(2018) 09 J&K CK 0057

In the Jammu And Kashmir High Court

Case No : Criminal Appeal No. 20, 21, 22, 25, 27 Of 2016

Sudershan Kumar @APPELLANT@Hash State Through CBI

Date of Decision : 24-09-2018

Acts Referred:

Code of Criminal Procedure 1973, — Section 161, 173(2), 342
Indian Evidence Act, 1872 — Section 9, 47, 73
Jammu and Kashmir State Ranbir Penal Code, 1989 — Section 120B, 419, 420, 467, 468, 471
J&K Prevention of Corruption Act, 2006 — Section 5(1)(c), 5(1)(d), 5(2)

Citation : (2018) 09 J&K CK 0057

Hon'ble Judges : M. K. Hanjura, J

Bench : Single Bench

Advocate : Sunil Sethi, Veenu Gupta, Hasbir Singh Jasrotia, Monika Kohli

Final Decision : Allowed

Judgement

I . These appeals are directed against the judgment dated 20.04.2016, passed by the Ld. Special Judge, Anti-Corruption (CBI Cases) Jammu by which the learned Special Judge has convicted the appellants named Sudershan Kumar, Kishore Sharma, R.S Mehta, Sohan Singh, Rajesh Kumar Sharma, Tilak Raj Sharma, Raj Kumar Dogra, Amit Pal Singh, Shekhar Dhar and Tulsi Thakur for the commission of offences u/s 120-B read with 419, 420, 467, 468, 471 RPC and S. 5(1)(d) of J&K Prevention of Corruption Act, whereas the accused named Jia Lal and Satpal Sharma have been acquitted of the charges levelled against them. The convicted accused have been awarded 2 years rigorous imprisonment on each count and a consolidated fine of Rs. 50,000/- each in default whereof it has been directed that they shall undergo rigorous imprisonment for a further period of two months. The appellants have challenged the judgment of the learned Special Judge, Anti-Corruption (CBI cases) on several grounds.

Before coming to the grounds of the appeal, it will be appropriate and apposite to let give a brief background of the facts leading to the filing of these appeals.

2. The prosecution version is that an FIR bearing No. RC 0042003/A003 came to

be registered on 23.06.2003 by the CBI on the basis of a reliable information. According to the FIR, Shri Sudershan Kumar, LDC in the office of Commissioner of Income Tax, Jammu, Shri Jia Lal Peon, Shri Rajesh Kumar alias Raju Chowkidar of the Income Tax Office, Jammu had, in the year 20022003, entered into a criminal conspiracy with the accused namely Rajinder Singh Mehta, Kishore Sharma and others with the aim and object to misappropriate the refund amount due to various assesses by opening fictitious accounts on the basis of the forged documents. In pursuance of the said criminal conspiracy, Sudershan Kumar, Jia Lal and Rajesh Kumar Sharma by misusing their official positions as public servants, handed over undelivered income tax refund orders and cheques to the appellants, Sudershan Kumar Sharma and R.S Mehta, who opened fictitious bank accounts in the names of the income tax assesses in various banks, whereafter the income tax refund in the shape of orders/cheques were encashed. In this way they succeeded in encashing a total amount of Rs. 1,57,988/-. The FIR further alleges that the undelivered refund orders/cheques were collected from the receipt counter of the Income Tax Department by the accused namely, Jia Lal and Rajesh Kumar Sharma, whereafter the same were handed over by them to the accused namely Sudershan Kumar, who distributed the amount received by him in between the accused Jia Lal and Rajesh Kumar for the services rendered by them. It is also alleged that the amount of refund cheques was misappropriated by opening fake accounts in the name of the assesses by the accused namely, R.S Mehta and Kishore Kumar in different banks and thereby they encashed the amount of Rs. 84,188/- and Rs. 73,800/- respectively. The FIR disclosed the commission of offences u/s 120-B read with 409, 419, 420, 467, 468, 471 RPC and S. 5(2) read with 5 1(c) and (d) of Jammu and Kashmir Prevention of Corruption Act, 2006 against the accused.

3. On the basis of the aforesaid FIR, the investigation of the case was set into motion. After the investigation of the case, it was found that the accused Sudershan Kumar was working as LDC in the office of the Commissioner of Income Tax, Jammu in the year 2002. It further revealed that the said accused was in contact with the accused namely Kishore Kumar and R.S Mehta who used to visit him in connection with the refund of the income tax on behalf of M/S M. Way Corporation. The accused Sudershan Kumar, disclosed before the accused Kishore Kumar and R.S Mehta that a large number of income tax refund vouchers are being received back in the Income Tax Department inasmuch as the assessees, to whom these refund vouchers, pertain are no longer posted in Jammu and Kashmir. The accused Sudershan Kumar further disclosed before them that these refund vouchers were like cheques and the same could be encashed after opening forged bank accounts. The accused R.S Mehta agreed to the proposal of the encashment of these refund vouchers as put forth by the accused Sudershan Kumar.

4. During the investigation of the case it was also found that the accused Sudershan Kumar received four (4) income tax refund vouchers directly from the postal authorities as the same were returned undelivered. The said accused also

received more income tax vouchers from the office of Girdhari Lal from where these had been stolen by the accused Jia Lal. The accused Sudershan Kumar handed over five income tax vouchers to the accused Kishore Sharma and these refund vouchers related to Madhu Gupta, Diwakar Sharma, Amardeep Singh, Chitranjan Barua and Abdul Ahad. These refund vouchers were for the amounts ofRs. 26480/-, Rs. 7800/-, Rs. 2700/-, Rs.9000/- and Rs.45500/- respectively. Another fifteen income tax vouchers were handed over by the accused Sudershan Kumar to the accused R.S Mehta and these pertained to S/Shri Atul Khanna, Arjun Singh, Shaleen Gupta, Bansi Lal Koul, Ram Anuj, Sunil Sharma, Ramesh Chander, Arun Sharma, Ravinder Singh, Madan Lal, Prem Nath Khushu, Ajay Kumar Handoo and Rattan Lal. These refund vouchers were for the amounts ofRs.13,890/-, Rs. 5,589/-, Rs. 5,780/, Rs. 17,710/-, 16,500/-, Rs.16,860/-, Rs. 5,760/-, Rs. 4,660/-, Rs.4,619/-, Rs. 2,930/-, Rs. 4,830/-Rs. 5,190/-, Rs.4,139/-, Rs. 4,130/- respectively. The aforesaid refund vouchers had not been delivered by the postal authorities to the assesses on account of various reasons and the same were returned as undelivered at the general receipt counter of Income Tax Department. Instead of returning these refund vouchers to the concerned section, the accused Sudershan Kumar, handed over these to the accused R.S Mehta and Kishore Kumar.

5. It was further revealed during the course of the investigation of the case that the accused Kishore Sharma opened fraudulent accounts in the names of Madhu Gupta and Amardeep Singh with Canara Bank by utilising the services of the accused Sohan Singh. Not only this, the services of the accused Rajesh Kumar were exploited and a fake bank account was opened with Central Bank of India, Fruit Mandi, Jammu. By appropriating the services of the accused Tilak Raj Sharma another fake account was opened with Citizens Cooperative Bank, Vinayak Bazar, Jammu. The accused Kishore Kumar opened another fraudulent account with Canara Bank in the name of Diwaker Sharma. It was also found that the accused Sohan Singh by impersonating as Madhu Gupta opened fictitious bank account for encashing the refund vouchers for an amount of Rs. 26480/- and the account holder was identified by the appellant Satpaul Sharma, the bank guard. The appellant, Kishore Kumar, impersonated as Diwaker Sharma and opened an account with Canara Bank, Jammu and refund voucher ofRs. 7800/- was presented in the said bank for encashment. The accused Satpaul Sharma, bank guard introduced the account holder. The photograph of the accused Tilak Raj was pasted on account opening fom of the said account. However, the refund voucher could not be encashed by the accused Sudershan Kumar and he handed over the same to the accused R.S Mehta, who opened an account with Citizens Corporative Bank, Vinayak Bazar, Jammu by employing thé services of the accused Rajesh Kumar. The accused Tulsi Thakur opened a fictitious account in the name of Atul Khanna by impersonating as Atul Khanna, whereafter he presented the income tax refund voucher for an amount to Rs. 13890/- and encashed the same in two instalments.

6. It was also found that the accused Sohan Singh opened a fictitious account

with Canara Bank, Jammu in the name of Amardeep Singh and he was introduced by the accused Kishore Sharma whereafter he presented the income tax refund voucher for an amount of Rs.2700/and encashed the same. The accused Sohan Singh opened another fictitious account with Corporation Bank, Jammu, wherein he was introduced by Yashpaul Sharma. The income tax refund voucher for an amount of Rs. 16500/- was deposited in this account, which was opened in the name of Ravinder Nath and an amount of Rs. 16000/was withdrawn by the accused Sohan Singh from this account. The accused Rajesh Kumar Sharma opened fictitious account with the Central Bank of India, Fruit Mandi, Jammu by impersonating as Chitranjan Barua and he encashed the refund voucher of Rs. 9000/by handling the services of the accused Rajesh Kumar. This account was introduced by Harbhajan Singh. The accused Tilak Raj Sharma opened another fictitious account with Citizens Co-operative Bank, Jammu by impersonating as Abdul' Ahad and a refund voucher of Rs. 35500/- was presented and encashed from the same account. This account was introduced by Sangram Singh.

7. It was also found that the accused Shekhar Dhar by impersonating as Shaleen Gupta opened a fictitious account with Citizens Co-operative Bank, Jammu and another fictitious account with SBI, Satwari by impersonating as Bansi Lal Koul. The said appellant deposited the refund vouchers to the tune of Rs. 175 10/- in these two accounts. These accounts were introduced by Manohar Sharma at the instance of the accused R.S Mehta. It was also found that the accused Shekher Dhar gave a letter of authority in the name of the accused R.S Mehta for withdrawal of the cash in one of these accounts whereas, in the other account the accused Shekher Dhar himself withdrew the cash. It was also found that the accused R.S Mehta by impersonating as Arjun Singh opened an account with Citizens Corporative Bank, Vinayak Bazar, Jammu which was introduced by Harminder Singh. A refund voucher of Rs. 5598/- was deposited in this account and an amount of Rs. 5500/- was withdrawn from the said account by the accused R.S Mehta. He further put to use the services of Amit Pal Singh and opened an account with SBI, Satwari in the name of Ravinder Singh.

This account was introduced by Ranjit Ram and an amount of Rs. 2930 was withdrawn from this account after the presentation of the income tax refund voucher. It was also found that the accused Kishore Sharma forged the application seeking revalidation of the income tax voucher of Chitranjan Barua and on the basis of this application a fresh income tax voucher for an amount of Rs. 9000/was issued and the same was encashed by the accused Rajesh Kumar Sharma by opening a fictitious account.

8. It was finally established that a total amount of Rs. 1,62,118/-had been fraudulently withdrawn by the appellants/accused in furtherance of a criminal conspiracy of which the accused Sudershan Kumar was the kingpin. On the basis of these allegations, offences u/s 120-B read with 419, 420, 467, 468 471 RPC and S. 5(2) read with 5(l)(d) of Jammu and Kashmir Prevention of Corruption Act

were found established against the accused and accordingly a charge-sheet in terms of section 173 (2) Cr.P.C. was laid before the Trial Court. Vide order dated 07.12.2005, the learned Trial Court framed the charges for offences u/s 5(1) (d) read with S.5(2) of Prevention of Corruption Act and ss. 120-B, 419, 420, 467, 468 and 471 RPC against the accused Sudershan Kumar whereas charges for the commission of offences u/s 120-B, 419, 420, 467, 468 and 471 RPC were framed against the other accused.

9. To prove its case, the prosecution has examined PWs Surinder Nath Koul, Ravi Kant, Badri Nath, Rakesh Kumar, Ajay Kumar, Harbhajan Singh, Madhu Gupta, Atul Kumar Gupta, Khazaan Singh, Ravinder Singh, Rajpaul Sharma, Sangram Singh, Arun Sharma, Atul Khanna, Sunil Sharma, Ashok Kumar Sharma, Kuldeep Singh, Madan Lal, Ravinder Nath, Karan Singh Jamwal, Bansi Lal Koul, Rattan Lal, Ajay Handoo, Har Prem Singh, Ravinder Singh, Ravinder Kumar, Claint Mattoo, Arvind Mishra, Gharu Ram, Manzoor Ahmad, P.N.Khushu, Harminder Singh, Manohar Singh, Avtar Krishan Koul, V.K Gupta, Bansi Lal, Anand Gupta, Naveen Sharma, Amardeep Singh, Avtar Singh, Charanjit Singh, Rakesh Kumar, Amit Kumar, R.K Gabgotra, Kanv Bali, Ranjit Ram, Rashpal Singh, Satish Kumar Sharma, Rajesh Raina, Kishori Lal Dhiman, Kuldeep Kotwal, Parveen Sharma, Mohan Singh, Manjul Bushan, Ramesh Sharma, Nemi Braru, Rajneesh Kumar, Anita Thusoo, Joginder Singh, Rita Sharma, Rajesh Koul, Jagdish Singh, Ram Anuj, Raj Kumar Gupta, Satish Kumar Gupta, Ravi Gupta, Rattan Lal, Kewal Sharma, Tej Krishan Koul, Yashpaul, Dharminder Gupta, Girdhari Lal, Sunil Verma, Avinash Kumar, Prem Gulzar Chawla, Satpal Sharma, D.K Mattoo, Madan Lal Raina, Raj Kumar, Ravinder Razdan, Shamsher Singh, N.C.Sood, Parveen Khajuria? Maqsood Ahmed Bhat, S.K.Peshan and Prashant Sharma as witnesses.

10.After recording the statements of the prosecution witnesses, the statements of the accused as envisaged u/s 342 Cr.P.C were recorded by the Trial Court but they did not opt to produce any evidence in defence. The Ld. Trial Court, on the basis of the evidence led by the prosecution, came to the conclusion that the offences u/s 120-B read with S. 419. 420, 467, 468 and 471 RPC and S.5(2) read with of Prevention of Corruption Act, stand established against the appellants/accused, whereas the accused Jia Lal and Satpaul Sharma were acquitted of the charges against them for lack of evidence. It is this finding of the Ld. Trial Court that has been assailed by the appellants by way of these appeals.

11.1n the appeals, the appellants have contended that there is no direct evidence of forgery against the appellants and that there is no evidence regarding the conspiracy of handing over or taking over of refund cheques/orders by the appellants. It is further contended that there are inherent contradictions in the evidence on record which demolishes the prosecution story and that the Ld. Trial Court has not appreciated the prosecution evidence in the right perspective. It has also been contended that initially an FIR relating to the said occurrence was lodged with Police Station Bahu Fort, Jammu by the Income Tax authorities and ASI Maqsood Ahmad was appointed as Investigating Officer after registration of an FIR bearing no. 105/103. However, on 30.09.2003 another FIR relating to the same occurrence was lodged by the CBI in respect of the same offences that were already under investigation by Police Station, Bahu Fort, Jammu. On the basis of these facts, it is contended that the second FIR is not permissible under law and, as such, the investigation and the challan is non-est in the eyes of law.

12.1 have heard learned counsel for the appellants and the learned counsel for the respondent Central Bureau of Investigation. I have also gone through the impugned judgment passed by the learned trial Court, the grounds of appeal and the evidence on record.

13. The main accused in the case is the appellant namely Sudershan Kumar, who according to the prosecution case is the kingpin and the author of the crime. He is alleged to have received 20 Income Tax Refund Vouchers which he delivered to the other accused by entering into conspiracy with them and these Income Tax Refund Vouchers were later on encashed by the other accused thereby causing a loss of Rs. 1,62,118/ to the Income Tax Department. As per the evidence on record, the appellant Sudershan Kumar was working as the LDC in the Income Tax Department at the relevant time. As per the prosecution case, during his tenure as LDC in the Jammu office of Income Tax Department, the appellant Sudershan Kumar received Income Tax Refund Vouchers that were not delivered to the addressees due to incomplete* address or for certain other reasons, whereafter the said accused delivered these Income Tax Refund Vouchers to the other accused for their encashment. In order to fasten the culpability upon the accused/appellant namely, Sudershan Kumar, it was incumbent upon the prosecution to show that the said accused and none other than him had taken the delivery of these refund vouchers from the postal authorities or that the same had been delivered to him only by any other mode. To return a positive finding upon this circumstance, the learned trial Court has relied upon the statements of PWs Girdhari Lal, Yashpal and Tej Kishan Koul.

According to the learned trial Court, from the statements of these witnesses, it has been established that the accused Sudershan Kumar used to receive the mail including the Refund Vouchers especially those that are the subject matter of the case, from the postal authorities against proper receipt.

14. The aforesaid conclusion drawn by the learned trial Court, I am afraid, is not supported by the evidence on record. According to PWParveen Sharma Sr. Income Tax Assistant, PW Girdhari Lal was the receipt clerk in the Income Tax Department at Jammu at that point of time. PW Girdhari Lal has admitted in his statement that he was posted as a receipt clerk at the general receipt counter of the Income Tax Department. He has further stated that some times, other employees of the Income Tax Department would also sit with him and receive the mail. According to him, the accused Sudershan Kumar also used to sit with him at the general receipt counter and some other employees namely Sh. Rattan

Chand and Govind Ram, would also sit with him at the receipt counter. Thus the evidence on record suggests that PW Girdhari Lal, was fundamentally and principally the person who occupied the seat on the receipt counter and occasionally some other employees of the Income Tax Office, Jammu, including the accused Sudershan Kumar would also handle the receipt counter. On the face of such an eventuality, it was for the prosecution to show and establish by credible and cogent evidence that the very Income Tax Refund Vouchers that are the subject matter of this case, were actually and veritably handed over by the postal authorities to the appellant Sudershan Kumar or that he came into their possession by any other mode as otherwise it is all impossible to identify the person amongst the receipt clerks, who had actually come into the possession of these particular refund vouchers. For solving this riddle, the statements of the postmen namely PWs Tej Kishan Koul and Yash Pal, require to be scanned, assessed and analysed.

15.Although PW Tej Kishan Koul in his examination-in-chief has commented that he had delivered the items mentioned in the receipts EXTP-77/2, EXTP-77/3 and EXTP-77/3 to the accused Sudershan Kumar. Yet, during his cross examination, when his attention was drawn to his statement recorded u/s 161 Cr.P.C, he has knocked the bottom out of the prosecution case by categorically stating that he had never stated that he had delivered any mail to the accused Sudershan Kumar. He has thereby contradicted his earlier statement and rendered it untrue and unbelievable.

16.PW Yash Pal, the other postman, has avowed that during his posting, he had delivered the mail at the receipt counter to PW Girdhari Lal as well as the accused namely Sudershan Kumar. He has proceeded to state that he delivered mail to PW Girdhari Lal vide receipts EXTP 77 and EXTP 77/5. He has also stated that he delivered mail to the accused Sudershan Kumar vide receipts EXTP-77/2, EXTP-77/3 and EXTP-77/4. From this statement of the prosecution witness what comes to the fore is that he had delivered the mail pertaining to the Income Tax Department to PW Girdhari Lal as also to the accused Sudershan Kumar.

17. What was the nature of the mail delivered either to PW Girdhari Lal or to the accused Sudershan Kumar is not coming forth from the evidence on record. The prosecution has not led any evidence to show that the mail delivered to the accused Sudershan Kumar included the Refund Vouchers that are the subject matter of this case. Unless, it is shown by any credible and trustworthy evidence that breeds confidence in the eyes of a reasonable and a prudent man that the undelivered Income Tax Refund Vouchers were actually received by the accused namely Sudershan Kumar, it cannot by any stretch of imagination be stated that it is the accused only who was obliged to account for the same. The evidence on record shows that the mail including the Income Tax Refund Vouchers were either received by PW Girdhari Lal or by the accused Sudershan Kumar. This raises a serious doubt as to the identity of the person who had received the Income Tax Refund Vouchers which are the subject matter of the present case. It

was incumbent upon the prosecution to prove, by leading conclusive and convincing evidence, the circumstance that it was only and only the accused Sudershan Kumar who had taken the delivery of the Refund Vouchers that are subject matter of this case. The same has, unfortunately not been done by the prosecution and this vital aspect of the case which cuts at the very root of the prosecution case has been completely overlooked and ignored by the learned trial Court. The learned trial Court has without any evidence on record, on that count, come to the conclusion that the Income Tax Refund Vouchers were received at the receipt counter by the accused namely Sudershan Kumar. The finding of the learned trial court in this regard is bad and perverse and cannot withstand the scrutiny of law. The evidence on record on the basis of which the main architect of the crime, as alleged in the prosecution case, was convicted, is so weak and fragile that it is difficult to hold as to who was the originator of the crime. What the prosecution, in the instant case has been able to establish is that the accused Sudershan Kumar was one of the several officials who used to receive the mail on the receipt counter of the Income Tax Department but there is no evidence on record to show that he was the only official who used to receive the mail or that he had received the Income Tax Refund Vouchers that are the subject matter of the present case. Therefore, the entire exercise shades into suspicion.

18.Learned trial Court has rightly concluded that there is no evidence on record to show that the accused Jia Lal had delivered any Inxome Tax Refund Vouchers to the accused Sudershan Kumar. Therefore, it can safely be stated that the receipt of the Income Tax Refund Vouchers by the accused Sudershan Kumar either at the Receipt Counter or by any other mode is not established in this case. As such, the entrustment of Income Tax Refund Vouchers to the accused namely Sudershan Kumar, is not proved beyond reasonable doubt. This turns the prosecution case topsy-turvy and therefore it can safely be said that the charge against the principle accused is not established. The finding of learned trial Court that the charge against the accused namely Sudershan Kumar is established appears to be a pertinent example of having acted per incurium, and therefore, deserves to be set aside.

19. That takes one to assess and appreciate the role of the other appellants/ accused against whom the learned trial Court has found the charges to have been proved. Although it is established that the charge against the principle accused is not established, there is no need to determine the role of the other accused/appellants, yet for academic interest, let us discuss the evidence on record as against the other accused/appellants.

20. The prosecution case is that the other accused/appellants in connivance with the accused namely Sudershan Kumar managed to encash the undelivered Income Tax Refund Vouchers by opening fake bank accounts in various names and, thereafter, withdrew the amount from these accounts. Therefore, the evidence adduced by the prosecution on that count requires appraisal and

valuation.

21. The appellant Kishore Kumar, as per the learned trial Court, had introduced the opening of fake accounts in the name of Chitranjan, Barua though the said accounts were not opened by Chitranjan Barua but were opened by the accused Sohan Singh, Rajesh Kumar and Tilak Raj. In short the role assigned to the appellant Kishore Sharma is that he had introduced fake accounts. I am afraid, the learned trial Court while holding that charges against appellant Kishore Kumar are proved, has discriminated between the introducers of the alleged fake accounts inasmuch as in similar circumstances and on the basis of the similar evidence, the learned trial Court has acquitted the accused namely Sat Pal Sharma by observing that he is in agreement with the submissions of the learned Counsel for the accused Sat Pal that the equals have been treated by the investigating agency unequally. This observation of the learned trial Court has come in the backdrop of the fact that most of the alleged introducers of the fake accounts have been cited as the prosecution witnesses by the Investigating Agency, whereas, the accused Sat Pal, an introducer of an alleged fake account, has been arrayed as an accused. On the face of this contingency, the learned trial Court, while acquitting the accused Sat Pal, who had also allegedly introduced the fake accounts, came to the conclusion that the said accused has been treated unequally by the Investigating Agency. The said observation of the learned trial court would apply in all the fours to the case of the accused Kishore Sharma also, who according to the learned trial Court, had introduced fake accounts. We cannot have one yard stick for one accused and another scale for another accused. Both the accused Sohan Singh and Kishore Kumar are alleged to be the introducers of the fake accounts, so they have and had to be treated equally. The finding of the learned trial Court that the appellant Kishore Kumar is criminally liable for having facilitated the opening of the fake accounts in the name of Chitranjan Barua and at the same time concluding that the accused Sohan Singh, another introducer of the alleged fake account, is not criminally liable, is a confutation and contradiction of the glaring order and on this count alone the conviction of the accused namely Kishore Sharma is unsustainable and liable to be set aside.

22.That takes us to the role of the accused [appellant namely R S Mehta. According to the learned trial Court it has been established on record that the accused Rajinder Singh Mehta impersonated before the bank authorities and opened an account in the name of Arjun Singh on the basis of fake documents and thereafter withdrew and misappropriated an amount of Rs. 5500/- belonging to Arjun Singh. While coming to the aforesaid conclusion, the learned trial Court has mainly relied upon the statements of PW Harvinder Singh, the introducer of the alleged fake account, PW Surinder Kumar, the person in whose presence specimen handwritings of the appellant Raj inder Singh Mehta were taken and the statement of PW N.C.Sood, the handwriting expert.

23. The accused Sohan Singh, as per the learned trial Court, opened a fake

account in the name of Madhu Gupta in Canara Bank, whereafter he encashed the refund vouchers amounting to Rs. 26,480/- and withdrew the amount from the said account. It is further concluded by the learned trial Court that the accused Sohan Singh opened another fictitious account in the name of Ravinder Nath in Corporation Bank, deposited the Income Tax Refund Vouchers and encashed the same. While coming to the aforesaid conclusion, the learned trial Court has mainly relied upon the statements of PW Raj Kumar, clerk Oriental Insurance Company before whom the accused is alleged to have given his specimen handwritings/ signatures and PW N.C.Sood the handwriting expert.

24.Regarding the appellant Rajesh Kumar, the learned trial Court has come to the conclusion that he opened a fake account in the name of Chitranjan Barua, whereafter refund voucher in an amount of Rs. 9000/- was credited in the said account and proceeds thereof were withdrawn. In order to come to this conclusion the learned trial Court has relied upon the statements of PW Harbhajan, the introducer of the alleged fake account, PW Ravinder Razdan, the person in whose presence specimen handwriting/signatures of the accused were taken and the statement of PW N.C.Sood the handwriting expert.

25.As far as the appellant Tilak Raj Sharma is concerned the learned trial court has determined that the said accused opened two fake accounts in the Citizen Cooperative Bank and Canara Bank in the name of Abdul Ahad and Diwakar Sharma respectively, whereafter he deposited the Income Tax Refund Vouchers and withdrew the proceeds thereof. In order to hold the aforesaid opinion, the learned trial Court has mainly relied upon the statement of PW Sangram Singh the introducer.

26.Regarding the appellant Raj Kumar Dogra, the learned trial Court has contemplated that he opened one fake account in Citizen's Cooperative Bank in the name of Diwakar Sharma and the other one in the name of Rattan Lal. The appellant Raj Kumar Dogra is also stated to have opened another fake account in the name of Sumit Sharma with J&K Bank Trikuta Nagar. The said appellant is further stated to have opened fake accounts in the name of Ramesh Chander in J&K Bank, in the name of Madan Lal in State Bank of Patiala, in the name of Arjun Singh with Oriental Bank of Commerce, in the name of Prem Nath Khushoo with UCO Bank and in the name of Ram Anuj with Jammu Central Cooperative Bank. The learned trial court has viewed that the appellant Raj Kumar deposited Income Tax Refund Vouchers in these accounts and thereafter withdrew the proceeds thereof. In order to arrive at this finding, the learned trial Court has relied upon the statements of the introducers of these accounts as well as the witnesses before whom the said accused had given their specimen writings/ signatures and the handwriting expert.

27 As regards the accused Amit Pal Singh, the learned trial Court concluded that the said appellant opened a fake account with SBI Jammu Cantt. in the name of Ravinder Singh. He deposited the Income Tax Refund Vouchers in the said account and withdrew the proceeds thereof. In this analysis, the learned trial

court has relied upon the statement of the introducer of the fake account PW Ranjit Ram, the witness in whose presence the specimen handwritings/ signatures of the appellant were taken, as also the statement of handwriting expert.

28.1n regard to the appellant Shekhar Dhar, the learned trial Court has opined that the said appellant opened a fake account in the name of Shaleen Gupta with Central Cooperative Bank and another fake account in the name of Bansi Lal Koul with SBI Jammu Cantt. The said appellant is stated to have deposited the Income Tax Refund Vouchers in these accounts and is said to have encashed the same. In order to come to the aforesaid conclusion, the learned trial Court has relied upon the statement of the introducer of the fake account namely PW Manohar Singh, the statement of PW Rashpal Singh, Special Assistant SBI Jammu Cantt, the statement of the person in whose presence the specimen writings/ signatures of the appellant Shekhar Dhar were taken, as also the statement of the handwriting expert namely PW N.C.S00d.

29. With reference to the appellant Tulsi Thakur, the learned trial court has held that he opened a fake account in the name of Atul Khanna with Citizen Cooperative Bank. He deposited the Income Tax Refund Vouchers in the said account and encashed the same. Again in order to hold this view, the learned trial Court has relied upon the statement of the introducer of the fake account namely PW Avtar Singh, the person before whom the appellant is stated to have given his specimen handwriting/ signatures and the handwriting expert PW N.C.S00d.

30.From what has been noticed hereinbefore, it is clear that the learned trial Court, in order to hold that the appellant/accused had opened fake accounts, has mainly relied upon the statements of introducers of these fake accounts, the persons in whose presence the specimen writings/ signatures of the appellant/ accused were taken, the bank officials who were associated with the opening of these accounts and the evidence of the handwriting expert.

31.0n a critical analysis of the statements of all the introducers of these fake accounts, a common thread runs through them, that is none of these introducers actually had any acquaintance with the appellants/accused. All of them have stated that they had seen the appellants/accused for the first time in their life in the bank. They have further deposed that thereafter they never saw the appellants/accused. They have also affirmed that no identification parade of the appellants/accused was conducted during the investigation of the case, nor were they shown to them while their statements u/s 161 Cr.P.C were being recorded or at any other stage of the investigation thereafter. The statements of these witnesses have been recorded almost after 8/9 years of opening of the alleged fake accounts. It is unbelievable that an introducer of a bank account who had no previous acquaintance with the account holder will be able to identify him in the Court after 8/10 years, particularly when during the intervening period, he had neither seen him nor had he any occasion to see him thereafter nor has any test identification parade been conducted during the investigation. The statement of a witness is not to be accepted on its face value but it has to be tested on the touchstone and bulwark of the probability and natural course of events. In the instant case, the introducers during the course of examination-in-chief were shown the account opening forms of the fake accounts on which photographs of appellant/accused are pasted and it is probably on that basis that they have stated that accused/appellants are the same persons who opened the bank accounts on the basis of their introduction. Therefore, the statements of the introducers of the alleged fake accounts, so far as the same relate to the identification of the appellants/accused, cannot be relied upon. Similar is the fate of the statements of the bank officials. Their statements about the identity of the accused/appellants are based upon what the introducers of these fake accounts have narrated to them. None of the bank officials has stated in his statement that they were having any previous acquaintance with the appellants/accused. On the basis of this evidence, which is shaky and unreliable, it cannot be stated that the accused/ appellants were the persons, who opened the fake accounts.

32. The law on the subject is lucid, pellucid and clear. It provides that the identification is necessary where the accused is not known to the witnesses and they get an opportunity to see him only for a short while at or about the time of the commission of the offence. In such cases it is necessary to verify the capacity of the witnesses to identify the accused proper by holding a test parade. But no such test identification is necessary where the witnesses had occasion to be with the accused for quite a long time. In such cases there is room for any mistake on the part of the witnesses in identifying the accused. The only question in such cases is whether the witnesses are telling the truth or not. It further provides that the facts which establish the identity of an accused person are relevant under section 9 of the Indian Evidence Act. As a general rule, the substantive evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances he came to pick out the particular accused person and the details of the part which the accused played in the crime in question with reasonable particularity.

33.Delving into the evidence as it relates to the specimen writings/signatures of the appellants/accused, these have been taken by the Investigating Officer in the presence of the civilians who happened to be the employees of the Banks and the Insurance Companies etc. All of them have stated that they had no previous acquaintance with the accused/appellants and that they were introduced to them by the Investigating Officer. None of these witnesses have conducted their own enquiry with regard to the identity of the persons, who were produced before them for the purpose of obtaining specimen handwriting/signatures. They have categorically and unambiguously stated that they did not obtain any proof of their identity from the persons produced before them. Therefore, their knowledge about the identity of the persons whose specimen handwriting/ signatures were taken, is based upon what the Investigating Officer conveyed to them. The accused/appellants in their statements u/s 342 Cr.P.C have denied having given their specimen handwriting/signatures. In the absence of any cogent, credible and convincing material to show that it is the accused/appellants had given their specimen handwriting/signatures before the witnesses, it cannot be stated that the specimen handwriting/ signatures on record of the file pertain to the accused/appellants.

34.Looking at this aspect from a different perspective, the specimen handwritings/signatures of the accused/appellants in this case are alleged to have been obtained in the presence of civilians, who as is repeated here were the employees of banks/Insurance Companies. In this behalf, reference can usefully be made to the provisions of Sections 47 and 73 of the Evidence Act. It has to be viewed and judged as to who can take the specimen handwriting/signatures for making comparison between the admitted and the questioned ones. The specimen handwriting/ signatures can be obtained by the Court when some proceedings are pending before it. However, when no proceedings were pending before the Court and the case was still under investigation and, therefore, the same could have been obtained in the presence of the Magistrate or at least in presence of a Gazetted Officer, so as to lend credence and credibility to the proceedings but this has not been done by the Investigating Agency. Therefore, the process of obtaining specimen handwritings/ signatures of the accused/ appellants by the investigating agency in the instant case is inappropriate and reflects adversely upon the manner in which the investigation of the case has been conducted which appears to be shabby and slippery. The very manner in which the specimen handwritings/signatures of the appellants/accused have been taken is questionable, and therefore the opinion of the handwriting expert with regard to these specimen handwritings/signatures cannot be relied upon and pales into insignificance. Looking at the quality of the evidence led by the prosecution for connecting the appellants/accused with the opening of the fake accounts, it cannot be stated that the accused/appellants were responsible for opening of these accounts.

35.From the foregoing discussion, it is absolutely clear that the prosecution has failed to prove not only the charge that the main accused Sudershan Kumar had received the Income Tax Refund Vouchers that are the subject matter of the instant case but also that it has failed to prove its case by any cogent, convincing, credible and reliable evidence to the effect that the other accused/ appellants were responsible for opening of the fake accounts. For these reasons, the conclusion arrived at by the learned trial Court appears to be based upon insufficient and unreliable evidence. The impugned judgment of the learned trial Court, therefore, deserves to be set aside. The same is, accordingly, set aside and the appeals are accepted. The appellants/accused are acquitted of the charges for which they were tried by the learned trial Court. The bail bonds of the appellants stand discharged. The record of the learned trial Court along with copy of this judgment be sent to the learned trial Court forthwith.

