sheraton Hotel for three days and returned to Ahmedabad by plane and that the accused No. 2 had borne all the expenses of this witness and the accused No. 1. The stand taken by the accused No. 1 that there were oral instructions from the Zonal Office of the bank to attend the exhibition is also not believable in view of this evidence on record. There is therefore no escape from the conclusion that in this manner the accused No. 1 had accepted illegal gratification other than legal remuneration by way of expenses of the trip and stay at Oberoi Sheraton Hotel from the accused No. 2.

18. In light of the aforesaid evidence on record, I quite agree with the finding arrived at by the learned Special Judge that the accused No. 1 was guilty of the offence in question, and awarding of the requisite sentence and also giving benefit of doubt for the offence u/s 120B of IPC to the accused No. 1.

19. Mention requires to be made here that the record of the trial Court shows, and is also ultimately admitted by the accused that almost all the material documents produced on the record of the case are genuine, in their further statement recorded u/s 313 of the Code of Criminal Procedure. To be precise, after proving the number of entries and number of documents as also the signatures of the accused on a number of documents by the Investigating Officer who obtained specimen handwriting and signatures of the accused persons and forwarded the same to the Handwriting expert and proved the documents, entries, letters, handwriting and signatures of different accused as can be seen from the evidence of the handwriting expert Shri Madhusudan Sharma PW 40, Exh.1590.

20. The learned Counsel next contended that the learned Special Judge has erred in holding that the accused Nos. 2 and 3 along with other partners had committed offences of cheating and forgery with the bank by making false representations, floating fictitious firms and availing various types of financial facilities. Going through the judgment of the trial Court, it is clearly borne out that there is no dispute that the accused Nos. 2 and 3 along with other two partners started business in the name of a registered firm, namely, M/s. New Russian Automobiles??, Ahmedabad and got opened an account in the Central Bank of India, Gheekanta Branch and availed of various financial facilities for the said firm. As can be seen from the record, the accused No. 2 opened three fictitious firms at Bombay, namely (1) M/s. Technical Export Import Corporation ? Techeximpa, wherein the accused No. 2 as sole proprietor opened a current account with Bank of India, Bombay on 25-11-1971. It would be relevant to refer to the evidence of Shri Shiv Atmaram Mirchandani, PW 22, Exh1504 who was working with United Auto Tractors, Bombay. This witness in his testimony has stated that his Head Office instructed him to give all the conveniences to the accused No. 2. He has further deposed that the accused No. 2 met him on four to five occasions in connection with the spare parts business run by his company.

 

According to this witness, the accused No. 2 expressed his desire to open an account in the Bank of India in the name of the said sole proprietary firm and so he accompanied the accused No. 2 to the bank and introduced the accused No. 2 to Shri Mangesh Kothari, the Manager of the Bank of India, Colaba Branch, Bombay. This witness- Mr.Mirchandani has stated that he signed as the introducer in the account opening form Exh.1459 and an account was got opened in the name of the accused No. 2. He has further deposed that he thereafter came to know that the accused No. 2 had given the address of the firm that of Mirchandani and therefore, he addressed a letter to the bank requesting to cancel his introduction. This witness has in no uncertain terms stated that the firm ?STecheximpa?? was never doing any work at the address where he was residing. The evidence of the Manager of the Bank of India Shri Kotari also supports the say of this witness. The evidence of Shri Pravinchandra Jaishanker Upadhya PW 20, Exh.1455 and that of Shri Chandrakant Gedba Kamle PW 20, Exh.1506 who are respectable persons being the Secretary of the Society and the Postman respectively also corroborates the said fact when they deposed that such a firm does not exist there and such firm was never functioning there. Thus, it is fully established that the accused No. 2 opened the said account in the bank in the name of a fictitious firm by giving false address.

21. There is also documentary evidence to show that the said firm was fictitious and bogus. In this connection, it would be relevant to refer to two receipts dated 20-12-1972 and 8-5-1973 produced at Exhibits 1443 and 1054 respectively These two receipts were passed by the firm "Techeximpa" in favour of M/s. New Russian Automobiles". Further Exh.1444 is a copy of invoice dated 10-5-1973 issued by the said fictitious firm to M/s. New Russian Automobiles for an amount of Rs. 2,75,950/- for sale of USSR make crank shaft grinder. The aforesaid two receipts at Exhs.1054 and 1443 shows that M/s. Techeximpa received the total amount of Rs. 75,000/- as advance payment, but the extract of the account statement of the said fictitious firm (Exh.1461) does not reveal the deposit of the said amount. This fact also stands substantiated by the evidence of Shri Sharma, Internal Auditor of the bank Exh.1433.

22. The accused No. 2 as a sole proprietor also got opened another account in the name of M/s Alloy Steel Corporation with the Union Bank of India, Mazgaon Branch, Mumbai on 13-3-1974. Shri Mohmmad Yusuf Shaikh, PW 21 in his deposition at Exh.1456 has deposed that he was serving with the Sales Tax Department at Bombay and that he knows the accused Nos. 2 and 3. According to him, he had introduced the accused No. 2 to the Union Bank, Mazgaon Branch for opening the account in the name of the said firm. This witness has deposed that as the accused No. 2 did not have any business premises, he had given his residential address, but no business was done by the said firm- M/s. Alloy Steel Corporation from his residence and that he used to redirect the letters to accused No. 2 at his Ahmedabad address. The say of this witness stands corroborated by the evidence of another witness Shri Nizamuddin Lokhandwala PW 10, Exh.1202, the Branch Manager when he states that the accused No. 2 opened account in

 

the name of the aforesaid firm and that the accused No. 2 gave address of this witness Shri Shaikh as the address of his firm.

23. Thereafter, the accused No. 2 opened yet another new account in the name of M/s. Alloy Steel Corporation with the Union Bank at Grant Road Branch Bombay by introducing two more partners in the firm. To establish this fact it is necessary to refer to the General Power of Attorney produced by the prosecution at Exh.384,'' which shows that the other two partners have given authority to the accused No. 2 to operate the said account. Here again, the accused No. 2 had given the address of the firm to be that of the residential address of Mr. Shaikh which is clearly borne out from the evidence of Shri Vibhakar Shamel, PW 13, Exh.1259. Even the statement of the accused No. 2 himself corroborates these facts.

24. Sufficient documentary evidence is also there on record to show that the said firm was fictitious and bogus. Exh.1266 dated 27-7-1974, the account opening form and Exh.1267, the Declaration go to show that the accused No. 2 opened Current Account No. 11062 as the sole proprietor of Ms. Alloy Steel Corporation with Union Bank of India, Mazgaon Branch, Bombay by giving address of Shri Shaikh, who was examined at Exh.1456 and subsequently by a letter (Exh.1072) dated 12-3-1976 the accused No. 2 requested that the said account be closed as there was change in the constitution of the firm and that two new partners Mr. N.D. Sheth and Mr. I.I. Patel were introduced as partners.

25. Again, the accused No. 2 opened a new current account No. 11084 in the name of M/s Auto Parts Centre on 12-3-1976 and in the relative account opening form he had given the address of Ms. Sabrina Latif. Ms. Sabrina Latif PW 39 in her deposition Exh.1569 has stated the accused No. 2 had employed her as his Secretary. She further deposed that there was no firm in her flat or in the building of her flat by name of M/s. Auto Parts Centre or M/s. Alloy Steel Corporation. The evidence of this witness Ms. Sabrina gets corroboration from the evidence of Shri Farukh Gulamhusain Merchant, PW 27, Exh.1475,-the accountant of the Mazgaon Branch of the Union Bank of India when he says that the accused No. 2 opened two current accounts in the name of firms "M/s. Alloy Steel Corporation and M/s. Auto Parts Centre and that Ms. Sabrina Latif was attending the bank. This witness has further stated that upon the return of a cheque of Rs. 2 lakh, on instructions received from the bank to make inquiry about the firm at the address mentioned in the record of the bank, he had inquired at the address mentioned in the account opening form, but he neither found any such firm functioning there nor did he find any sign board of the firm there. This fact is also established by the evidence of the Investigating Officer Shri B.K. Gill, PW 38, Exh.1558 who has stated that none of the aforesaid three firms were in existence and that he had also not found any of the alleged partners of the firm during the course of his investigation. It is significant to note here that the evidence of this Investigating Officer has remained unchallenged and is worthy of credence. This Court is, therefore, of the opinion that all the

 

aforesaid three firms floated by the accused No. 2 were fictitious and bogus.

26. With regard to the offence of cheating and forgery, it may be noted that the said firm M/s. New Russian Automobiles, Ahmedabad falsely represented to the bank that it had purchased forgings of the value of Rs. 44,19,000/- from M/s. Alloy Steel Corporation, and thereby, induced the bank to advance total amount of Rs. 30,93,300/- to the said firm even though, in fact, no such purchase had taken place. Admittedly as per the copy of plaint in Civil Suit No. 707 of 1977 the said firm owed total amount of Rs. 40,70,043-84ps. to the said bank as on 2-3-1977 against loans. As far as the Letter of Credit facility granted by the bank by sanction Exh.96 dated 27-8-1975 is concerned there is nothing due from the said firm as the Lal Darwaja Branch of the said bank has admittedly received an amount of Rs. 4,99,200/-under this head., however, the record reveals that the Ghee Kanta Branch of the said bank advanced loan against the very goods of letter of credit evem though it was not permissible for the bank to advance second loan against the security of the same goods. Regarding the facilities enjoyed by the accused from the bank, we have the deposition of Shri Sudharshankumar Jashvantrai Sharma, PW 19 at Exh.1433, the Internal Auditor of the Central Bank of India who carried out audit and inspection of various records of the bank as well as the firm which clearly indicates that the bank advanced loan against the very goods of L.C.Credit though it was not permissible for the bank to advance second loan against the security of the same goods. Exhs.1442 and 1443 the inspection reports prepared by this witness as also the other documents Exhs.953, 987, 990 and 1439 is also suggestive of the fact that the bank had advanced such loan facility. Under the Cash Credit Open Loan facility the said firm obtained different advances by hypothecating their goods lying in their factory. The evidence adduced by the prosecution before the trial Court proves that the accused No. 2 had produced exhs.942 to 952 invoices bearing dates 9-4-75 to 20-6-76 issued by M/s Alloy Steel Corporation, Bombay in respect of sale and despatch of forgings for the total value of Rs. 44,19,000/- to the said firm. These invoices have been attested to be true copies by the accused No. 4. The motor receipts mentioned in these invoices also show that the goods under the said invoices were sold and sent to the said firm and that the motor receipts were issued by Gujarat Transport Service. In this connection, we have the deposition of witness Mr. Hanif Abdulrazak Motorwala, PW 14 at exh.1291 as also the deposition of witness Mr. Zikar Hamid Darvesh, PW 15 at Exh.1329 who were working with the said Gujarat Transport Service who have deposed to the effect that the motor transport receipts mentioned in Exhs.942 to 952 have not been issued by the said transport company and that the said transport company had also never transported the goods of M/s. Alloy Steel Corporation, Bombay to Ahmedabad. It is significant to note here that the accused No. 1 ought to have obtained the original invoices or their copies from the said firm at the time of advancing the loan or the said firm was bound to supply to the bank the original invoices. That is not so, but it is only when demand was made by the Inspector of Godowns at the time of inspection of the

 

accounts by Shri Sam Baheramji Aibara, PW 3 at Exh.51 that the copies of invoices Exhs.942 to 952 were produced by accused No. 2. It has also come on record that M/s. Alloy Steel Corporation is a fictitious company of the accused No. 2. Thus, it is proved that the accused had cheated the Central Bank of India by falsely representing that M/s. Alloy Steel Corporation, a fictitious and bogus firm of accused No. 2 was a genuine firm and by representing that the aforesaid firm had sold forgings of the value of Rs. 44,19,000/- and had despatched the same to said M/s. New Russian Automobiles, Ahmedabad under 11 Motor Transport Receipts of Gujarat Transport Service, Bombay though no such forgings were ever sold to the said M/s. New Russian Automobiles, and by producing 11 photo-stat copies of the invoices which were attested to be true copies by accused No. 4 and by obtaining an amount of Rs. 30,93,,300/- as a loan from the said bank for the said firm of M/s. New Russian Automobiles through the accused No. 1 against hypothecation to goods (forgings). It is also required to be noted that the accused No. 2,3 and other partners of Ms. New Russian Automobiles, Ahmedabad have admitted their liability regarding the amount claimed by the bank and they had invited decree in suit which was filed against them by the Central Bank of India.

27. So far as Bill Discount Usuance Facility is concerned, the firm owed Rs. 10,34,890.61 paise and as far as Bill Purchase Facility is concerned, the said firm owed an amount of Rs. 5,19,259.02. It is also the prosecution case that the accused Nos. 2 to 4 presented 41 Usuance Bills before the bank drawn upon M/s Auto Parts Centre, a fictitious firm floated by the accused No. 2 and along with these 14 Usuance Bills, motor transport receipts of three different companies, namely, M/s. Bombay General Freight Carriers Limited, M/s. Gujarat Transport Services and M/s. Associated Traders & Engineers Ltd. all of Ahmedabad representing that they were genuine receipts. It is also the prosecution case that during the period from October, 1975 to March 1976, the accused Nos. 2 to 5 presented 25 documentary bills including OBD and BP Bills before the said bank and along with those 25 bills, produced fake motor receipts of M/s Bombay General Freight Carriers Pvt.Ltd. Out of these 25 bills the amount of 11 bills with fake transport receipt were not paid by M/s Auto Parts Centre and three bills were not paid by M/s Navinchandra Khubchand & Co. as the said company did not place any order with the said firm. Thus, in all 14 bills totaling to Rs. 9,94,340/- remained unpaid.

28. So far as the offence of cheating the bank by the accused Nos. 2 to 4 by presenting 41 Usuance Bills in the name of bogus firm M/s Auto Parts Centre, Bombay and making false declaration about the value of the goods dispatched under the motor transport receipts produced along with the said 41 bills is concerned reference is required to be made to the evidence of Investigating Officer Shri Gill wherein he has stated that 30 consignments were attached by him from the premises of M/s Gujarat Transport Service and M/s. Associated Traders & Engineers, that contained only scrap material while M/s. New Russian Automobiles had shown inflated value of these consignments in Usuance Bills

 

though the scrap value was very negligible. The Investigating Officer has also deposed to the effect that the delivery of the said 30 consignments was not taken and, therefore, the same could be attached whereas delivery of remaining 11 consignments was already taken. The fact also remains that it is an admitted position before the learned Special Judge that the accused Nos. 2 to 5 presented the documents including covering letters, motor transport receipts, hundis and obtained the credit facilities from the Central Bank of India, Gheekanta Branch, Ahmedabad against the OBD Bills, details of which are given by the learned Special Judge in tabular form at internal Page 190-191 of his judgment. The documents on record show that hundis of 28 Usuance Bills were drawn upon M/s. Auto Parts Centre, Bombay. This position is also admitted by the accused No. 2 in his statement recorded before the trial Court that he had not taken delivery of the consignments of all the OBD Bills. Exhibits 1394 to 1412 are letters written by M/s Associated Traders and Engineers Limited addressed M/s Auto Parts Centre calling upon them to take delivery of the consignments lying at its godown. Shri Shankar Gajeli PW 6 who was at the relevant time serving at Bombay with M/s Associated Traders and Engineers Ltd and doing the work of giving delivery has been examined at Exh.1331. This witness in his deposition has stated that the said consignments that were booked by M/s New Russian Automobiles, Ahmedabad were lying undelivered and ultimately, the same were attached by the Investigating Officer Mr. Gill vide Panchnama Exh.1413 and he also referred to OBD Bills and BP bills. This Panchnama clearly reveals that the consignments attached from the premises of M/s. Associated Traders & Engineers Ltd contained only scrap material. Similar was the version given by Shri Harish Ramsunder Dasji Mahant, PW 33 who was serving at the Ahmedabad Office of the above transport Company in his deposition at Exh.1520. The evidence of Shri Gill at Exh.1588, Shri Zakir Darvesh at Exh.1329 and Hanif Razak at Exh. 1291 along with the Panchnama Exh.1330 all go to show that 11 consignments booked from Ahmedabad to Bombay under different motor transport receipts were lying undelivered and attached from the premises of the transport company at Bombay and on opening in presence of Panchwitness it was found that the same contained only scrap. It is interesting to note the conduct of the accused No. 2 in not taking delivery of the consignments. This shows that he was aware of the fact that the consignments contained only scrap and not the crankshafts.

29. Now I come to the issue as to whether in order to cheat the bank the accused have produced forged motor receipts along with documentary bills. Exhs. 203, 828, 831, 833, 835, 838 and 840 are the forged receipts. 16 bills along with which forged motor receipts were produced before the bank with the covering letter that was signed by the accused No. 4 . All the forged receipts were in the name of M/s Bombay General Freight Carriers Pvt. Ltd. In this connection, Shri Shailendra Prasad Suryamanisingh PW 17, the Manager of Ahmedabad Office of M/s. Bombay General Freight Carriers at the relevant time has been examined at Exh.1414. This witness on being shown the aforesaid seven forged receipts, has in clear terms stated that the said company never

 

issued these forged receipts. He also produced carbon copies of the receipts that show that the same were issued to different parties. Thus, it is established that the said receipts were forged ones. It is pertinent to note that the covering letter mentioning the numbers of aforesaid forged receipt was signed by the accused No. 4. This fact is also admitted by the accused Nos. 2 to 5 in their statements. Again, Shri Ashokkumar Mangaldas Tripathi PW 41 in his deposition at Exh.1601 has stated that original genuine motor receipts of which carbon copies are produced at Exhs.1421 and 1422 were issued by him from Thana Branch of the Transport Company and other two carbon copies Exhs.1423 and 1424 of original genuine motor transport receipts were also issued by Thana Branch through his Assistant Shri Rampal. Further more, the evidence of other witness Ramnath Choksarai PW 42, Exh.1628 and Shri Kundal Jagirilal Joshi PW 43, Exh.1629 go a long way to prove the case of forgery. Apart from this there is another letter dated 17-3-1976 (Exh.98) signed by the accused No. 4 addressed to the Union Bank of India, Bombay, a copy of which was endorsed to Gheekanta Branch of Central Bank of India, to detain the bills. Similar letter was also written by the accused No. 2 (Exh.986) as well as there is a telegram on record at Exh.566 making such request. There is also evidence on record to show that M/s Navinchandra & Co. never placed any order with M/s. New Russian Automobiles, Ahmedabad and yet the firm drew B.P Bills Nos. 22 to 24 and by presenting the same the accused No. 4 dishonestly induced the bank to give credit of the amounts of the bills in the account of the firm.

30. Undoubtedly, therefore, the evidence of the aforesaid witnesses have satisfactorily established that the firm M/s. New Russian Automobiles, Ahmedabad through the accused No. 4 produced forged receipts before the bank as genuine ones , ad thereby,dishonestly and fraudulently induced the said bank to advance loan amounts and thereby cheated the bank.

31. There is also evidence on record to show the involvement of the accused No. 3 in the offences in question. The learned Special Judge has rightly held that the accused No. 3 was not a sleeping partner. The record shows that the accused No. 3 had also opened the bank account with other partners in the name of the said firm. There cannot be any dispute to the fact that the covering letters Exh.574 and 599 bears the signature of the accused No. 3 and that the O.B.D. bills Nos. 13 and 14 issued to M/s. Auto Parts Centre, Bombay were presented to the said bank with these covering letters. The accused No. 3 has also written a letter Exh.1000 to the bank informing that the firm received the goods from Ms. Bharat Forge Company Limited and also signed pro forma letter Exh.1009. There is also ample evidence on record that the accused No. 3 had signed and issued stock statements "Exhs. 923, 903, 933, 937 along with letters at Exhibits 488, 489 and 490 under his signature. The accused No. 3 also issued cheques at Exh.247, 248, 205, 259, 260, 220, 225, 226 as the partner of M/s. New Russian Automobiles, Ahmedabad and all these cheques were issued in favour of the Central Bank of India. As already discussed earlier, the accused No. 3 has also issued a cheque of Rs. 6000/- as partner of M/s. New Russian Automobiles,Ahmedabad in favour of ?

 

Sself?? which was used to give illegal gratification to the Branch Manager-accused No. 1. This accused has also attested along with accused No. 2 the signature of the accused Nos. 4 and 5 in the letters of authority produced at Exhs.521 and 522 whereby the said firm authorized the accused No. 4 and 5 to sign DA Usuance Bills and such other documents. Thus, it is clear that the accused No. 3 has taken actively participated in the management of the firm right from the inception and therefore, it can be concluded that he has played active role in deceiving the bank and committing the offence of cheating.

32. Admittedly, the accused No. 4 was working as Chief Manager (Operations) with M/s. New Russian Automobiles. As already discussed hereinabove, it has been proved that he had drawn almost all OBD and BP bills on behalf of the said firms. From the documentary evidence referred to hereinabove, it is amply clear that the accused No. 4 was very well knowing that the bank was being deceived by showing highly inflated amounts in the OBD bills. The accused No. 4 has also signed all the bills along with which forged receipts were issued. He had also attested 11 photo-copies of Exhs.942 to 952 as true copies of the forged invoices issued by M/s. Alloy Steel Corporation. Considering all these circumstances, it is abundantly clear that the accused No. 4 was undoubtedly a party to the offence of cheating and forgery upon the said bank.

33. No other contentions have been raised by the learned Counsel for the present appellants in each of these appeals.

34. Thus, taking an over all view of the entire evidence on record, I do not find any merit in any of the submissions canvassed on behalf of the present appellant/s in each of these appeals.

35. I have critically analyzed the entire evidence on record. I have not only perused the reasoning assigned by the learned Special Judge but also cross-checked the reasoning with the evidence on record and found not an iota of evidence that could render the reasoning recorded by the learned Special Judge in the impugned judgment inconsistent with the evidence on record.

36. In view of what has been discussed hereinabove, it has been conclusively proved that the present appellants-accused No. 1 holding the post of high repute as the Branch Manager of Central Bank of India who is a publi servant had accepted a fairly huge amount as illegal gratification and misappropriated big amounts, thereby causing heavy loss to the employer. Similarly, the accused nos 2 floated three fictitious and bogus firms at Bombay and he along with the accused Nos. 3 and 4 are the original conspirators who had assisted and abetted accused No. 1 in his attempt to misappropriate the amounts, and therefore, there being outright deceiption by the firm M/sNew Russian Automobiles with the bank, keeping in view the offence committed, and also the fact that corruption is rampant in the country, I am of the considered opinion that the learned Special Judge was perfectly justified in passing the impugned judgment and order of conviction and sentence against the accused., and hence, no inteference is called

 

for at the hands of this Court.

37. In the result, all these appeal fail, and are hereby dismissed. The judgment and order of conviction and sentence dated 2-4-1987 recorded by the learned Special Judge, Ahmedabad, in Special Case No. 13 of 1979 against the respective appellants in each of these appeals stand confirmed. The bail bonds of the respective appellants are cancelled. The respective appellants are given time of six weeks for surrendering before the trial Court and filing proceedings before the higher forum if they so desire.

 