

(2011) 11 BOM CK 0035

In the Bombay High Court

Case No : Criminal Appeal No. 439 of 1991

Vitthal Pandurang Pawar, Ramesh Kaluram Kharat, Ravindra
alias Raju Parashuram alias Prasadrao Gaikwad (ABATED)
and Rajendra alias Fakira Wagh

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 11-11-2011

Acts Referred:

Evidence Act, 1872 — Section 114

Penal Code, 1860 (IPC) — Section 120B, 201, 34, 420, 465

Prevention of Corruption Act, 1947 — Section 19(3), 5, 5(1), 5(2), 6

Citation : (2012) BomCR(Cri) 743

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : Revati Mohite-Dere No. 1 and Shri. Prakash Naik Nos. 2 and 4, for the Appellant; P.P. Bhosale, Assistant Public Prosecutor, for the Respondent-State, for the Respondent

Judgement

R.C. Chavan, J.—This appeal is directed against the conviction of the appellants by the learned Special Judge, Pune for the offences punishable under Sections 420, 467, 468, 471 r/w Section 34 of the Indian Penal Code (for short, the IPC) and Section 5(2) r/w Section 5(1)(d) of the Prevention of Corruption Act, 1947 (for short, the PC Act) and sentence of RI for 3 years with fine of Rs. 500/- or in default RI for 15 days, imposed upon each of them for each of the offences punishable under Sections 420, 467, 468 and 471 of the IPC, as also RI for 1 year with fine of Rs. 250/- and RI for 1 year with fine of Rs. 500/- for the offence punishable u/s 5(2) r/w 5(1)(d) of the PC Act. Appellant No. 2 was also convicted for the offence punishable u/s 201 of the IPC and sentenced to RI for 1 year with fine of Rs. 250/- or in default RI for a further period of 7 days.

2. Facts which are material for deciding this appeal are as under:

Appellant Nos. 1 and 2 Vitthal Pawar and Ramesh Kharat were working in Sales Tax Department at Pune. Accused No. 3 Ravindra Gaikwad and accused No. 5

Prakash Bhosale were working in Social Welfare Department, Pune. Accused No. 4 Rajendra Wagh was working in Animal Husbandry Department at Pune. Though they were working in different offices, according to the prosecution, they entered into a criminal conspiracy of preparing bills for withdrawal from Government Provident Fund (for short, GPF) accounts in the name of fictitious persons working in the Sales Tax Department and the Animal Husbandry Department with fictitious GPF account numbers. They also forged orders in the names of their Heads of the Department sanctioning such advances, submitted bills to the Treasury on the basis of such false orders after forging the signatures of the Drawing and Disbursing Officers (for short, the DDOs), got the bills passed from the Treasury, obtained cheques, encashed them and put the amounts to their own use. Bills for amounts totaling to Rs. 67, 120/- were presented to the Treasury and actually a sum of Rs. 64,490/- was withdrawn by the accused persons by submitting nine bogus bills.

3. This came to light on 30-1-1980 when Laboratory Assistant Shri Dhanve (PW-2) had gone to the Treasury for seeing whether the bills of his office were passed. Shri Dhanve was told by the employees of the Treasury that, bill of one V.P. Joshi for a sum of Rs. 16,650/- had also been passed and Dhanve was asked to collect the cheque. Since Dhanve was not having token for the said bill with him, he contacted his superior Shri Muley (PW-1), who told Dhanve not to accept the cheque. Shri Muley enquired in his office and found that no such bill of any V.P. Joshi was submitted to the Treasury through his office. Muley went to the Treasury, saw the bill and found that it bore stamp of his office and also signature similar to his signature on the bill, as also, a sanctioning order bearing signature similar to his signature. He instructed the Treasury Officer not to handover the cheque to anyone and informed his superior. Eventually, he lodged a report with the Bund Garden Police Station on 5-2-1980 and on which an offence was registered and investigation commenced.

4. On 25-2-1980 Madhukar Wagale, who was in the Sales Tax Department, received a telephonic message from one Bapat from the State Bank of India asking him whether any person by name A.V. Wagh was working in his office. On Wagale informing Bapat that Wagh was not working in his office, Bapat asked Wagale as to whether cheque of Rs. 11,630/- was submitted by Wagale for encashment. Wagale informed him that he had not submitted any such cheque for encashment. Bapat asked Wagale to come to the Bank. After going to the Bank he noticed that cheque dated 4-2-80 was issued by the Treasury Office in the name of his office. The cheque had not been received by his office and he had not signed the cheque, yet the cheque was presented to the Bank for encashment. He went to the Pune Treasury and found that a bill had been submitted for withdrawal from the GPF accounts in the names of H.R. Sawant for Rs. 4,680/- , S.D. Falke for Rs. 3,600/- and Shripati Kale for Rs. 3,350/- . The bill was shown to have been signed by D.G. Jadhav, Clerk. Wagale noticed that these persons were not serving in his office and the bill was not signed by him and, therefore, concluded that the bill was falsely prepared. Therefore, he too

reported the matter to the police.

5. On 7-4-1980 Devdatta Limaye, working as Senior Treasury Officer at the relevant time, also reported to the police about a bill in the name of S.T. Joshi by which an amount of Rs. 12,800/- was received as per cheque issued by the Treasury Officer. He also informed about withdrawal of Rs. 16,650/- in the name of V.P. Joshi by bill dated 24-1-1980. The police found, after investigation, that, three bills from the Sales Tax Department and two bills from the Animal Husbandry Department had been submitted for withdrawal from GPF accounts of fictitious persons, without proper authorisation by forging orders, signatures as well as bills.

6. The investigating officer sought necessary sanction from the learned Judicial Magistrate, First Class to investigate into the offences and after it was granted vide Exhibits-129 and 130 proceeded with the investigation. After investigation, it was found that the original accused Nos. 1 and 2, working in the office of the Sales Tax Department, accused Nos. 3 and 5, working in the Social Welfare Department and accused No. 4, working in the Animal Husbandry Department, had prepared these forged bills, orders and had also forged the signatures of the authorities concerned for encashing these bills. Specimens of hand-writing of these persons were collected and were sent to a hand-writing expert, who opined that the disputed writings in the bills

7. The learned trial Judge charged the appellants, as also accused No. 5 Prakash Anaji Bhosale of offences punishable under Sections 420, 467, 468, 465, 471 and 201 r/w Section 120-B or Section 34 of IPC and Section 5(2) r/w Section 5(1)(d) of the PC Act r/w Section 120-B or Section 34 of IPC. Since the accused pleaded not guilty, they were put on trial at which the prosecution examined 30 witnesses in its attempt to bring home the guilt of the appellants. After considering the evidence of these witnesses in the light of defence of denial taken by all the accused persons, the learned trial Judge convicted the appellants for the offences punishable under Sections 420, 467, 468 and 471 r/w Section 34 of IPC and Section 5(2) r/w Section 5(1)(d) of the PC Act and sentenced them as already indicated. He also convicted the appellant Ramesh Kaluram Kharat for the offence punishable u/s 201 of the IPC. He acquitted the appellants of the offence of criminal conspiracy and acquitted accused No. 5 of all the offences charged. Aggrieved by their convictions and the sentences imposed upon them, the appellants have preferred this appeal.

8. The appellant Ravindra alias Raju Parashuram alias Prasadrao Gaikwad died during the pendency of the appeal and, therefore, the proceedings, in so far as they relate to him, abate.

9. The appeal was in fact heard at length by Shri Justice J.H. Bhatia and was reserved for Judgment, when it was noticed that Exhibit-140, the order sanctioning prosecution of appellant No. 1, was neither admitted by appellant No. 1 nor was it proved by examining the authority. In view of this, by the order

dated 2-2-2011 the matter was remitted back to concerned and the office orders were of the accused persons. Hence, on completion of the investigation, charge-sheet was sent the Special Judge, Pune, for giving an opportunity to the prosecution to prove the sanction Exhibit-140. The Special Judge was directed to record the evidence of the sanctioning authority and send the said evidence along with the other records, without giving any findings, to this Court. The sanctioning authority was reported to have passed away on 27-5-011. Therefore, the Special Judge, Pune, could not record the evidence of the sanctioning authority and reported accordingly by the letter dated 29-6-2011.

10. I have heard Ms Revati Mohite-Dere for the appellant Vitthal Pandurang Pawar and Shri. Prakash Naik for the appellants Ramesh Kaluram Kharat and Rajendra alias Fakira Wagh. I have also heard the learned APP Ms P.P. Bhosale for the State. I have gone through the entire evidence with the help of the learned counsel.

11. The first contention of the learned counsel for appellant No. 1 is that since the sanction itself is not proved, the prosecution against appellant No. 1 must fail. For this purpose, she placed reliance on a Judgment of this Court in Jagannath Maruti Tekade v. State of Maharashtra, reported in 1991 Mh. L.J. Page 976. In that case, the Collector, who was the sanctioning authority, though cited as a witness was not examined and instead a Clerk from the Collector's office was examined, who had deposed about the process which had been undertaken in according sanction. The Court held that examination of a Clerk from the Collector's office is tantamount to examination of no witness at all because that Clerk was certainly not a competent witness for the purpose of deciding the crucial question as to whether the Collector applied his mind to the facts of the case and whether he had granted a valid sanction. The learned counsel, therefore, submitted that this vitiates not only the trial but renders the prosecution void ab initio. The sanction order tendered in the case could not at all be looked into.

12. The learned APP contested this proposition and submitted that there could be cases like the present one where the sanctioning authority expired and became unavailable for examination by the Court. In such a situation, according to the learned APP, it would be wrong to hold that the sanction could not be proved by other means or that it could be held that the sanction was bad for want of proof of application of mind by the authority. She submitted that the presumption that all official acts are done properly would have to be invoked in such a case. According to the learned APP, none of the parties seem to have raised any objection to the exhibition of sanction Exhibit-140 in the course of the trial. It was nobody's case that the sanction had not been accorded by Shri N.K. Fadnavis, the sanctioning authority. The only lacuna seems to be that Shri Fadnavis was not examined. Unfortunately, even after this Court remitted the matter back to the trial Court, though Shri Fadnavis was alive at that time his evidence could not be recorded and this is how the Special Judge came to report,

after the death of Shri Fadnavis, that evidence of Shri. Fadnavis could not be recorded.

13. I have carefully considered the rival contentions. Section 6 of the PC Act, 1947 prohibits a Court from taking cognizance of an offence by a public servant under the Act without the previous sanction of the authority competent to remove such public servant. The section itself does not prescribe any mode for proof of such a sanction. Illustration (e) to Section 114 of the Evidence Act provides for a presumption that all official acts have been regularly performed. Yet a body of judgment law has evolved over a period of time requiring that authority which accorded sanction is examined before the Court. A statement by such person before the Court that he applied his mind and then accorded sanction is not conclusive of the matter and Courts are required to find out if the authority had indeed applied its mind and then accorded sanction. Sub-section (3) of Section 19 of the PC Act, 1988 provides that an error, omission or irregularity in the sanction would not warrant reversal of a finding unless it occasioned failure of justice. This provision is inapplicable to the case at hand, since the case pertains to events prior to the coming into force of the 1988 Act. In this context the question that arises would be whether on non availability of authority competent to sanction prosecution the matter must be relegated back to square one, since judicial precedents show that when prosecution is launched without sanction, it is no prosecution at all, enabling the authority to accord a fresh sanction and launch a fresh prosecution. Such a course would be more vexatious for the appellants rather than the State, since they would be relegated to the year 1982 30 years backwards. Apart from this, there are two reasons why in the present case, sanction must be presumed to have been accorded after due application of mind. Vide application Exhibit-94, the Addl. PP had called upon the parties to admit genuineness of documents. The sanction by Shri N.K. Phadnavis is at serial No. 20 in the list annexed. On behalf of appellant Nos. 2, 3 and 4 there are endorsements dated 8-1-1991 to show that they had admitted the documents except those at serial Nos. 26 and 28. Accused No. 1 had not admitted this document. Even in reply to question No. 133 in his statement u/s 313 appellant No. 1 had stated that contents of all documents included in that question were false. But on behalf of appellant No. 1, PW-30 I.O. Shri Naik, who stated that he had received from the concerned departments sanction to prosecute the accused persons (including appellant No. 1), was not at all cross examined. Secondly, appellant No. 1 is being prosecuted and has been convicted for offences punishable under Sections 420, 467, 468 and 471 r/w Section 34 of the IPC as well. The cheating or forgery allegedly committed by appellant No. 1 could, by no stretch of imagination, be held to have been committed in discharge of duties by appellant No. 1. Offence punishable u/s 5(2) r/w Section 5(1)(d) of the PC Act is only incidental to the offences of cheating and forgery by which appellant No. 1 enriched himself. Therefore, the absence of sanction may at worst affect appellant No. 1's conviction for offence punishable u/s 5(2) r/w Section 5(1)(d) of the PC Act. Therefore, failure to prove sanction does not

matter and the appeal would have to be decided on merits. It is, therefore, not necessary to refer to judgment of this Court in Jagannath Maruti Tekade Vs. State of Maharashtra, .

14. It may not be inapt to record here that the investigators seem to have unnecessarily complicated the matter by joining together offences independently committed by officials in different departments by invoking provision of Section 120-B of the IPC. The learned trial Judge has rightly acquitted all the accused of charge of conspiracy.

15. With this I have proceeded to examine the record with the help of the learned counsel for the parties. Out of the 30 witnesses examined, PW-28 Shrinivas Phansalkar was the Chief Examiner of Questioned documents who had examined forged bills and orders. His opinion at Exhibit-172 with supporting documents at Exhibits-173 to 189 are the foundation of the case built up against the appellants. The expert had found that several orders, bills are in the writings of appellant Nos. 1 and 2. Some of the cheques encashed also show writings of these appellants on the reverse. The expert also came to similar conclusion about some documents being in the handwriting of appellant No. 3 Gaikwad (who died during the tendency of appeal).

16. The learned counsel for the appellants submitted that opinion of PW-28 Shrinivas Phansalkar was not reliable. They submitted that Phansalkar had admitted in his cross that he did not have any degree/diploma in examination of questioned documents and could not state in how many cases his opinion was accepted/rejected by Courts. He had also admitted that science of identification of hand writing is not perfect and that many times there are conflicting opinions by experts. As rightly pointed out by the learned APP there is nothing wrong in what the witness stated. She pointed out that the witness had duly established his credentials by stating that he had experience of 27 years in examining documents. I have also gone through elaborate cross-examination of this witness and find that there is nothing to impeach his opinion.

17. The learned counsel for appellant No. 1 submitted that evidence of handwriting expert in itself could not be sole evidence to base conviction. For this purpose she relied on a Judgment of the Supreme Court in Magan Bihari Lal Vs. The State of Punjab, , followed by a learned single Judge of this Court in Krishnamohan Ananda Saindane Vs. Anilkumar Bherumal Mawani and Another, . In Magan Bihari Lal (supra), in para 7, the Court held as under:

... It is true that B. Lal, the handwriting expert, deposed that the handwriting on the forged Railway Receipt Ex. PW 10/A was that of the same person who wrote the specimen hand writings Ex. PW 27/37 to 27/57, that is the appellant, but we think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a hand writing expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a hand writing expert. There is a profusion

of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in *Ram Chandra and Another Vs. State of Uttar Pradesh*, that it is unsafe to treat expert handwriting opinion a sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in *Ishwari Prasad Mishra Vs. Mohammad Isa*, that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in *Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee* since deceased and after him his legal representatives and Others, where it was pointed out by this Court that expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in *Fakhruddin v. State of M.P.*, AIR 1967 SC 1326 and if uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial.

18. There can be no doubt about this proposition. In view of this, the other evidence in the case would have to be examined to find out if it provides adequate corroboration to the opinion of expert.

19. PWs-29 and 30 are officers who conducted investigation. Evidence of PW-19 Rajendra Ranka and PW-23 Sadashiv Duse about production of two typewriters does not throw much light on the complicity of the appellants. Evidence of PW-25 Raghunath Zumbade is about deceased appellant/accused No. 3 Gaikwad and therefore is not required to be discussed.

20. There are reports to police, Exhibit-45 by PW-1 Shriram Muley of Animal Husbandry Department, Exhibits-102 and 103 by D.R. Limaye of the Treasury, Exhibit-96 by Wagale and Exhibit-103 by D.R. Barve of the Treasury in respect of forgery and cheating by appellant Nos. 1 and 2 of Sales Tax Department. Panchnamas pertaining to typewriter and samples of typewriting at Exhibits-146, 131 and 132, about samples of handwriting at Exhibits-133 to 136 and 143, house search of the accused, Exhibit-142, seizures Exhibits-147 and 148 have been perused. They show the steps taken in course of investigation.

21. PWs-8 V.D. Sant, 9 Sharad Kulkarni, 12 Vilas Wagh, 13 Shrikrishna Natekar and 22 Vimal Nirgudkar from the Sales Tax Department state that they had not sought advances/withdrawals from their GPF accounts and that they are not P.H. Sant, P.V. Kulkarni, N.V. Wagh, N.V. Natekar or S.R. Nirgudkar respectively for whom withdrawals were made. PW-10 Shankar Wavale from the Sales Tax Department states that bills for withdrawal of Rs. 6,500/- (2) for Shri P.H. Sant

and Rs. 5,000/- for P.V. Kulkarni are not in his hand. Three employees from the Treasury, PW-4 Gandhi, PW-5 Takale and PW-7 Vinaya Naik state about enquiries made by the accused persons about cheques. PW-18 Smita Deshpande states having made payment of cheque Exhibit-91 for Rs. 3,600/- to one Shinde who produced the token. PW-7 Ramani working with the office of the Accountant General had produced seven cheques (including the one at Exhibit-88) before the investigating officer.

22. The evidence of these witnesses would show that persons for whom amounts were shown to have been withdrawn were not at all working in the Sales Tax Department. Persons working in the Department sharing the same surnames had account numbers which did not tally with fictitious account numbers from which amounts were withdrawn and that these persons had not received any amounts. As rightly submitted by the learned APP, this would show that forged and fabricated bills were submitted to the Treasury. However, the learned counsel for the appellants wondered as to how this evidence could point to first appellant's complicity in these forgeries.

23. As far as appellant No. 2 Ramesh Kharatis concerned, there is also evidence of PW-26 Pramod Ghangale who stated that he was working as a Clerk in the State Bank of India and in February, 1980 had received a cheque for Rs. 11,630/- (Exhibit-101) from a person and had handed over a token to the person. He then passed on the cheque to the other officials for being cleared for payment. This officer Shri Bapat had told him to ask the person presenting the cheque to see Bapat. Accordingly, the person was directed to see Bapat. The person went away with the token and never returned. The witness identified the person to be appellant No. 2. Prior to that the witness stated that he had been called to identify the person at test identification parade and that he had identified appellant No. 2 at the test identification parade. The learned Magistrate who conducted the parade had expired and so could not be examined. But a panch at the parade Jalinder was examined as PW-27. The learned counsel for the appellants submitted that PW-26 Pramod had stated in his cross that he knew appellant No. 2 who had come previously for collecting cheque amounts. This, as rightly submitted by the learned APP, does not diminish the value of the test identification parade or identification of appellant No. 2 by the witness. Several persons come to Bank for withdrawing amounts and Bank staff would know the persons who withdraw/deposit amounts in the sense that they would be able to identify them. That does not mean that merely because witness had seen appellant No. 2 receiving moneys in the past too he could have named appellant No. 2 obviating need of a test identification parade. There is no infirmity in this evidence.

24. This evidence would, according to the learned APP, receive corroboration from that of PW-24 Ramchandra Najan, a panch at the failed attempt to find the token allegedly thrown by appellant No. 2 in a canal. The learned counsel for appellant No. 2 may be right in submitting that since nothing was seized/

discovered, the evidentiary value is greatly reduced. All the same this attempt only shows that the investigating officer did try to secure the token.

25. In any case, in my view, identification of appellant No. 2 by PW-26 Pramod as the person who presented cheque Exhibit-101, would corroborate the opinion of handwriting expert PW-28 Phansalkar, that cheque Exhibit-101 bears the writing of appellant No. 2 on the reverse which is marked as D-39 and D-40 and that the writing marked as R-35 is not of Wagale (not examined as witness) whose writing should have been found on Exhibit-101 if it was to be an official withdrawal. D-39 and D-40 are the signatures in the name of P.V. Date. There is an endorsement above these signatures, as also forged signature R-35 to the effect that payment was received through P.V. Date whose signature was attested. This endorsement was found by the handwriting expert to be in the handwriting of appellant No. 1 Pawar. On the bill Exhibit-97 too there is signature in the name of Wagale which is marked as R-1. The expert found that this too was not in the handwriting of Wagale. The expert however did not state that signatures R-1 or R-35 on Exhibits-97 and 101 were in the handwriting of appellant No. 1 or 2. This shows that his opinion is unbiased and he has held the appellants responsible for the writings which he found to be those of the appellants.

26. The opinion about complicity of appellant No. 1 receives corroboration from the evidence of PW-12 Vilas Wagh who states that appellant No. 1 used to come to his office to see appellant No. 2. While PW-4 Dhanyakumar from the Treasury stated that appellant No. 1 used to visit to enquire about the cheque, PW-5 Dashrath, also from the Treasury, states about visits of appellant No. 1. The learned counsel for the appellants submitted that this evidence may be discarded as the witness stated that they had seen the appellant while under investigation. Though it would have been ideal same this attempt only shows that the investigating officer did try to secure the token to parade even appellant No. 1 at test identification parade, given the nature of allegations, this lapse may not matter. As rightly submitted by the learned APP, a forger would not commit forgery in presence of others. Opinion of the handwriting expert is shown to be objective and cross for the appellants does not show that the opinion could not have been formed. This, coupled with evidence about contacts of appellant Nos. 1 and appellant No. 2 and appellant No. 1's unwarranted visits to Treasury would indicate appellant No. 1's complicity as well.

27. Similar are the findings about Exhibit-84, cheque for Rs. 5,860/- on which endorsement to pay is in the handwriting of appellant No. 1 and the specimen signature attested is that of appellant No. 2. It is not just one such document but there are several other documents like Exhibits-98, 100, 109, 110, 111, 112, 113, 114 and 115. Sanction orders have handwriting of appellant No. 1 (Writings marked as N/3 to N/5, N/19, N/24, N/25, N/28, N/29, N/31, N/34, N/35, N/36, N/37, N/38, N/39 in the expert's evidence). The pattern that emerges is that appellant No. 1 used to forge writings on orders and endorsements on cheques

and appellant No. 2 used to carry cheques for encashment.

28. Evidence about forgery and cheating in Animal Husbandry Department, where appellant No. 4 Rajendra Wagh worked, comes from PW-1 Muley, who gave report Exhibit-45, PW-2 Dhanve who was the first to learn about bills not officially presented being passed by Treasury, PW-3 Kukde, Deputy Director under whom appellant No. 4 worked and who made available writings of appellant No. 4 and PW-21 Somnath, all from the Animal Husbandry Department; PW-4 Dhanyakumar from the Treasury who states about appellant No. 4 making enquiries about cheques; PWs-14 to 16, Joshi, Meera Dongre, Suresh Shah, from the State Bank who state having made payments, but do not state having paid amounts to appellant No. 4. Witnesses from the Animal Husbandry Department state that persons in whose names amounts were withdrawn were not employed in the Department. However, significantly the evidence of handwriting expert does not show that any of the disputed writings are in the hand of appellant No. 4. Many of those writings were in the hand of deceased appellant No. 3. However, unlike the pair of appellant No. 1 and appellant No. 2 where appellant No. 1 forged and appellant No. 2 presented cheques to Bank, there is nothing about appellant No. 4 being identified as having presented any cheque. Therefore, the learned counsel for appellant No. 4 may be right in submitting that there is really no clinching evidence against appellant No. 4.

29. The learned counsel for the appellants submitted that the culprits may in fact be some others since officials in the Treasury should have known that officers who are shown to have signed orders could not have sanctioned nonrefundable advances/withdrawals from the GPF. They also submitted that bills were passed without DDO Code and significantly the bill/token registers were not produced at trial. However, as rightly submitted by the learned APP, failure to trace out others involved does not absolve the appellants. Also non-examination of complainant Wagle from the Sales Tax Department or Treasury Officer Barveis not significant, since those complaints at Exhibits-96 and 103 only reported fraud.

30. To sum up, as far as appellant Nos. 1 and 2 are concerned, the evidence disposes that:

- (a) appellant No. 1 forged entries on orders and endorsements on cheques,
- (b) appellant No. 2 presented the cheques and was caught and identified while presenting one such cheque,
- (c) appellant Nos. 1 and 2 used to meet each other,
- (d) they used to enquire about the cheques.

Therefore it cannot be said that the learned trial Judge erred in concluding that appellant Nos. 1 and 2 indulged in cheating and forgery for cheating. Since sanctions to prosecute appellant No. 1 for the offence punishable u/s 5 of the PC Act is not proved, he could not have been convicted for the said offence. Since

appellant No. 2 had caused a token to be thrown in canal after State Bank of India officials had questioned him, his conviction for the offence punishable u/s 201 also has to be upheld.

31. As far as appellant No. 4 is concerned, the evidence to connect him to the crime is deficient and benefit of doubt ought to be extended to him.

32. I have also considered the sentences imposed upon the appellants. Sentence of RI for 3 years for forgery and cheating cannot be called excessive. Considering the fact that appellant Nos. 1 and 2 had been defrauding the Treasury, though the incident is 30 years old and appellant Nos. 1 and 2 are living in the shadow of conviction for the last 20 years, exemplary sentence is called for and so there is no case for reduction of sentence.

33. In view of this, the appeal is partly allowed. Conviction and sentence of appellant No. 4 Rajendra Wagh for all the offences is set aside and he is acquitted of those offences. Conviction of appellant No. 1 Vitthal Pawar for the offence punishable u/s 5(2) r/w Section 5(1)(d) of the PC Act and sentence imposed for that offence is set aside. His conviction for the offences punishable under Sections 420, 467, 468 and 471 of the IPC and sentence imposed for those offences, as also conviction of appellant No. 2 Ramesh Kharat and sentences imposed on him for all the offences are maintained. The sentences shall run concurrently.

34. Appellant Nos. 1 and 2 shall surrender to their bail in four weeks and if they do not, the learned Special Judge shall have them arrested and sent to prison to serve their sentences, after giving them set-off for the period of detention, if any, as per rules.