

IN THE COURT OF SH. ABHISHEK GOYAL, ADDITIONAL
SESSIONS JUDGE-03, CENTRAL DISTRICT, TIS HAZARI
COURTS, DELHI

CNR No.: DLCT01-015297-2022
CRIMINAL APPEAL No.: 239/2022

SHRI. SURENDER AGGARWAL,
S/o. Late Shri. Chaman Lal,
R/o. A-533, Shastri Nagar,
Delhi-110052.

... APPELLANT

VERSUS

1. **SHRI. KRISHAN LAL,**
S/o. Shri. Nar Singh Dass,
R/o. E-2/245, Shastri Nagar,
Delhi.
2. **SHRI. GAURAV GUPTA,**
S/o. Shri. Krishan Lal,
R/o. E-2/245, Shastri Nagar,
Delhi.
3. **SHRI. VISHAL GUPTA,**
S/o. Shri. Krishan Lal,
R/o. E-2/245, Shastri Nagar,
Delhi.
4. **STATE,**
Through SHO,
PS. Sarai Rohilla.

... RESPONDENTS

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Date when judgment is pronounced	:	30.06.2026

JUDGMENT

1. The present appeal has been filed under Sections 372/378 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C./Code'*)/*pari materia* with Sections 413/419 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as 'BNSS'*) against the judgment dated 08.07.2022

(*hereinafter referred to as 'impugned judgment'*), passed by learned Metropolitan Magistrate-04/Ld. MM-04, Central, Tis Hazari Courts, Delhi (*hereinafter referred to as the 'Ld. Trial Court/Ld. MM'*) in case bearing, '*State v. Kishan Lal & Ors., Cr. Case No. 301961/2016*', arising out of *FIR No. 114/2003, PS. Sarai Rohilla*, under Sections 339/352/380/341/406(2)/420/506 (part-II)/120B/34 of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*), *inter alia* acquitting respondent nos. 1, 2 and 3 of the charges/offence(s) framed/alleged against them, *i.e.*, respondent no. 1 was acquitted of charges under Section 420 IPC and respondent nos. 2 and 3 were acquitted of charges under Sections 323/341/506 (part-II) IPC read with Section 34 IPC, respectively.

2. Succinctly, the case of the genesis of the present proceedings is a complaint under Section 190/200 Cr.P.C. along with application under Section 156(3) Cr.P.C., filed by/on behalf of the appellant/complainant, namely, Surender Aggarwal (*hereinafter referred to as the 'complainant/appellant'*) against respondent nos. 1-3 before the concerned Ld. Metropolitan Magistrate. Markedly, under the said complaint/application, the appellant *inter alia* asserted that respondent no. 1 along with his sons, *i.e.*, respondent nos. 2 and 3, were residing at E-2/245, Shastri Nagar, Delhi-110052 (*hereinafter referred to as the 'premise/property/property in question'*) at the relevant point in time, and operating their business in the name and style of, '*M/s. Kanchan Masala Company*', even from the said premise. As per the appellant, in the first week of October, 2000, respondent no. 1 contacted the appellant and expressed his intention to establish a new masala plant outside Delhi, in order to promote his business

further. Consequently, as per the appellant, respondent no. 1 sought financial assistance/loan to a tune of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) from him/the complainant. It is further the case of the appellant that at that point in time, respondent no. 1 expressed intention to mortgage/execute documents of transfer of the property in question in favour of the appellant. Consequently, being lured/impressed with respondent no. 1's representations, appellant made arrangement for the said amount from private chits committees, loan from his mother and other sources and loaned the said amount of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) in favour of respondent no. 1 (*hereinafter referred to as the 'loan'*). It was further chronicled under the appellant's complaint/application that respondent no. 1 handed over the original chain of title documents of the property in question to the appellant, towards the completion of formalities of the loan transaction. Correspondingly, as per the appellant, respondent no. 1 further executed, Agreement to Sell, Declaration-cum-Acknowledgment, Deed of Will, Receipt and General Power of Attorney, all dated 25.11.2000, in favour of the appellant against the loan transaction. As per the loan terms, as per the appellant, it was agreed between respondent no. 1 and him that respondent no. 1 would pay an interest on the loan at the rate of 2% per annum and eventually pay the loan amount within a period of three years from such execution. As per the complainant, subsequent to such loan transaction, though, respondent no. 1 made payments of installments against the loan amount for a period of four months, however, respondent no. 1 ceased making any payments to the appellant, thereafter.

2.1. Notably, it was further proclaimed by the appellant

under his complaint/application that on 12.04.2001, while he was proceeding towards his business establishment at Anand Parbat Industrial area from his house at Shastri Nagar, he/the appellant was stopped by one Sh. Ram Pal Mittal (since deceased), owner and partner of Aggarwal Sweet House, Shastri Nagar, at his said shop/sweet house. As per the appellant, he was carrying the documents, handed over by respondent no. 1 along with documents pertaining to another shop, executed by Laxmi Devi at that point in time, as he intended to keep the said documents in his safe/locker, at that point in time. Correspondingly, it is the case of the appellant that when he stopped at Aggarwal Sweet House, respondent nos. 1 and 3 were also present at the said sweet shop. Congruently, after the said discussion with Sh. Ram Pal Mittal, he proceeded for his/appellant's shop. However, as per the appellant, it was only when he reached at his shop, he realized that the aforesaid documents, which he was carrying on the said day, were missing. Thereafter, when the appellant made efforts to trace the said missing documents, all such endeavors were in vain and even correspondence with respondent no. 1 regarding the said loss, yielded no results. Consequently, considering some foul play, appellant got recorded, a missing report *vide* non-cognizable report no. 330/2001, at the concerned police station. Thereafter, as per the appellant, he requested respondent no. 1 to get the aforesaid documents in respect of the premise, executed again in his favour, in respect of the loan transaction. However, despite persistent assurances, no result was forthcoming from the end of respondent no. 1. It is further the case of the appellant that in order to dissuade him/the appellant from seeking refund of the loan amount, respondent no. 1 got him/the appellant, criminally intimidated

through his relatives, family members, brother, etc., besides also subjected the appellant to filthy language and abuse. Correspondingly, on 09.12.2002, as per the appellant, when he/the appellant was returning to Anand Parbat, his car was stopped by respondent nos. 2 and 3, besides both the said respondents threatened, abused, manhandled the appellant as well as beat him up. Consequently, under said facts and circumstances, the appellant filed a complaint before the concerned police officials. However, as per the appellant, since no action was taken by the concerned police officials, the appellant approached the concerned Ld. Metropolitan Magistrate, by means of the aforementioned complaint/application.

2.2. Remarkably, *vide* order dated 18.02.2003, concerned Ld. Metropolitan Magistrate, disposed of the appellant's application under Section 156(3) Cr.P.C. with the direction to the concerned SHO/police officials to register FIR. Consequently, pursuant to the aforesaid directions, the instant FIR came to be registered, and investigation ensued. Markedly, during the course of ongoing investigation, the concerned IO is asserted to have contacted with the appellant, who proclaimed that the original documents relating to the present case were deposited by him before the Hon'ble High Court of Delhi. However, subsequently, the appellant furnished photocopies of the documents, asserted to be executed by respondent no. 1 in his favour. Thereafter, respondent no. 1 was joined in the investigation and his specimen signatures were obtained by the concerned IO. However, as per the prosecution/IO, no result on comparison of said documents could be obtained from the forensic department for the want of original documents. Consequently, the IO made another endeavor to have

the documents verified, however, to no avail. Subsequently, statements of various witnesses were recorded, other documents/material, etc., were seized and upon conclusion of the investigation, the instant chargesheet came to be filed before the Ld. Trial Court. Relevantly, upon such chargesheet being filed, Ld. Trial Court *vide* order dated 03.10.2006, took cognizance of offences under Sections 420, 323, 341, 34 IPC and issued summons against the accused persons/respondent nos. 1-3 *inter alia* noting as under;

“*** The present charge sheet has been filed against all the three accused persons in respect of offences u/s 323/341/34 IPC. The FIR was registered in the present case on 8.4.03 whereas the challan has been filed only on 18.8.06 i.e. after more than three years from the date of registration of FIR. In the present case, accused have been sent up for trial in respect of offences u/s 323/324/34 IPC which are punishable for period not exceeding one year. That being so, section 468 Cr.P.C. enjoins upon the prosecution to file the challan in such like cases within a period of one year and in case of delay in filing the challan beyond the prescribed period of limitation, Court cannot take cognizance against accused persons in respect of such offences. However, SHO PS Sarai Rohilla submits that charge sheet could not be filed inadvertently and due to the reasons mentioned in the application for condonation of delay which has been moved

*I have given my thoughtful consideration to the
respectful submissions made and material on record.*

*During investigation, IO did not find any evidence against either of the said three accused persons in respect of offences mentioned hereinabove **except for offences u/s 323/341/34 IPC**. However, after going through the material placed on record by IO, **Court does not agree with the submissions made**. Reason being that complainant has specifically alleged that the accused no.1 obtained loan of Rs.25 lacs from him and executed transfer documents in respect of property bearing no. 2/245 Shastri Nagar, Delhi in favour of complainant which persuaded the complainant to release such huge loan of twenty five lacs to the accused persons who with their common*

intention, played fraud upon the complainant by cheating him by not returning the said amount and also by not executing the documents again in favour of complainant as the complainant had lost the said documents on 12.4.01 in respect of which necessary police complaint no. 330/01 is purported to have already been lodged with PS Sarai Rohilla. On record, the copies of documents allegedly executed by the accused in favour of complainant in respect of such property are on record. It is also on record that complainant has already filed one civil suit against the accused on the basis of said documents which is pending trial before Hon'ble High Court. Further, one mortgage without possession deed dated April 2003 purportedly executed by accused in favour of M/s Associates India Financial Services Ltd is also on record which is in respect of same property bearing No. E-2/245 Shastri Nagar, and according to said deed, Delhi which has been mortgaged by accused with one M/s Associates India Financial Services Ltd. for procuring a sum of Rs. 20,70,000/- on the basis of said property claiming therein that said property is free from all encumbrances. That being so, **Court finds sufficient material against all the three accused persons in respect of offence u/s 420 IPC also which is punishable with imprisonment up to 7 years and fine. Hence, I take cognizance against all the three accused persons in respect 420/323/341/34 IPC. As the cognizance has been taken for offence u/s 420 IPC also, therefore, the present chargesheet filed on 18.8.06 cannot be said to be beyond limitation as prescribed u/s 468 CrPC. Hence, application for condonation of delay is uncalled for and is accordingly disposed of.**

Issue summons to all the three accused through IO for ***"

(Emphasis supplied)

2.3. Subsequently, upon the accused persons'/respondent nos. 1-3's entering appearance before the Ld. Trial Court and on compliance of provisions under Section 207 Cr.P.C., arguments on charge were addressed by/on behalf of the respondent nos. 1-3 as well as by State. Consequently, the Ld. Trial Court *vide* its order dated 26.02.2009, directed framing of charges against the said accused persons/respondent nos. 1-3, *inter alia*, under the following observation(s);

“*** Heard the arguments.

Though the evidence on record regarding the offence u/s. 420 IPC might be very weak, but this is not the proper stage to appreciate the same. However, wear, the evidence may be, but a prima facie case is clearly made out against accused no. 1 u/s. 420 IPC. However, there is no evidence regarding the active or passive involvement of accused no. 2 and 3 in the aforesaid offence and hence, charge u/s. 420 IPC cannot be framed against them.

Now, coming to the offence u/s. 323/341/34 IPC, there are specific allegations that the said offences were committed by accused no. 2 and 3. There is no evidence regarding the active or passive involvement of accused no. 1. Hence, prima facie case u/s. 323/341/34 IPC is made out against accused no. 2 and 3 but not against accused no. 1.

Regarding the offence of theft, there is no recovery at the instance of accused persons. Further, cognizance also has not been taken under the said sections. Hence, no charge u/s. 379 IPC can be framed.

Put up on *** for framing of charge. ***”

(Emphasis supplied)

2.4. Relevantly, against the aforesaid order of charge, respondent no. 1 preferred a criminal revision petition bearing; ‘*Kishan Lal v. State, Crl. Rev. No. 25/2009*’, in terms of the provisions under Section 397 Cr.P.C. Pertinently, the said revision petition was dismissed by the Ld. Predecessor Judge *vide* order dated 01.05.2009, *inter alia* under the following observations;

“*** 6. I have given my thoughtful consideration to the submissions made by the learned counsel for the revisionist/accused no. 1 and Sh. ***, learned APP for the State.

7. At the outset, I find no merits in the contention of Sh. ***, learned counsel for the petitioner/revisionist that learned Metropolitan Magistrate could not have framed charge under section 420 IPC on a complaint wherein the grievance was only in regard to an offence assault under section 323/341/34 IPC. The allegations in the complaint have to be read in toto which would reveal that the complainant parted with a sum of Rs.25 lacs

in favour of the accused persons, who handed over certain documents concerning their premise and later allegedly the accused persons became dishonest and when the complainant persisted with his demands, they stopped him on the way and assaulted him.

8. Further, the plea raised by Mr. *** that in view of the pendency of the civil case in the High Court of Delhi, the present criminal proceedings cannot continue, also does not carry much weight. In the case of *Kamla Devi Aggarwal Vs State of West Bengal*, AIR 2001, Supreme Court 3846, The Apex Court was seized of a matter where the forgery of documents was under its scrutiny in a civil case. The High Court quashed the criminal proceedings by the complainant wherein the same set of documents were in question. Setting aside the order passed by the High Court, it was held that pendency of civil action in a different court, even though higher in status and authority, can not be made basis for quashing of criminal proceedings.

9. In the present case as well, merely because the complainant Surender Aggarwal has instituted a suit for recovery against the accused/revisionist in the High Court, would not ipso facto warrant that criminal proceedings be not continued.

10. In the case *Kamla Devi Aggarwal (supra)*, their lordships cited with the approval an earlier case *Nagawwa Vs Veeranna Shivalingapa* (1976) 3 SCC 736, wherein it was observed that it is to be made clear in mind that civil and criminal proceedings have to be adjudicated and concluded by adopting separate yardsticks. The onus for proving the allegations beyond reasonable doubts in criminal cases is not applicable in the civil proceedings which can be decided merely on the basis of preponderance probabilities with respect to the acts complained of.

11. In the present case, the allegations made in the complaint and the evidence so far collected by the prosecution if taken at their face values, do not lead to an inference that the allegations are patently absurd or unfathomable or inherently improbable. Prima facie the evidence collected by the prosecution suggests that the complainant parted with sum of Rs.25 lacs. Though the original documents are not in the custody of the complainant, the photocopies are on the record, which need to be probed into during the trial as observed by learned Metropolitan Magistrate. It is well settled that at the stage of framing of charge, mere suspicion is good enough to put the accused on trial.

12. In view of the above, **I find that there is no infirmity, illegality or impropriety in the approach adopted by the learned Metropolitan Magistrate in framing the charge against the accused/revisionist under section 420 IPC.** The revision petition is **dismissed**. Trial court record be sent back along with a copy of this order. Revision file be consigned to record room. ***”

(Emphasis supplied)

2.5. Apposite here to reproduce the charges, consequently framed against respondent nos. 1 to 3 on 08.12.2009 by the Ld. Trial Court, pursuant to the aforesaid order(s), as under;

“**** I, ***, M.M. Delhi do hereby charge you accused **Kishan Lal s/o Late Sh Narsingh Dass** as under:

That in the first week of October, 2000 at time unknown you the above named accused dishonestly induced the complainant Surender Kumar to deliver a sum of Rs. 25 lacs under the garb of executing documents of transfer with respect to property no. E-2/245, Shastri Nagar, Delhi and thereby you committed an offence punishable U/s 420 IPC and within my cognizance.

Further, both of you accused Vishal Gupta and Gaurav Gupta both sons of Kishan Lal on 9.12.02 rear Anand Parbat at an unknown time in furtherance of your common intention wrongfully restrained and manhandled the complainant Surender Aggarwal and you also threatened to kill him with an intent to cause alarm to him and thereby both of you committed offences punishable U/S 323/341/506-11/34 IPC and within my cognizance.

And I hereby direct that you be tried by this Court on the above said charge. **”**

(Emphasis supplied)

2.6. Significantly, during the course of trial, prosecution examined 10 (ten) witnesses/prosecution witnesses, who deposed in their respective testimonies, regarding the following;

Prosecution witness no.	Particulars of the witness	Description
PW-1	SI Rajender Singh	Duty Officer/DO, posted at PS. Sarai Rohilla on 08.04.2003, who <i>inter alia</i> proclaimed that on 06:00

		p.m., on the said day, on receipt of complaint of Surender Aggarwal/appellant from the concerned SHO, he registered the FIR no. 114/2003 (present FIR) and handed over the same to SI Om Prakash for further investigation.
PW-2	Surender Aggarwal	Complainant/appellant herein who <i>inter alia</i> avowed regarding the present incident and role of the accused persons/respondent nos. 1-3. Correspondingly, the complainant correctly identified the said accused persons/respondent nos. 1-3 before the Ld. Trial Court.
PW-3	Ashok Aggarwal	Testified as eyewitness to the execution of the documents in relation to property bearing no.; E2/245, Shastri Nagar Delhi by respondent no. 1 in favour of the complainant/appellant. Further, PW-3 correctly identified the accused persons/respondent nos. 1-3 before the Ld. Trial Court.
PW-4	ASI Jai Prakash	Deposed <i>inter alia</i> regarding him joining the investigation of the present case along with SI Om Prakash and visiting the house of respondent no. 1 on 18.08.2003. Further, as per PW-4, IO obtained the specimen handwriting and signatures of respondent no. 1 on the said date.
PW-5	ASI Sukhbir Singh	Deposed regarding him/PW-5's having witnessed the appellant's/complainant's handing over photocopy/certified copies of documents pertaining to property bearing no.; E2/245, Shastri Nagar Delhi to IO/SI Om Prakash.
PW-6	ASI Ishwar Singh	Deposed <i>inter alia</i> regarding him/PW-6's collecting the CFSL report in the present case on the instruction of DO, PS. Darya Ganj and handing over the same to the IO.
PW-7	ASI Beant Kumar	Deposed regarding him/PW-5's having witnessed the appellant's/complainant's handing over photocopy copies of documents pertaining to property bearing no.; E2/245, Shastri Nagar

		Delhi to IO/SI Om Prakash on 28.10.2003.
PW-8	SI Ram Avtar	Testified that on 12.06.2004, he/PW-8 was posted as MHC(M), PS Sarai Rohilla and that he handed over two sealed envelopes, containing the seal of 'OP' to Ct. Rajender and RC having number 78/21/2004 for their submission at FSL, Kolkata. Thereafter, as per PW-8, Ct. Rajender went to Kolkata and deposited the envelope to FSL, Kolkata and on return to the police station, handed over copy of RC to him/PW-8.
PW-9	SI (Retd.) Dinesh Prasad Yadav	Deposed <i>inter alia</i> of him having recorded the statements of witnesses, including the supplementary statement of the complainant/appellant herein and on conclusion of investigation of him/PW-9's filing the chargesheet before the Ld. Trial Court.
PW-10	SI (Retd.) Om Prakash	Investigating Officer/IO in the present case, who <i>inter alia</i> deposed of the investigation conducted by him.

2.7. Pertinent to note here that the aforementioned witnesses/prosecution witnesses further exhibited/attested/proved the following documents/material objects, during the course of their respective evidence;

Exhibit no./Material objects	Description of Exhibit	Proved by/Attested by/Exhibited by
Ex. PW1/A	Copy of FIR No. 114/2003, PS. Sarai Rohilla.	PW-1/ SI Rajender Singh
Ex. PW2/A	Complaint under Section 190/200 Cr.P.C. along with application under Section 156(3) Cr.P.C., filed by the appellant.	PW-2/Surender Aggarwal
Ex. PW2/B	Seizure memo of photocopy of GPA, Agreement to Sell, Deed of Will, acknowledgment, receipt of property bearing no.; E2/245, Shastri Nagar Delhi.	PW-2/Surender Aggarwal
Ex. PW4/A	Seizure memo regarding specimen of handwriting and	PW-4/ASI Jai Prakash

	signatures of respondent no. 1/Kishan Lal.	
Ex. PW7/A	Seizure memo of handing over of copies of documents relating to property in question by the complainant/appellant to the IO.	PW-7/ASI Beant Kumar

2.8. Markedly, subsequently, to the conclusion of prosecution evidence on 22.02.2020, separate statements of the accused persons/respondent nos. 1-3 were recorded on 27.02.2020, wherein all the said accused persons opted to lead evidence in their defence. Consequently, respondent no. 1/Kishan Lal adduced himself in defence as DW-1. Thereafter, upon conclusion of defence evidence, arguments were addressed by/on behalf of the State/respondent no. 4 as well as the accused persons/respondent nos. 1-3. Consequently, on conclusion of said arguments, as aforementioned, Ld. Trial Court *vide* impugned order/order dated 08.07.2022, acquitted the accused persons/respondent nos. 1-3 of the charges alleged against them.

3. Ld. Counsel for the appellant submitted that the impugned judgment was passed by the Ld. Trial Court on mere conjunctures, surmises and in contravention of the settled principles of law, deserving the same to be set aside at the outset. As per the Ld. Counsel, the impugned judgment is incorrect both on facts as well as in law, making the same untenable in law. It was further submitted that the Ld. Trial Court erred in not appreciating the facts and circumstances of the present case, nor the submissions made, before erroneously proceeding to acquit the accused persons/respondent nos. 1-3. Further, as per the Ld. Counsel, in case the impugned judgment is permitted to stand, grave injustice and irreparable loss would ensue to the appellant. It was further submitted that the Ld. Trial Court erred in observing that the case of cheating has not been made out against respondent

nos. 1-3 in as much as the prosecution has not been able to prove said accused persons' *mens rea* to defraud at the time of entering into agreement. However, as per the Ld. Counsel, mere payment of interest on the principal amount does not, in any manner, deviate from the assertion that the intention of respondent nos. 1-3 was to cheat/defraud the appellant, right from the inception. On the contrary, it was argued that the mere denial of mortgage transaction by respondent no. 1 clearly exhibits, accused persons' intention to cheat the appellant, right from inception of their interaction. As per the Ld. Counsel, respondent nos. 1-3's intention to deceive the appellant is made out from the very fact that between the first meeting of said parties in the month of October, 2000, and the eventual agreements' execution on 25.11.2000, respondent no. 1, with utter malafide, dishonest and fraudulent intention, got registered a non-cognizable report, alleging loss of original title documents by the appellant on 11.11.2020 and further got published, an advertisement to the same effect. Ergo, it was submitted that there was no reason for respondent no. 1 to have undertaken any such action, even prior to the handover of original documents to the appellant, in case his intention was not dishonest/to defraud the appellant, which fact, was not considered by the Ld. Trial Court while acquitting respondent nos. 1-3.

3.1. Ld. Counsel for the appellant further submitted that while passing the impugned order, Ld. Trial Court further did not consider that respondent no. 1's *mens rea* for the offence under Section 420 IPC is further established from the fact that despite the existence of an interim injunction by the Hon'ble Delhi High Court in appellant's suit bearing no. 257/2003 *vide* order dated

03.02.2003, respondent no. 1 proceeded to mortgage the property in question for availing a loan, in blatant contempt of the said directions. It was contended by the Ld. Counsel that the Ld. Trial Court erred in observing that the source of loan amount, paid in cash was questionable and prosecution failed to show documentary proof in support of payment to respondent no. 1. In this regard, it was submitted that the amount in question was merely Rs. 25,00,000/- (Rupees Twenty Five Lakhs only), being not such a huge amount, existence of which was required to be proved by the appellant independently, especially considering the appellant's stand with respect to his business and multiple sources of income. Even otherwise, as per the Ld. Counsel, the said payment stood proved even from the documentary evidence, in the form of Agreement to Sell, GPA, etc. executed by respondent no. 1 in favour of the appellant. As per the Ld. Counsel, the appellant duly proved the photocopies of the said documents by way of secondary evidence, considering that respondent nos. 1-3 themselves exhibited the NCR No. 330/2001, dated 12.04.2001 regarding the misplacement of said documents as Ex. DW2/A. Ld. Counsel further submitted that the Ld. Trial Court erred in taking adverse inference against the appellant/case of the prosecution for the reason of non-production of ITRs of the relevant period by the appellant during his cross-examination. In this regard, Ld. Counsel vehemently argued that the law does not require books of accounts and earlier returns to be maintained for an infinite period of time. Ergo, considering that more than sixteen years had lapsed between the grant of loan and appellant's cross-examination, as per the Ld. Counsel, drawing of such adverse inference was against all canons of law/justice.

3.2. Ld. Counsel for the appellant further submitted that the Ld. Trial Court erred in observing that there was contradiction between the testimonies of PW-2 and PW-3 in respect of source of funds utilized for grant of loan. In this regard, Ld. Counsel submitted that in so far as the initial answer of PW-2 pertaining to business of *dharamkanta* and sources of income in PW-2's cross examination are concerned, same pertained to a general question, and not particularly the sources of income utilized for the grant of the loan in question. Correspondingly, as per the Ld. Counsel, assertion of PW-3 during his cross examination is inconsequential and does not contradict the version put forth by PW-2 during his testimony. Even otherwise, as per the Ld. Counsel, failure to produce Smt. Bharpai Devi as witness before the Ld. Trial Court ought not to have been read against the appellant's case, considering her age, ailments and inability to appear as a witness during the course of trial. Consequently, Ld. Counsel reiterated that the conclusion drawn by the Ld. Trial Court regarding the source of said income is contrary to the facts, proved on record. It was further submitted that the Ld. Trial Court gravely erred in drawing an adverse inference against the appellant's/prosecution's case for non-production of original chain of title documents of the property in question. In this regard, it was argued that the appellant had moved an application seeking permission to place on record original title documents of the premise, however, due to the omission of the Ld. Trial Court, the said application was never taken up before the Ld. Trial Court. Ergo, it was submitted that no fault can be attributed to the appellant in this regard. Even otherwise, the certified copies of the original chain of documents, obtained from Hon'ble Delhi High Court were produced on the

record before the Ld. Trial Court. Nonetheless, it was argued that it is the admitted case of respondent nos. 1-3 that the original chain of documents, relating to the property in question was already handed over by respondent no. 1 to the appellant. Ergo, under such circumstances, even for the loss of original documents, as per the Ld. Counsel, equitable mortgage stands proved in favour of the appellant and the respondents have failed to tender any explanation as to how the original title documents in relation to premise came in possession of the appellant.

3.3. Ld. Counsel for the appellant further strenuously reiterated that the Ld. Trial Court erred in not treating the transaction documents executed by respondent no. 1 in favour of the appellant on 25.11.2000 as proved by way of secondary evidence. As per the Ld. Counsel, the observation of the Ld. Trial Court that the loss of documents was not proved in the present case since the non-cognizable report (NCR) in relation to the same had not been produced in evidence, is completely fallacious and contrary to the record. In fact, as per the Ld. Counsel during the appellant's cross-examination, respondent nos. 1-3 themselves produced/put the said NCR to the appellant, which was admitted as Ex. DW2/A. Correspondingly, it was submitted that the Ld. Trial Court failed in considering that the appellant's case was supported by the documents dated 25.11.2000 and the original chain of documents handed over by respondent no. 1 to the appellant, the delay, if any, in initiating the present criminal proceedings is inconsequential and immaterial. Further, as per the Ld. Counsel, even as far as the charges under Section 323/341/506(II)/34 IPC are concerned, Ld. Trial Court failed to appreciate that the statement of the appellant was quite lucid and

bore no ambiguity. In this regard, it was submitted that since the appellant stood in the position of an injured person, his testimony stood at a higher footing than an ordinary witness. Ergo, as per the Ld. Counsel, mere absence of independent eyewitnesses is not sufficient to belie the case put forth by the prosecution against the accused persons. Correspondingly, as per the Ld. Counsel, mere absence of an MLC is also irrelevant in as much as it is not the case of the appellant that he physically hurt to such an extent so as to require any admission in Hospital. Ld. Counsel further reiterated that the Ld. Trial Court erred in acquitting respondent nos. 1-3, despite explicit role being attributed *qua* the said accused/respondents by the appellant in his deposition. Further, as per the Ld. Counsel, in the facts and circumstances brought forth, the prosecution has established the guilt of accused/respondent nos. 1-3 beyond reasonable doubt, despite which, the Ld. Trial Court wrongly acquitted the said accused/respondents. Ergo, Ld. Counsel strenuously reiterated that the impugned judgment is totally illegal, unjustified and erroneous, besides, inconsistent with settled judicial dictates/disciplines. As per the Ld. Counsel, the impugned judgment ignores material facts and circumstances and the Ld. Trial Court, did not apply his judicial mind while reaching a finding of acquittal of respondent nos. 1, 2 and 3 from allegations levelled against them. Accordingly, it was entreated that the impugned judgment be set aside in so far as it acquits respondent nos. 1, 2 and 3 of the charges levelled against them and the said respondents be convicted and sentenced, as per law. In support of the said contentions, reliance was placed upon the decisions in; ***Mohd. Abdullah Azam Khan v. Nawab Kazim Ali Khan, 2023 (1) ADJ 439; K.J. Nathan v. S.V. Maruty Reddy &***

Ors., AIR 1965 SC 430; Satyam Kumar Sah v. Narcotic Control Bureau, 2019 SCC Online Del. 8409; Brij Mohan v. State, Crl. Appeal No. 562/2001, dated 11.09.2009 (DHC); Firasat Hussain v. State (GNCT of Delhi), 2018 (167) DRJ 165; Rehman v. State, 2018 (8) AD (Delhi) 660; Dhananjay Singh Bhadoria v. State, 2011 (3) JCC 2256; and Surejeet Kaur v. Nachhattar Singh, 2000 SCC Online P&H 935.

4. *Per contra* Ld. Addl. PP for the State/respondent no. 4 submitted that the impugned judgment was passed by the Ld. Trial Court after due appreciation of the facts and circumstances of the case as well as in consonance with the settled judicial precedents. Concomitantly, it was submitted by the Ld. Addl. PP for the State no grounds for any indulgence or relaxation are made out by the appellant. Accordingly, Ld. Addl. PP for the State submitted that the present appeal deserves to be dismissed at the outset.

4.1. Ld. Counsel for respondent nos. 1 to 3, while supplementing the arguments of Ld. Addl. PP for the State, argued that no irregularity can be attributed to the impugned judgment, which was passed by the Ld. Trial Court after due consideration of facts and circumstances as well as the material brought on record. Ld. Counsel for the respondents further submitted that in the instant case, the prosecution has not only failed to adduce proof of income of loan allegedly extended, execution of alleged documents or even the loss of original documents, as otherwise alleged by the appellant. Correspondingly, the prosecution even failed to bring on record, the evidence and/or documents, which were alleged to be in the possession of the appellant. On the contrary, as per the Ld. Counsel, the instant proceedings were initiated by the appellant solely to usurp the property/property in

question, belonging to respondent no. 1 as well as to wriggle out of his own criminal acts of forgery/fabrication of documents. Even otherwise, the appellant conveniently stated that he lost a set of property documents, which were forged by him, however, continued to retain other set of documents allegedly relating to the said transaction. It was further submitted that under the NCR/Ex. DW2/A, there is no specification of loss of alleged documents, despite the fact that the appellant is a persistent litigant and aware of the nuances of law. On the contrary, as per the Ld. Counsel, such conduct of the appellant is demonstrative of the fact that appellant initiated the present case solely to harass the respondents and deprive them of their rightful claims to the property in question. In fact, as per the Ld. Counsel, respondent no. 1 forthwith got registered NCR regarding the particulars of handing over of the original title documents with the appellant and their loss by the appellant, to the prejudice of the respondents.

4.2. Ld. Counsel for respondent nos. 1-3 further submitted that the appellant has failed to explicate the delay in filing the instant proceedings. In this regard, it was submitted though as per the appellant's own case, the documents relating to the property in question was allegedly lost by him on 12.04.2001, however, the instant proceedings were initiated only after a lapse of a significant period of two years, without any explanation forthcoming. It was further submitted that none of the prosecution witnesses have been able to attribute explicit role against respondent nos. 1-3. In fact, as per the Ld. Counsel, PW-2 and PW-3 have deposed in completely different tangents and irreconcilable manner, belying the allegations against the accused persons. Ergo, it was argued that the appellant/prosecution has been unable to prove charges against

the accused persons, beyond reasonable doubt. As per the Ld. Counsel, the conduct of the appellant in delaying the proceedings in the instant case, clearly demonstrates that she wants to pressurize respondent nos. 1, 2 and 3 to submit to his unlawful demands. Consequently, it was entreated that the present appeal may be dismissed outrightly as grossly malicious. In support of the said contentions, reliance was placed upon the decisions in; *Harmanpreet Singh Ahluwalia v. State of Punjab*, 2009 (7) SCC 712; *Ghurey Lal v. State of U.P.*, (2008) 10 SCC 450; *State of Kerala v. A. Pareed Pillai*, (1972) 3 SCC 661; *Hridaya Ranjan Prasad Verma v. State of Bihar*, (2000) 4 SCC 168; *B. Suresh Yadav v. Sharifa Bee*, (2007) 13 SCC 107; *Hira Lal Hari Lal Bhagwati v. CBI*, (2003) 5 SCC 257; *Lakshmi Sreenivasa Coop. Building Society Ltd. v. Puvvada Rama*, (2018) 9 SCC 251; *A.B. Govardhan v. P. Ragothaman*, (2024) 10 SCC 613; *Manisha Mahendra Gala v. Shalini Bhagwan Avatramani*, (2024) 6 SCC 130; *State of A.P. v. M. Madhusudhan Rao*, (2008) 15 SCC 582; *Amar Nath v. State of U.P.*, 2023 SCC Online SC 1322; *Tharammel Peethambaran v. T. Ushakrishnan*, 2026 SCC Online SC 169; *Basalingappa v. Mudibasappa*, (2019) 5 SCC 418; *Sudir Engineering Co. v. Nitco Roadways Ltd.*, 1995 SCC Online Del 251; *Ishar Dass Malhotra v. Dhanwant Singh*, 1983 SCC Online Del 284; *Sunil Kumar Jain v. Ram Kishan Tokas*, 2025:DHC:11399; *Chaudhuri Janardan Parida v. Prandhan Das*, 1940 AIR Pat. 245; *Kanchan Malhotra v. Yashvir Singh*, 1986 (1) DMC 185; *Bank of India v. Allibhoy Mohammed*, 2008 AIR Bom. 81; *Harripria Debi v. Rukmini Debi*, 1892 (19) Cal. 438 (PC); *N. Shanmugavelu v. S. Gnanasudhakar*, 2021 SCC Online Mad 897; *Kali Charan v. Suraj Bali*, 1940 Legal Eagle (ALD) 12036;

Zaharul Hussain v. Mahadeo Ramji Deshmukh, 1948 ILR (Nag.) 621; Annetta Rajpoot v. Saraswati Gupta, MANU/MP/1815/2012; and Sharda Rani v. Amar Singh, CR-5017-2015, dated 17.02.2016 (P&H).

5. The arguments of Ld. Counsel for the appellant, Ld. Addl. PP for the State/respondent no. 4 as well as that of Ld. Counsel for respondent nos. 1, 2 and 3 have been heard and the record(s), including the Trial Court Record and the written submission/additional written submissions filed by/on behalf of the parties as well as the case laws relied, thoroughly perused.

6. Pertinent to note that in light of the facts and circumstances brought before this Court, the questions that outrightly falls for consideration before this Court are, *‘whether the Ld. Trial Court committed any irregularity and/or impropriety in acquitting the accused persons/respondent nos. 1-3 of the charges levelled against them?’*, in particular, to determine, *‘whether from the material brought forth, finding of guilt of the accused persons for the charges/allegations levelled against them can be reached, beyond reasonable doubt, in the instant case?’*. Relevantly, before proceeding with the determination of the said conundrum, this Court deems it apposite to refer and reproduce the relevant provisions under law/Cr.P.C., as under;

“2. Definitions- *In this Code, unless the context otherwise requires,- *** (wa)¹ “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir; ****

*** *** ***

¹ *Pari materia* with Section 2(y) BNSS, which provides, **“2. Definitions-** (1) *In this Sanhita, unless the context otherwise requires,- *** (y) ‘victim’ means a person who has suffered any loss or injury caused by reason of the act or omission of the accused person and includes the guardian or legal heir of such victim;’* (Emphasis supplied)

372¹. No appeal to lie unless otherwise provided-
No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

(Emphasis supplied)

7. Noticeably, it is seen from a conscientious perusal of the aforementioned provisions that the law explicitly provides that there shall lie, no appeal from any judgment or order of a criminal court, except, “... *as provided for by this Code or by any other law for the time being in force* ...”. Clearly, it is seen from above that a right to appeal is not an inherent right, rather, purely derived out of statutory provisions/statutory right², as conferred by the legislature. In so far as the scope and ambit of the provisions under Section 372 Cr.P.C. (*pari materia* with Section 413 BNSS) is concerned, reference is made to the decision of the Hon’ble Supreme Court in ***Mahabir v. State of Haryana, 2025 SCC Online SC 184***, wherein the Hon’ble Court unambiguously noted in the said context, as under;

“53. Therefore, by the aforesaid provision a right has been created in favour of the victim, which was not existing earlier in the Code, i.e., that a victim shall have a right to prefer an appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation. The plain reading of the statement of objects and reasons for introducing the proviso to Section 372 CrPC makes it clear that it wanted to confer certain rights on the victims. It has been noted

¹ *Pari materia* provisions under Section 413 BNSS provides, “**413. No appeal to lie unless otherwise provided- No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Sanhita or by any other law for the time being in force: *** Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.**” (Emphasis supplied)

² ***Milind Satish Sawant v. State of Maharashtra, 2025 SCC Online Bom 3081.***

therein that the victims are the worst sufferers in a crime, and they don't have much role in the court proceedings. They need to be given certain "rights" and compensation, so that there is no distortion of the criminal justice system. This, by itself, is clear that the **object of adding this proviso is to create a right in favour of the victim to prefer an appeal as a matter of right. It not only extends to challenge the order of acquittal, but such appeal can also be filed by the victim if the accused is convicted for a lesser offence or if the inadequate compensation has been imposed.**"

(Emphasis supplied)

8. Remarkably, it is further seen from a perusal of the proviso to Section 372 Cr.P.C./Section 413 BNSS that the law confers right in favour of a victim to prefer an appeal, as a matter of right, against an order of acquittal of an accused or against an order of accused's conviction for a lesser offence or an order imposing inadequate compensation. Quite lucidly, the right of appeal conferred under the said provision is visibly encompassed and limited therein, and cannot be extended to confer a right, even on a victim to challenge any or all orders of the trial court. In fact, the superior courts have persistently avowed that the right of appeal under Section 372 Cr.P.C. (*pari materia* with Section 413 BNSS) is quite restricted in its scope, provision being self-contained in nature. Reference in this regard is made to the decision of the Hon'ble High Court of Delhi in ***Ashok Malhotra v. State (NCT of Delhi)*, 2019 SCC Online Del 10864**, wherein the Hon'ble Court, noted in the context of foregoing, as under;

"18. A plain reading of the proviso to Section 372 of the CrPC indicates that the **victim also has a right to prefer an appeal against an order passed by the Court in the following circumstances - (a) acquitting the accused; or (b) convicting the accused for a lesser offence; or (c) imposing inadequate compensation.**

19. The proviso to Section 372 of the CrPC **does not contemplate an appeal against an order of a Court imposing an inadequate sentence/ punishment.** It is

well settled that there is no inherent right of an appeal and the said right is a statutory right and is available only if it is conferred by a statute. In several decisions, an appeal has been described as a creature of a statute. (See: Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh, (2014) 9 SCC 102). In National Commission for Women (supra), the Supreme Court had observed that “an appeal is a creature of a statute and cannot lie under any inherent power”. In view of the above, the contention that respondent no. 2 has an inherent right to appeal against an order of a court imposing inadequate punishment on the accused, is unmerited.

20. The proviso to Section 372 of the CrPC provides a limited right to the victim to file an appeal. The plain language of the said proviso indicates that it does not contemplate an appeal against an inadequate sentence.”

(Emphasis supplied)

9. Germane for the purposes of the present discourse to further make a reference to the decision of the Hon’ble Supreme Court in ***Khem Singh v. State of Uttarakhand, 2025 SCC Online SC 1778***, wherein the Hon’ble Apex Court unambiguously noted that a victim has an indefeasible right to prefer an appeal under Section 372 Cr.P.C./Section 413 BNSS, irrespective of his status as a complainant. In fact, the Hon’ble Court noted under the said judgment that even if the victim of an offence is a complainant, he can still proceed under the proviso to Section 372 Cr.P.C. (proviso to Section 413 BNSS) to prefer an appeal on the grounds/reasons encompassed therein, and need not advert to Section 378(4) Cr.P.C./Section 419(4) BNSS. Ergo, in the case as one brought before this Court, where the appellant/complainant has also professed himself to a victim in the hands of the accused persons/respondent nos. 1-3, the present appeal under Section 372 Cr.P.C./Section 413 BNSS, is in the considered opinion of this Court, maintainable. Apposite here to reproduce the relevant extracts from the decision of the Hon’ble Supreme Court in

Khem Singh v. State of Uttarakhand, (Supra.), as under;

“7.1. *** On a reading of the proviso to Section 372 CrPC, it is apparent that a victim shall have a right to prefer an appeal against: (i) any order passed by the court acquitting the accused; or (ii) convicting for a lesser offence; or (iii) imposing inadequate compensation. Such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court. In fact, with effect from 31.12.2009 when clause (wa) to Section 2 CrPC was inserted to the definition of victim, proviso to Section 24 was also added which provides that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under the said sub-section.

9. The right to prefer an appeal is no doubt a statutory right and such a right in an accused against a conviction is not merely a statutory right but can also be construed to be a fundamental right under Articles 14 and 21 of the Constitution. If that is so, then the right of a victim of an offence to prefer an appeal cannot be equated with the right of the State or the complainant to prefer an appeal unless the victim is also the complainant. Hence, the statutory rigours for filing of an appeal by the State or by a complainant against an order of acquittal cannot be read into the proviso to Section 372 CrPC so as to restrict the right of a victim to file an appeal on the grounds mentioned therein, when none exists.

9.1. As already noted, the proviso to Section 372 CrPC was inserted in the statute book only with effect from 31.12.2009. The object and reason for such insertion must be realised and must be given its full effect to by a court. In view of the aforesaid discussion, we hold that the victim of an offence has the right to prefer an appeal under the proviso to Section 372 CrPC, irrespective of whether he is a complainant or not. Even if the victim of an offence is a complainant, he can still proceed under the proviso to Section 372 CrPC and need not advert to sub-section (4) of Section 378 CrPC. ***”

(Emphasis supplied)

10. Proceeding further, this Court now deems it apposite to enunciate the scope of jurisdiction of this Court in an appeal against acquittal. In this regard, this Court it is pertinent to outrightly make a reference to the decision of the Hon’ble

Supreme Court in *Sadhu Saran Singh v. State of U.P.*, (2016) 4 SCC 357, wherein the Hon'ble Court, while delving into the 'scope and ambit' of appellate court's jurisdiction in an appeal against acquittal, *inter alia* noted as under;

*“20. Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate Court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate court in an appeal against acquittal, in *Sambasivan v. State of Kerala* [*Sambasivan v. State of Kerala*, (1998) 5 SCC 412: 1998 SCC (Cri) 1320] has held: (SCC p. 415, para 7)*

7. The principles with regard to the scope of the powers of the appellate Court in an appeal against acquittal are well settled. The powers of the appellate Court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate Court cannot substitute its view in the place of that of the trial Court. It is only when the approach of the trial Court in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate Court can interfere with the order of acquittal.

21. This Court, in several cases, has taken the consistent view that the appellate Court, while dealing with an appeal against acquittal, has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded. If the appellate Court, on scrutiny, finds that the decision of the Court below is based on erroneous views and against settled position of law, then the interference of the appellate Court with such an order is imperative.

*22. This Court in *Chandrappa v. State of Karnataka* [*Chandrappa v. State of Karnataka*, (2007)*

4 SCC 415: (2007) 2 SCC (Cri) 325] after referring to a catena of decisions, has laid down the following general principles with regard to powers of the appellate court while dealing with an appeal against an order of acquittal: (SCC p. 432, para 42)

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court. ***"

(Emphasis supplied)

11. Correspondingly, the Hon'ble Apex Court in **Atley v.**

State of U.P., 1955 SCC Online SC 51, iterated in respect of the foregoing as under;

*“8. ...It is also well settled that the Court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal. If the appellate court reviews the evidence, keeping those principles in mind, and comes to a contrary conclusion, the judgment cannot be said to have been vitiated. (See in this connection the very cases cited at the Bar, namely, *Surajpal Singh v. State* [1951 SCC 1207 : AIR 1952 SC 52]; *Wilayat Khan v. The State of Uttar Pradesh* [1951 SCC 898 : AIR 1953 SC 122]. In our opinion, there is no substance in the contention raised on behalf of the appellant that the High Court was not justified in reviewing the entire evidence and coming to its own conclusions.”*
(Emphasis supplied)

12. Quite evidently, from a conjoint reading of the aforementioned judicial dictates it can be perspicuously deduced that the jurisdiction of this Court in an appeal extends to reappreciation of the entire material placed on record of the trial court and to arrive at an independent conclusion as to whether the said evidence can be relied upon or not. In fact, as aforementioned, court(s), while exercising appellate power is not only required to consider the question of law, rather, also question of facts to affirmatively reach a conclusion of guilt or innocence of an accused. In fact, it is trite law¹ that non-re-appreciation of the evidence on record in an appeal may affect the case of either the prosecution or even the accused. Needless to reemphasize that the appellate court is to be further wary of fact that presumption of innocence of an accused, even extends until an accused is held guilty by the final court of

¹ *State of Gujarat v. Bhalchandra Laxmishankar Dave*, (2021) 2 SCC 735.

appeal. Nonetheless, it is seen from above that in the instances of appeal against acquittal, appellate courts have to be cognizant of the fact that in appeal against acquittal there is ‘*double presumption*’ in favour of the accused, *i.e.*, one of fundamental principle of criminal jurisprudence that every person has to be presumed, innocent unless he is proved guilty by a competent Court of law. Correspondingly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

13. Here, it is further pertinent to note that in cases of appeal against acquittal, the superior courts have repeatedly declared that an appellate court can interfere with an order of acquittal only if it is satisfied, after reappreciation of evidence that the only possible conclusion was that of the guilt of the accused, beyond a reasonable doubt. However, it has been cautioned that an appellate court cannot overturn order of acquittal only on the ground that another view is possible. Reference in this regard is made to the decision of the Hon’ble Apex Court in ***Bhupatbhai Bachubhai Chavda v. State of Gujarat, 2024 SCC Online SC 523***, wherein the Hon’ble Court noted in akin terms, as under;

*“6. It is true that while deciding an appeal against acquittal, the Appellate Court has to reappreciate the evidence. After re-appreciating the evidence, the first question that needs to be answered by the Appellate Court is whether the view taken by the Trial Court was a plausible view that could have been taken based on evidence on record. Perusal of the impugned judgment of the High Court shows that this question has not been adverted to. **Appellate Court can interfere with the order of acquittal only if it is satisfied after reappreciating the evidence that the only possible conclusion was that the guilt of the accused had been established beyond a reasonable doubt. The Appellate Court cannot overturn order of acquittal only on the ground that another view is possible. In other words, the judgment of acquittal must be found to be***

perverse. Unless the Appellate Court records such a finding, no interference can be made with the order of acquittal. The High Court has ignored the well-settled principle that an order of acquittal further strengthens the presumption of innocence of the accused. After having perused the judgment, we find that the High Court has not addressed itself on the main question.”

(Emphasis supplied)

14. Therefore, being cognizant of the aforesaid principles, however, before proceeding further with the determination of the rival contentions of the parties, it would be pertinent to reproduce the relevant provisions under law/IPC, for the purpose of present adjudication, as under;

“34. Acts done by several persons in furtherance of common intention-When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

*** *** ***

319. Hurt-Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

*** *** ***

321. Voluntarily causing hurt-Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt”.

*** *** ***

339. Wrongful restraint-Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception-The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

*** *** ***

341. Punishment for wrongful restraint-Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

*** *** ***

15. Notably, from a perusal of the above, it is observed that the provisions under Section 34 IPC recognize the principle of vicarious liability¹ in criminal jurisprudence, attracting culpability against a person for an act/offence, not committed by him but by another person with whom he shared the common intention. It is trite law² that Section 34 IPC does not provide for a substantive offence, rather, envisages culpability on the part of an accused only upon the proof of two conditions, i.e., “(1) *common intention*, and (2) *participation of the accused in the commission of an offence*.” Quite evidently³, mere common intention on the part of any such accused, *per se* may not attract the provisions under Section 34 IPC, *sans* an action in furtherance thereof. Strikingly, the Hon’ble Supreme Court in ***Ram Naresh v. State of U.P., (2024) 1 SCC 443***, while explicating the contours of the provisions under Section 34 IPC *inter alia* remarked as under;

“7. A reading of Section 34 IPC reveals that when a criminal act is done by several persons with a common intention each of the person is liable for that act as it has been done by him alone. Therefore, **where participation of the accused in a crime is proved and the common intention is also established, Section 34IPC would come into play.** To attract Section 34IPC, it is **not necessary that there must be a prior conspiracy or premeditated mind.** The common intention can be formed even in the course of the incident i.e. during the occurrence of the crime.

11. Assistance has been taken of para 26 of the decision of this Court in *Krishnamurthy v. State of Karnataka* [*Krishnamurthy v. State of Karnataka, (2022) 7 SCC 521: (2022) 3 SCC (Cri) 192*], which is reproduced herein below: (SCC p. 537)

“26. Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between

¹ *Suresh v. State of U.P., (2001) 3 SCC 673.*

² *Nagaraja v. State of Karnataka, (2008) 17 SCC 277.*

³ *Jasdeep Singh v. State of Punjab, (2022) 2 SCC 545.*

the co-perpetrators, which means that there should be community of purpose and common design or prearranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be prearranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens. Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-assailants/perpetrators, object and purpose behind the occurrence or the attack, etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34IPC are satisfied. We must remember that Section 34IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator, resort to Section 34IPC is not necessary as the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts. Section 34 or the principle of common intention is invoked to implicate and fasten joint liability on other co-participants.”

12. A plain reading of the above paragraph of Krishnamurthy case [Krishnamurthy v. State of Karnataka, (2022) 7 SCC 521: (2022) 3 SCC (Cri) 192] reveals that for applying Section 34 IPC there should be a common intention of all the co-accused persons which means community of purpose and common design. Common intention does not mean that the co-accused persons should have engaged in any discussion or agreement so as to prepare a plan or hatch a conspiracy for committing the offence. Common intention is a psychological fact and it can be formed a minute before the actual happening of the

incidence or as stated earlier even during the occurrence of the incidence.”

(Emphasis supplied)

16. Markedly, from the above, it is noted that in the instances where the provisions under Section 34 IPC are proposed to be invoked by the prosecution against an accused, it is not mandatory to demonstrate that there such persons engaged in any prior discussion or agreement so as to prepare a plan or hatch a conspiracy for committing the offence. On the contrary, common intention may be formed at a spur of moment, even during the commission/occurrence of incident, which is to be discernible from the facts of circumstances of each case. Correspondingly, it is also a settled law that for proving formation of common intention by accused persons, direct evidence may seldomly be available, yet, in order to attract the provisions under Section 34 IPC, prosecution is under a bounden duty to prove that the participants had shared a common intention¹. Reference, in regard the foregoing is further made to the decision in ***Virendra Singh v. State of M.P., (2010) 8 SCC 407***, wherein the Hon’ble Supreme Court, elucidated as under;

*“38. The vicarious or constructive liability under Section 34 IPC can arise only when two conditions stand fulfilled i.e. the **mental element or the intention to commit the criminal act conjointly with another or others; and the other is the actual participation in one form or the other in the commission of the crime.***

*39. The common intention postulates the existence of a prearranged plan implying a prior meeting of the minds. It is the intention to commit the crime and the accused can be convicted only if such an intention has been shared by all the accused. **Such a common intention should be anterior in point of time to the***

¹ Hon’ble High Court of Kerala in ***Khalid B.A. v. State of Kerala, 2021 SCC Online Ker 11875***, in this regard, remarked; “72. It is settled law that the common intention or the intention of the individual concerned in furtherance of the common intention could be proved either from direct evidence or by inference from the acts or attending circumstances of the case and conduct of the parties. **Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances.**” *(Emphasis supplied)*

commission of the crime, but may also develop on the spot when such a crime is committed. In most of the cases it is difficult to procure direct evidence of such intention. In most of the cases, it can be inferred from the acts or conduct of the accused and other relevant circumstances. Therefore, in inferring the common intention under Section 34 IPC, the evidence and documents on record acquire a great significance and they have to be very carefully scrutinised by the court. This is particularly important in cases where evidence regarding development of the common intention to commit the offence graver than the one originally designed, during execution of the original plan, should be clear and cogent.

40. The dominant feature of Section 34 is the element of intention and participation in action. This participation need not in all cases be by physical presence. Common intention implies acting in concert.

42. Section 34 IPC does not create any distinct offence, but it lays down the principle of constructive liability. Section 34 IPC stipulates that the act must have been done in furtherance of the common intention. In order to incur joint liability for an offence there must be a prearranged and premeditated concert between the accused persons for doing the act actually done, though there might not be long interval between the act and the premeditation and though the plan may be formed suddenly. In order that Section 34 IPC may apply, it is not necessary that the prosecution must prove that the act was done by a particular or a specified person. In fact, the section is intended to cover a case where a number of persons act together and on the facts of the case it is not possible for the prosecution to prove as to which of the persons who acted together actually committed the crime. Little or no distinction exists between a charge for an offence under a particular section and a charge under that section read with Section 34.”

(Emphasis supplied)

17. Here, this Court deems it further pertinent to observe in the context of the aforesaid provision that the absence of a co-accused by death or evasion (absconding) does not negate the principle of joint liability, if the prosecution proves a common

design amongst such accused. Correspondingly, law is trite¹ that the provisions under Section 34 IPC can be invoked even in those cases where some of the co-accused may be acquitted, provided that it is proved either by direct evidence or inference that the accused and the others have committed an offence in pursuance of the common intention of the group. In so far as culpability under Section 323 IPC is concerned, this Court outrightly records that the essence of the said offence lies in the causation of hurt to a victim by an accused, voluntarily, *i.e.*, intentionally or with knowledge that in the process, hurt would be caused. Significantly, the term, hurt, in turn, is defined under Section 319 IPC as causation of any bodily pain, disease or infirmity to a victim. Quite evidently, disease or infirmity may have external manifestation, however, bodily pain may not be easily perceivable from any medical report. Ergo, it is quite understandable that the superior courts have persistently avowed that in order for conviction under Section 323 IPC to stand, it is not essential for production of an injury/medical report. Reference in this regard is made to the decision in ***Lakshman Singh v. State of Bihar, (2021) 9 SCC 191***, wherein the Hon'ble Supreme Court in unambiguous terms noted as under;

“11. Now so far as the submission on behalf of the appellant-accused that all the appellants were alleged to have been armed with lathis and so far as PW 8 is concerned, no injury report is forthcoming and/or brought on record and therefore they cannot be convicted for the offence under Section 323 IPC is concerned, at the outset, it is required to be noted that PW 8 in his examination-in-chief/deposition has specifically stated that after he sustained injuries, treatment was provided at Government Hospital, Paatan. He has further stated in the cross-examination on behalf of all the accused persons except accused

¹ ***Prabhu Babaji v. State of Bombay, MANU/SC/0103/1955: AIR 1956 SC 51; and Abdul Sayeed v. State of Madhya Pradesh, MANU/SC/0702/2010.***

Dinanath Singh that he sustained 2-3 blows of truncheons. He has also stated that he does not exactly remember that how many blows he suffered. According to him, he first went to Police Station, Paatan along with the SHO of Police Station, Paatan, where his statement was recorded and thereafter the SHO sent him to Paatan Hospital for treatment. Thus, he was attacked by the accused persons by lathis/sticks and he sustained injuries and was treated at Government Hospital, Paatan has been established and proved. It may be that there might not be any serious injuries and/or visible injuries, the hospital might not have issued the injury report. However, production of an injury report for the offence under Section 323 IPC is not a sine qua non for establishing the case for the offence under Section 323 IPC. Section 323 IPC is a punishable section for voluntarily causing hurt. "Hurt" is defined under Section 319 IPC. As per Section 319 IPC, whoever causes bodily pain, disease or infirmity to any person is said to cause "hurt". Therefore, even causing bodily pain can be said to be causing "hurt". Therefore, in the facts and circumstances of the case, no error has been committed by the courts below for convicting the accused under Section 323 IPC..."

(Emphasis supplied)

18. Germane for the present purpose(s) to note that in order to attract culpability under the provisions of Section 420 IPC, prosecution is required to prove the commission¹ of, "(i) *cheating as defined under Section 415 IPC*²; (ii) *dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security, and (iii) mens rea of the accused at the time of making the inducement.*" Here, it is further pertinent to note that as per Section 415 IPC, cheating encompasses, fraudulently or dishonestly inducing a 'person so deceived' to deliver any property to any person, or to

¹ *Binod Kumar v. State of Bihar, 2014 (10) SCC 663* and *Prof. R.K. Vijayasathya v. Sudha Seetharam, (2019) 3 SCALE 563.*

² Section 415 of IPC provides, "Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

consent that any person shall retain any property, or even includes, intentionally inducing a person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived. Quite evidently, in so far as the latter part of Section 415 IPC is concerned, ‘*property*’, at no stage, is involved. In fact, it is the doing of an act or omission to do an act by the person so cheated, as a result of intentional inducement by the accused, which is material. However, even in this regard, law is settled that the damage or harm caused or likely to be caused must be the necessary consequence of the act done by reason of the deceit practiced, or must be necessarily likely to follow therefrom, and the law does not take into account remote possibilities that may flow from the act. In other words, law does not take into account remote possibilities that may flow from the act. Clearly, such damage or harm must be proximate and natural result of the act or omission and does not include vague and contingent injury. Reference in this regard is made to the decision of the Hon’ble Calcutta High Court in *Harendra Nath Das v. Jyotish Chandra Datta*, AIR 1925 Cal. 100, wherein the Hon’ble Court, while iterating similar sentimentalities, remarked as under;

“6. *** Under Section 415 of the Indian Penal Code, the damage or harm caused or likely to be caused must be the necessary consequence of the act done by reason of the deceit practiced, or must be necessarily likely to follow therefrom, and the law does not take into account remote possibilities that may flow from the act [Mojev v. Queen-Empress (1890) I. L. R. 17 Calc. 606]. The proximate and natural result only of the act has to be judged, and not any vague and contingent injury that may possibly arise [Milton v. Sherman (1918) 22 C. W. N. 1001]. The prosecution allege in the present case that the accused used the name of a bogus or non-existent firm, with the object of not fulfilling the contract in the event of the market going up, and as the market did go up he did not supply the jute with the result that Mr.

*Pithie suffered loss. Such remote consequences must, in my opinion, be ignored for the purposes of Section 415 of the Indian Penal Code. ***”*

(Emphasis supplied)

19. Here, it is pertinent to note that in the context of the offence, as specified under Section 415/420 IPC, it is incumbent on the prosecution to prove that the intention to deceive, existed from the stage, when an inducement was made. In fact, it is trite law that to attract culpability for cheating, prosecution must establish from evidence that a person had fraudulent or dishonest intention at the time of making the promise and that mere failure to keep the promise subsequently, has been held by superior courts to not form the sole basis to presume that dishonest intention existed from the very beginning. Reference in this regard is made to the decision of the Hon’ble Supreme Court in ***V. Ganesan v. State, 2026 SCC Online SC 444***, wherein the Hon’ble Court, explicated the law, in following terms;

“13. In order to constitute an offence of cheating the intention to deceive should be in existence when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise. Mere failure to keep the promise subsequently cannot be the sole basis to presume that dishonest intention existed from the very beginning.

14. In Vesa Holdings Private Limited v. State of Kerala (2015) 8 SCC 293: (2015) 3 SCC (Cri) 498: (2015) 189 Comp Cas 580, this court held that every breach of contract would not give rise to an offence of cheating. Only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later, the same cannot amount to cheating. In other words, for the purpose of constituting an offence of cheating, the complaint is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made about failure on part of the accused to keep his promise, in absence of a dishonest intention at the

time of making the initial promise, no offence under Section 420 of IPC is made out.”

(Emphasis supplied)

20. Correspondingly, reference is made to the earlier decision in ***Raju Krishna Shedbalkar v. State of Karnataka, (2024) 14 SCC 791***, wherein the Hon’ble Supreme Court, expressed similar sentimentalities, in the following terms;

“9. A perusal of the aforesaid provision shows that the offence of cheating is in two parts. The first is where a person fraudulently or dishonestly deceives another in inducing that person to deliver any property to any person, etc. The second part of the offence would be made out if somebody is deceived to do an act which causes damage or harm to that person “in body, mind, or reputation or property is said to have cheated”. Time and again, this Court has reiterated that in order to make out an offence under cheating the intention to cheat or deceive should be right from the beginning. By no stretch of imagination, this is even reflected from the complaint made by the informant.

10. In ***Hridaya Ranjan Prasad Verma v. State of Bihar*** [*Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168 : 2000 SCC (Cri) 786*], this Court held as under: (SCC p. 177, para 15)

“15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is, the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

11. Further, in ***Indian Oil Corpn. v. NEPC (India) Ltd.*** [*Indian Oil Corpn. v. NEPC (India) Ltd., (2006) 6*

SCC 736 : (2006) 3 SCC (Cri) 188] this position was reiterated in the following manner: (SCC p. 757, para 33)

*“33. The High Court has held that mere breach of contractual terms would not amount to cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction and in the absence of an allegation that the accused had a fraudulent or dishonest intention while making a promise, there is no “cheating”. The High Court has relied on several decisions of this Court wherein this Court has held that dishonest intent at the time of making the promise/inducement is necessary, in addition to the subsequent failure to fulfil the promise. Illustrations (f) and (g) to Section 415 make this position clear: ***”*
(Emphasis supplied)

21. Noticeably, for the provisions under Section 341 IPC to be attracted in a case, it has to be established¹ that there was obstruction by the Accused; (ii) such obstruction prevented a person from proceeding in a direction to which he had a right to proceed; and (iii) the Accused caused such obstruction voluntarily. The obstructor must intend or know or would have reason to believe that the means adopted would cause obstruction to the complainant. Reference in this regard is further made to the decision of the Hon’ble High Court of Delhi in ***State v. Darshan Singh, 2025 SCC Online Del 2234***, wherein the Hon’ble Court explicated the ingredients of offence under Section 339/341 IPC, in the following terms;

“43. To establish the offence under Section 341, the following ingredients must be satisfied: -

*1. **Voluntary Obstruction:** The accused must have voluntarily obstructed the victim.*

*2. **Prevention from Proceedings:** The obstruction must prevent the victim from proceeding in any direction.*

¹ *N.S. Madhanagopal & Ors. v. K. Lalitha, MANU/SC/1805/2022.*

3. Right to Proceed: The victim must have a lawful right to proceed in the direction from which they were obstructed.

44. The Apex Court in Keki Hormusji Gharda vs Mehervan Rustom Irani, has observed that the obstruction must be direct and physical, and mere allegations without substantial evidence do not suffice to establish wrongful restraint...

(Emphasis supplied)

22. In as much as the culpability under Section 506 of IPC is concerned, law is settled that in order for the said provision to apply, the prosecution is required to prove that the; (i) accused threatened some person; (ii) such threat must extend to causing any injury to his person, reputation or property, or to the person, reputation or property of someone in whom he was interested; and (iii) the accused did so with intent to cause alarm to that person, or to cause that person to do any act which he was not legally bound to do or omit to do an act which he is legally entitled to do as a means of avoiding the execution of such threat. Pertinently, the Hon'ble High Court of Orissa in *Amulya Kumar Behera v. Nabaghana Behera, 1995 SCC Online Ori 317*, while explicating the meaning of the word, 'alarm' used under Section 503/506 IPC, noted as under;

*“*** The threat must be intended to cause alarm from which it follows that, ordinarily, it would be sufficient for that purpose. The degree of such alarm may vary in different cases, but the essential matter is that it is of a nature and extent to unsettle the mind of the person on whom it operates and take away from his acts that element of free voluntary action which alone constitutes consent. The case where the threat produces an alarm is comparatively a simple one, for all that has then to be proved is that threat was given and that the alarm was due to the threat: but where the threat has not that effect, it involves a question whether it was sufficient to overcome a man of ordinary nerves. The Court may hold it to be an empty boast, too insignificant to call for penal visitation of Section 506. “Intimidate” according to Webster's*

*Dictionary means” (1) to make timid, make afraid, overawe; (2) force or deter with threats or violence, cow”. Threat referred to in the Section must be a threat communicated or uttered with intention of its being communicated to the person threatened for the purpose of influencing his mind. Question whether threat amounts to a criminal intimidation or not does not depend on norms of individual threatened if it is such a threat as may overcome ordinary free will of a man of common firmness. “Threat” is derived from Anglo-saxam word “threotou to life”, (harass). It is the dicleration of an intention to inflict punishment, loss or pain on another. “Injury” is defined in Section 44. It involves doing of an illegal act. If it is made with intention mentioned in the section, it is an offence. Whether threat was given with intention to cause alarm to the person threatened has to be established by evidence to be brought on record. ****

(Emphasis supplied)

23. Significantly, in the aforementioned dictate, the Hon’ble Court explicitly observed that the *mens rea*/intention envisaged under Section 503/506 IPC must be to cause alarm to the victim and whether or not such a victim is alarmed, is not of any consequence. Here, it is further apposite to make reference to the decision of the Hon’ble Supreme Court in ***Manik Taneja v. State of Karnataka, (2015) 7 SCC 423***, wherein the Hon’ble Court, while dealing with the ingredients of offence under Section(s) 503/506 IPC, *inter alia*, observed as under;

*“11. *** A reading of the definition of “criminal intimidation” would indicate that there **must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.**”*

(Emphasis supplied)

24. Consequently, being wary of the above, this Court would proceed with the determination of the rival contentions

raised before this Court. In this regard, this Court deems it pertinent to outrightly note that from a assiduous scrutiny of the material placed on record it is observed that the fulcrum of the prosecution case against the accused persons is premised on the testimonies of PW-2/appellant/Surender Aggarwal and PW-3/Ashok Aggarwal. Markedly, in his deposition, PW-2/Surender Aggarwal/appellant *inter alia* avowed that on 25.11.2000, he had given a loan of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only), in cash, on interest to respondent no. 1, who was correctly identified by the appellant before the Ld. Trial Court. Correspondingly, as per PW-2, in lieu of the said loan, respondent no. 1, mortgaged his property bearing no.; E-2/245, Shastri Nagar, Delhi to him/PW-2 by depositing the previous original documents of said property and also executed General Power of Attorney/GPA, Will, Agreement to Sell, Receipt and acknowledgment of said property in his/PW-2's favour on 25.11.2000. As per PW-2, respondent no. 1 paid interest to him/PW-2, till 25.03.2001, on the said loan amount. However, on 12.04.2001, he/PW-2 had lost the said GPA, Will, Agreement to Sell, Receipt and acknowledgment of said mortgaged property, whereupon he/PW-2 made a non-cognizable offence report/NCR against the said loss with PS Sarai Rohilla on 12.04.2001. Correspondingly, as per PW-2, he also informed about the factum of loss of said documents to respondent no. 1, who assured him/PW-2 that he/respondent no. 1 would again execute the said documents. However, as per PW-2, respondent no. 2 also stopped payment of interest on the said loan amount. Consequently, PW-2 filed a recovery suit, bearing no. 257/2003 before the Hon'ble High Court against respondent no. 1, seeking recovery of Rs.

25,00,000/- (Rupees Twenty Five Lakhs only). PW-2 further avowed that on 03.02.2003, the Hon'ble High Court was pleased to grant stay on the property in question and a copy of the said order was sent to respondent no. 1 as well. However, as per PW-2, respondent no. 1, despite the existence of such stay order, obtained certified copies of the property documents and obtained a loan of Rs. 20,70,000/- (Rupees Twenty Lakhs Seventy Thousand only) from some bank against the property in question. PW-2 further avowed that he had filed all the previous original documents of property in question in the said suit before the Hon'ble High Court, as well as also filed a contempt petition against respondent no. 1 before the Hon'ble High Court. It was further proclaimed by PW-2 that the IO verified from the concerned Stamp Vendor that the respondent no. 1 had purchased non-judicial stamp paper on 25.11.2000 and that the Stamp Vendor had the record of the same. Further, as per PW-2, IO had also endeavored to verify from the concerned Notary Public, namely, Arun Kumar Gupta regarding the attestation of the said GPA, Will, Agreement to Sell, Receipt and Acknowledgment of the property in question. However, it was determined that Sh. Arun Kumar had since left for heavenly abode on 15.01.2002. PW-2 also avowed that on a day, exact particulars of which, he could not recollect, he/PW-2 was proceeding from Anand Parbat to Shastri Nagar and when he reached near flyover T-Point, Sarai Rohilla, respondent nos. 2 and 3, who were both correctly identified by PW-2 before Ld. Trial Court, approached him, wrongly restrained and criminally intimidated him/PW-2 as well as beat him, leading to him/PW-2's receiving internal injury. Needless to mention, PW-2 further proved his complaint (Ex. PW2/A), photocopy of

GPA (Mark-A), Agreement to Sell (Mark-B), Deed of Will (Mark-D), acknowledgment (Mark-C), receipt of property (Mark-E) of the property in question, copy of order of the Hon'ble High Court (Mark-F) and copies of entries in stamp vendor's register as Mark-G and H, respectively. Apposite to note that upon being led by Ld. Addl. PP for the State, PW-2 affirmed that the date of incident with respondent nos. 2 and 3 was 09.12.2002.

25. Pertinently, during the course of his cross examination by/at the behest of respondent nos. 1-3, the appellant/PW-2 *inter alia*, proclaimed as under;

*“XXXXXX by Shri ***, Ld. Counsel for all accused.*

I knew the accused persons being residents of the same area. It was in the year 2000 when accused Kishan Lal contacted me for loan. I had given him loan. The loan was given in cash in the presence of myself, accused Kishan and my brother Ashok Kumar. Written documents were executed regarding the loan. I had given the photocopy of the documents to the IO and original of the same are filed in the civil suit no.257/2003 pending in Hon'ble High Court of Delhi.

On 25.11.2000, I gave a loan of Rs. 25 Lac to accused Kishan Lal. I was running business of Dharam Kanta in the year 2000. I used to have income by both base one in the accounts and other without accounts. Vol. I was having the rental income also from approximately 10 properties. Today, I can not tell details of the said properties but I can provide the same later on. I can produce the details of the said property before the court. It is wrong to suggest that I was not owner of 10 properties and therefore I am not giving details of the same. Again said the said properties stands in my name and in the name of my family members. We are five brothers namely, Surender Aggarwal, Ashok Aggarwal, Naresh Aggarwal, Rohtash Aggarwal and Pradeep Aggarwal. The name of my wife is Mrs. Sunita Aggarwal. There is no documents for authorizing me by my brothers to collect the rent of the said properties. Vol. I was verbally authorized by my brothers as I am elder brother and business and family were joint. In the year

2000, the total rental income of our family was about Rs. 30 Lacs. I am filing Income Tax Return on my behalf for about 20 years. Vol. I had not filed ITR in between for few years due to family problems. I do not remember whether I filed ITR for the year 1999-2000 and 2000-2001. I must have shown the rental income in my ITRs. I do not know whether my other family members also filed ITR. Vol. They may be filing the same. I do not know since when my family members are filing their ITRs. I do not have in my possession the record of my ITRs for aforesaid years (1999-2000 and 2000-2001). Vol. The ITR records are not available with the Income Tax Return for more than previous 7 years. I do not remember whether we used to issued rent receipts to our tenants. As on day, I cannot produce documentary proof to show that our family had rental income of Rs. 30 Lacs in the aforesaid year.

At this stage, witness has submitted that he can produce the rent agreements of the relevant times of some properties of his family.

The annual income from the Dharam Kanta (weighing bridge) was around Rs. 1 Lac per month. I had mentioned the said income in my ITR. The said Dharam Kanta is in the name of my wife at present but at the time of present incident it was in the name of some family members.

I had mentioned the alleged loan of Rs. 25 Lacs in my ITR for the year 2000. I do not have record of said ITR in my possession now. It is wrong to suggest that I never mentioned any such loan amount in my ITR and for said reason I am not producing the record of ITR before the court.

***Question:** I put to you that on 18.02.2016, you had deposed that you had given the photocopy of the documents regarding the loan to the IO and original to the same had been filed in Civil Suit no. 257/2003 pending in Hon'ble High Court of Delhi, but on the other hand you had stated that the original documents regarding the loan have been lost/stolen. Which of the two statements of yours is correct?*

***Answer:** The documents executed between myself and accused Kishan Lal regarding the loan have been lost, however the original documents of the property referred in the said loan documents have been filed before the Hon'ble High Court of Delhi.*

Number of documents like GPA, Will etc were executed in regard to the loan amount. In the NCR also I mentioned the same documents. Vol. In the

NCR, I also mentioned about the lost of documents of one another property i.e A1 Shahzabad Extension near Inderlok.

Question: I put it to you that in the present court you have stated the source of alleged loan amount as the rental income whereas before the Hon'ble High Court of Delhi, you have stated the source of the said loan as Chit fund amounts of your mother. Which of the said two statements is correct?

Answer: I have stated in the Hon'ble High Court of Delhi that the source of the loan amount was from business, from my mother and from committees (Chit funds) and I am saying the same before the present court also.

It is wrong to suggest that I never gave the alleged amount to accused. It is wrong to suggest that I had prepared forged documents in the regard to the said amount and have lost the same myself as same were forged. It is wrong to suggest that I had deliberately lost the alleged documents so that the originals could not be compared by any expert with the admitted signatures of the accused.

*** *** ***

I have shown in my ITR 2000-2001 regarding the loan given to the accused Kishan Lal. It is correct that I have not filed the said ITR for the said year before this Honorable Court. It is incorrect to suggest that I have not shown the loan transaction in the ITR of the 2000-2001 as I never advanced said loan to accused Kishan Lal. It is wrong to suggest that accused Kishan Lal never took loan of Rs.25 Lakhs from me. It is wrong to suggest that I intentionally conceal the original loan paper as same was forged by me. It is wrong to suggest that I took the photographs of the accused Kishan Lal from the original relinquishment deed and put his forged signature on the loan documents. It is wrong to suggest that there was no money transaction between me and accused Kishan Lal. It is wrong to suggest that I am deposing falsely.

*** *** ***

Q.: I put it to you that before advancement of alleged loan you and your brothers Ashok Aggarwal and Naresh Aggarwal knew Kishan Lal and his family?

Ans. I and Ashok knew him but I cannot say about Naresh.

I do not know whether there is a property dealer by name of Anil Aggarwal in Shastri Nagar opposite MCD Office. It is wrong to suggest that Anil

Aggarwal was the person through him I came into contact of accused persons. Vol. I do not know about my brothers whether he knows any Anil Aggarwal. It is correct that accused Kishan Lal Gupta was in the business of spices. It is wrong to suggest that Anil Aggarwal property dealer had taken me to the house of Kishan Lal Vol. I was already known to Kishan Lal and had visited Kishan Lal several times. It is wrong to suggest that I never used to visit the house of Kishan Lal but only used to meet each other during morning walk. It is wrong to suggest that on 05.11.2000 I and my brothers Ashok Aggarwal and Naresh Aggarwal accompanied the property dealer Anil Aggarwal to the house of accused Kishan Lal. It is further wrong to suggest that in the above meeting Anil Aggarwal introduced me with the accused persons. It is further wrong to suggest that in the above meeting in my presence Anil Aggarwal informed the accused persons that I was having very good connection with the finance company. It is further wrong to suggest that I had assured the accused persons that I can arrange loan from finance companies at a very cheap rate of interest. It is further wrong to suggest that I had demanded original document from accused to arrange the loan of Rs.5,00,000/-. It is wrong to suggest that I had informed the accused persons that original documents were required by finance company for verification from Sub Registrar office as well as from MCD office. It is further wrong to suggest that in above meeting on the assurance of Anil Aggarwal accused persons had handed over his property documents to me. It is wrong to suggest that above meeting took place at morning at about 10-11 am.

It is wrong to suggest that on 06.11.2000 accused Kishan Lal came to my house and informed me that he has given up the idea of expanding the business and therefore dropped the idea of taking loan of Rs. Five Lakhs and demanded his documents back. It is wrong to suggest that I had informed the accused that the documents are with the finance company and same have not been returned to me. It is wrong to suggest that accused Kishan Lal again came to my house on 11.11.2000 and demanded his documents but I informed him that documents have gone missing. It is further wrong to suggest that after a period of about 1½ years of the above incident I and my brothers started calling the accused Kishan Lal Gupta to pay them a sum of Rs. 3 to 4 lakhs if they want their documents back otherwise they sell the property to

bad elements and the unscrupulous dispossess the accused persons forcibly from the property.

It is correct that an FIR No.53/2003 was lodged against me and my brothers and police had called us in connection with above FIR.

It is correct that I had lodged DD No.48B on 12.04.2001. same is exhibited as Ex DW-2/A. It is wrong to suggest that Deed of sale agreement dt. 25.11.2000 does not bear the signature of accused Kishan Lal at point Q-1 to Q3 encircled in red and are forged. It is further wrong to suggest that the declaration cum acknowledgment dt. 25.11.2000 does not bear the signature of accused Kishan Lal at Q 4 encircled in red and it is forged. It is wrong to suggest that deed of WILL dt. 25.11.2000 does not bear the signature of accused Kishan Lal at Q 5 encircled in red and it is forged. It is wrong to suggest that Receipt dt. 25.11.2000 does not bear the signature of accused Kishan Lal at Q 6 encircled in red and it is forged. It is wrong to suggest that GPA dt. 25.11.2000 does not bear the signature of accused Kishan Lal at Q 7 to Q9 encircled in red and are forged. It is further wrong to suggest that the photographs of accused Kishan Lal present on Deed of sale agreement, declaration sum acknowledgment, deed of Will, receipt, GPA dated 25.11.2000 were taken by me from the original property documents which were given by the accused persons to me for procuring of loan. It is further wrong to suggest that the number copies of the photographs were made by me from a photographer and same were affixed on above mentioned documents.

I do not remember whether I had lodged any police report regarding the assault on me by the accused Vishal and Gaurav. It is correct that the place of this incident is very near to PS Sarai Rohilla. It is correct that I did not go to any hospital for the purpose of medico legal examination after the above incident. It is wrong to suggest that the I had concocted a false story regarding this incident to implicate accused Gaurav and Vishal. It is further wrong to suggest that the I have filed a false case and no loan was taken by accused Kishan Lal or any other accused. It is wrong to suggest that the accused Kihsan Lal was not running any committee.

I am 12th pass. I can read Hindi very well but not English that well. It is further wrong to suggest that the accused persons never purchased any stamp papers. It is further wrong to suggest that I had in

connivance with the police filed a false case against the accused.”

(Emphasis supplied)

26. Germane for the purpose of present discourse to refer to the deposition of PW-3/Ashok Aggarwal, who *inter alia* deposed before the Ld. Trial Court that on 25.11.2000, respondent no. 1 came to his/PW-3's brother, namely, Surender Aggarwal/PW-2 and demanded a sum of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) from him. Further, as per PW-3, respondent no. 1 assured PW-2 that in return, he would execute document in his favour in relation to property bearing no. E-2/245, Shastri Nagar, Delhi-110052. Thereafter, as per PW-3, PW-2 arranged the said money by taking some money from his/PW-3's mother and from the committees and thereafter, respondent no. 1, got executed notarized document from Tis Hazari Court through a notary named as Arun Kumar Gupta. Needless to mention, PW-3 correctly identified all the accused persons/respondent nos. 1-3 before the Ld. Trial Court. Pertinently, upon leading question being posed by Ld. Addl. PP for the State, PW-3 asserted that he was a witness in executing the aforesaid documents, which were subsequently executed, besides, PW-3 also admitted to his signatures as witness on documents, Mark-A to E. However, as per PW-3, *“Original documents of all the above said documents are kept before the Hon'ble High Court of Delhi in a writ petition.”*

27. Markedly, during the course of his cross examination by/on behalf of respondent nos. 1-3, PW-3 *inter alia* declared, as under;

*“XXXXXX by Sh. ***, Ld. Counsel for all the accused persons.*

My mother do not maintain any account. It is also correct my mother is also not an Income Tax Payee. It is wrong to suggest that my brother Surender

Aggarwal had not borrowed any money from his mother. It is wrong to suggest that no amount was collected through any committees to lend the money to the accused Kishan Lal. It is wrong to suggest that my brother Surender Aggarwal was not an Income Tax Payee. It is wrong to suggest that no amount was collected from the chit fund company for the payment of Rs. 25 Lacs. In my presence no amount was withdrawn. As per my knowledge, my brother Surender Aggarwal had borrowed part of the amount of Rs. 25 Lacs from my mother and remaining some he had arranged from a committee. I do not know the person who was running the committee. It is wrong to suggest that the story about borrowing of the above amount from mother and also arranging the balance amount from committee is concocted and false. It is correct that when the above amount was given by the complainant, my mother was a housewife. When the above amount was advanced, I and my brother Surender Aggarwal were living in their separate residences. During the relevant period my mother was living with my brother Surender Aggarwal. I do not have any knowledge whether my brother had declared lending of Rs. Twenty Five lakhs in his ITR. However I have knowledge that he files his ITRs. It is wrong to suggest that he files his ITRs. It is wrong to suggest that my mother had no sources/resources to lend money to my brother Surender Aggarwal. It is wrong to suggest that original documents of lending are deposited in the High Court. It is correct that we all brothers are residing in Shastri Nagar and accused is also residing in Shastri Nagar. It is also correct that property dealer Anil Kumar is also resident of Shastri Nagar. I have no knowledge whether Anil Kumar having his shop near E-2 Block, Shastri Nagar opposite MCD office, Subzi Mandi. I have no knowledge that accused Kishan Lal had requested initially his friend Anil Kumar that he required a sum of Rs.5,00,000/- for short duration for October and November for expanding his spice business. I have no knowledge that Anil Kumar had discussed this matter with my brothers including myself. It is wrong to suggest that after I and my two brothers gained knowledge about requirement of loan by Kishan Lal we all went to his house and told him that they can arrange loan for him from finance company at a very competitive rate as they were having very good links with finance companies. It is wrong to suggest that we again along with Anil Kumar property dealer went to house of accused in year 2000 and informed him that the finance company had agreed

to disburse loan but they had demanded the original property documents. It is wrong to suggest that during the above meeting Anil Kumar had consented to handover the original documents of the property to Surender Aggarwal and his brothers. It is further wrong to suggest that I and my brothers had told the accused that documents were required for verification by finance company from Sub Registrar office as well as MCD office. It is wrong to suggest that these documents were handed over to me and my brothers. It is wrong to suggest that accused had later on in my presence asked the complainant to return his documents as he was no longer interested in availing the loan since the rates of raw material of spices had shotup and he was now not interested in expanding his business. It is wrong to suggest that on 11.11.2000 accused had come to the house of Surender Aggarwal where I was also present and he had requested to return his documents. It is wrong to suggest that complainant had told the accused in my presence that the above documents have been misplaced. It is wrong to suggest that after a period of one and half year I and my brothers made telephonic calls to accused and threatened him to pay 3-4 lakhs otherwise they would sell the property to bad elements and will dispossess you from the property forcibly. It is wrong to suggest that on first week of October 2002 a further threat was extended to the accused that they had connection with local police and they would take the possession forcibly. It is correct that complainant Surender Aggarwal do not possess any money lending licence issued by any competent authority. It is correct that the property bearing no. E2/245, Shastri Nagar Delhi is still in the possession of accused Kishan Lal Gupta. Vol. Stay order has been obtained by Surender Aggarwal from the court. It is wrong to suggest that no loan amount was advanced by my brother. It is wrong to suggest that I in conspiracy with my brothers fraudulently obtained documents from Kishan Lal Gupta. It is wrong to suggest that no amount was lend by me or my brother to accused. It is wrong to suggest that I am deposing falsely.

Q. I put it to you that the sale agreement (Q1 to Q3 encircled in red), declaration cum acknowledgment (Q4 encircled in red), WILL (Q5 encircled in red), receipt (Q6 encircled in red), GPA (Q7 to Q9 encircled in red) all dated 25.11.2000 (mark A to E) does not bear the signatures of accused Kishan Lal and same are forged and fabricated?

Ans. I cannot comment upon the same as accused Kishan Lal had not put the signatures on the above documents at the above places in my presence.

On 25.11.2000 I was residing at B-1447, Shastri Nagar, Delhi.

Q. *Whether you have brought any document to prove that you were residing at B 1447, Shastri Nagar Delhi?*

Ans. *Yes. (witness has produced his voter card and DL bearing the above address and same has been shown to counsel for the accused).*

It is wrong to suggest that we all brothers were residing at the above address in the year 2000. vol. Only Naresh and myself were residing there in the year 2000. I and my brother Surender were not having joint business in the year 2000. It is correct that during the relevant time my mother was not paying any income tax. I do not remember whether on 06.11.2000 accused Kishan Lal had come to house of my brother Surender where I was also present along with my other brother Naresh Aggarwal and he had given up the Idea of expanding the business and demanded his documents back from my brother Surender Aggarwal. It is correct that accused Kishan Lal had filed one case against me and my brother Surender Aggarwal and Naresh Aggarwal regarding misappropriation of documents. I do not remember whether that this FIR was registered prior to present case. Vol. That case has been decided in our favour. It is wrong to suggest that it was decided in our favour. It is wrong to suggest that I along with my brothers and in connivance with the police have filed a false case against accused Kishan Lal. It is further wrong to suggest that no loan of Rupees Twenty Five Lakhs was disbursed to accused in my presence. Vol. Loan was given to him in my presence. It is wrong to suggest that I am deposing falsely.”

(Emphasis supplied)

28. Noticeably, considering that PW-3's cross examination, he/PW-3 was permitted to be re-examined by Ld. Addl. PP for the State as well as question was posed to him by the Ld. Trial Court, where PW-3, avowed, as under;

*“*** At this stage Ld substitute APP for state has sought permission of the court to re-examine the witness in the light of answers given by him in his cross examination U/s 311 Cr.P.C.*

Heard. Allowed.

Q. It is put to you that on 04.07.2019 in your examination in chief you deposed that you were the executing witness of documents mark A, B, C, D and mark E and you have also admitted your signatures on these documents, however, today in your cross examination you deposed that accused Kishan Lal has not signed the aforesaid documents mark A to E in your presence which of this statement is correct?

Court Observation: The witness has been explained the meaning of executing witness by the court.

Ans. Witness has submitted that on the earlier date when he made the above statement, he was not explained the meaning of executing witness either by Ld APP or by the court. Now he has understood the meaning of executing witness. Witness has stated that when he put signatures on the above documents the signatures of accused Kishan Lal and Surender Aggarwal were already on these documents i.e. both of them have not signed the above documents in my presence.

Q. Whether you were asked the question regarding the executing witness in Hindi or English?

Ans. The same was asked in English.

I answered the question to the best of my understanding and knowledge.

Court Question: What is your qualification?

Ans. I am 9th pass.

It is wrong to suggest that aforesaid documents were executed and prepared in my presence and both parties signed in my presence. It is wrong to suggest that on 04.07.2019 the questions in examination in chief was put to me in Hindi. It is wrong to suggest that I am deposing falsely on the points denied by me today.

*XXXXXX by Sh. ***, Ld. counsel for accused.*

Nil. Opportunity given”

(Emphasis supplied)

29. Markedly, for a comprehensive appreciation of the material placed on record, this Court further deems it pertinent here to make a reference to the deposition of PW-10/IO/SI Om Prakash, who *inter alia* testified that on 08.04.2003, he was posted

as Sub-Inspector/SI at PS. Sarai Rohilla, Delhi and on that day, the present case was registered on the complaint of the appellant. PW-10 further asserted that after the registration of FIR, same was marked to him, whereupon he/PW-10 met the appellant and demanded the original purchase documents of property no. E-245, Shastri Nagar, Delhi. As per PW-10, the appellant sought time to file the said documents, as the same were stated to be in the custody of appellant's lawyers of the Hon'ble Delhi High Court. Subsequently, on 15.07.2003, as per PW-10, the appellant handed over the photocopy documents of the property in question to PW-10, which were seized *vide* memo Ex. PW2/B. It was further avowed by PW-10 that on 18.08.2003, he obtained the sample signatures and handwriting of respondent no. 1 as well as seized the same *vide* memo, Ex. PW4/A. Thereafter, as per PW-10, he sent the sample signatures, handwriting and seized photocopy documents to CFSL Hyderabad and received a report, asserting that the opinion could not be given as all the documents were photostatic reproduction and '*very faint*'. Further, as per PW-10, on 28.10.2003, he again demanded original documents regarding the sale of said property, where the appellant told him/PW-10 that the original documents were lost and he again handed over photocopied documents of the alleged property to me, seized *vide* memo Ex. PW7/A. Thereafter, PW-10 again sent all the seized documents to CFSL Hyderabad along with the sample signatures and handwriting of respondent no. 1, however, to no avail. PW-10 further asserted that he also asked the appellant for the documents regarding the source and any receipt of handing over of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) to respondent no. 1, whereupon the appellant informed him/PW-10

that he/PW-2 had obtained a sum of Rs. 20,00,000/- (Rupees Twenty Lakhs only) from his mother and remaining amount of Rs. 5,00,000/- (Rupees Five Lakhs only) from the private committee. However, as per PW-10, the appellant did not produce any documents regarding the aforesaid amount. It was further asserted by PW-10 that on the allegations regarding the fight, he/PW-10 asked the appellant to produce any eyewitnesses, however, the appellant did not produce any eyewitness. Correspondingly as per PW-10, he also investigated regarding the said allegations by the appellant, however, no evidence in this regard was forthcoming. Needless to mention, PW-10 correctly identified all the accused persons before the Ld. Trial Court.

30. Pertinent to make a reference to the cross-examination of PW-10 by/on behalf of respondent nos. 1-3, wherein PW-10 proclaimed as under;

*“XXXXXX by Sh. ***, Ld. Counsel for all accused persons.*

It is correct that complainant Surender had not handed over any documents about his source of income. It is also correct that despite the demanding several times, the original sale and purchase of alleged documents, the complainant did not handover to me. It is also correct that I did not record the statement of Bharpai Devi from whom the complainant had alleged having received a sum of Rs. 20 Lakh. It is also correct that no proof was given regarding the withdrawal of Rs. 5 Lakh from the committee. It is also correct that no proof was given regarding the scuffle with the accused persons. It is also correct that neither any medical record or police record were produced in relation to scuffle. It is correct that as long as I remained IO, there was no evidence against the accused to charge-sheet them.”

(Emphasis supplied)

31. Ergo, in light of the foregoing, this Court would now proceed with the determination of the rival contentions of appellant and respondents. In this regard, this Court deems it

pertinent to reiterate that while, Ld. Counsel for the appellant has contended that the conviction of respondent nos. 1-3 can be premised on the testimony of the sole witness, in contrast, Ld. Counsel for respondents, strenuously argued that in the instant case, no reliance can be placed on the deposition of the appellant, as replete with material variations, omissions, contradictions and significant improvements. Ergo, under such circumstances, this Court deems it pertinent to note that it is mindful of the repeated avowals¹ of the superior courts, in a catena of judicial dictates, that there is no bar or legal impediment in convicting a person on the testimony of a sole/single witness, if the version so put forth by such a witness is clear and reliable. Unquestionably, reason behind the same is that the evidence, *'has to be weighed and not counted'*. Reference in this regard is made to the decision of the Hon'ble Supreme Court in *Sunil Kumar v. State (Govt. of NCT of Delhi)*, (2003) 11 SCC 367, wherein the Hon'ble Court unambiguously observed, as under;

*"9. Vadivelu Thevar case [AIR 1957 SC 614: 1957 Cri LJ 1000] was referred to with approval in the case of Jagdish Prasad v. State of M.P. [1995 SCC (Cri) 160: AIR 1994 SC 1251] This Court held that **as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness.** That is the logic of Section 134 of the Indian Evidence Act, 1872 (in short "the Evidence Act"). **But, if there are doubts about the testimony the courts will insist on corroboration. It is for the court to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material.** The time-honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise"*
(Emphasis supplied)

¹ *Kusti Malliah v. State of A.P.*, (2013) 12 SCC 680.

32. Quite evidently, it is seen from the above that a conviction of an accused can be premised on the testimony of a sole witness, however, the same is permissible only when such testimony is ‘sterling’¹ in nature so as to be able to be relied upon, without any corroboration. Notably, the term(s), ‘*sterling witness*’/‘*sterling testimony*’ in criminal jurisprudence has been repeatedly declared by superior courts to mean a witness who is², “*worthy of credence, one who is reliable and truthful.*” Reference in this regard is further made to the decision in *Rai Sandeep v. State (NCT of Delhi)*, (2012) 8 SCC 21, wherein the Hon’ble Supreme Court, catalogued the quality of a ‘sterling witness’, under the following observations;

“22. ...In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even

¹ *Bhimapa Chandapa Hosamani & Ors. v. State of Karnataka*, (2006) 11 SCC 323.

² *Kuriya v. State of Rajasthan*, (2012) 10 SCC 433.

be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged...”

(Emphasis supplied)

33. Consequently, being wary of the aforementioned principles, when the material/evidence placed on record is conscientiously evaluated, this Court unwaveringly reaches a conclusion that the testimony of PW-2/appellant/Surender Aggarwal is far from being termed as ‘sterling’ in nature so as to form the sole basis of conviction of respondent nos. 1, 2 and 3 in the instant case, either read individually or in conjunction with the other material brought on record, including the deposition of PW-3/Ashok Aggarwal. On the contrary, this Court outrightly records that there are material contradictions, improvements and variations in the material brought forth, creating a gaping void in the case put forth against the accused persons/respondent nos. 1-3 by the prosecution.

34. In respect of the foregoing, it is noted from a punctilious examination of the material brought forth that the case of the appellant/prosecution before the Ld. Trial Court is that respondent no. 1 obtained a loan for Rs. 25,00,000/- (Rupees

Twenty Five Lakhs only), in cash from the appellant and in lieu thereof, respondent no. 1 submitted the original title deed pertaining to property in question, *i.e.*, E-2/245, Shastri Nagar, Delhi-110052, besides also executed Agreement to Sell, Declaration-cum-Acknowledgment, Deed of Will, Receipt and General Power of Attorney, all dated 25.11.2000, in favour of the appellant. However, as per the appellant that it was only after the said Agreement to Sell, Declaration-cum-Acknowledgment, Deed of Will, Receipt and General Power of Attorney, all dated 25.11.2000, were misplaced on 12.04.2001, respondent no. 1 committed to pay the interest on the loan, besides refused to execute fresh document. Ergo, as aforementioned, it is contended on behalf of the appellant that respondent no. 1 committed the offence of cheating/under Section 420 IPC. Relevantly, in order to prove the said case, appellant relied on photocopy of documents, *i.e.*, GPA (Mark-A), Agreement to Sell (Mark-B), Deed of Will (Mark-D), acknowledgment (Mark-C), receipt of property (Mark-E) of the property in question, with an assertion that he/the appellant is within his right to tender secondary evidence of the said documents, considering the originals thereof were lost. Further, in order to buttress the said contention, Ld. Counsel for the appellant/appellant strenuously relied upon document, Ex. DW2/A, asserted to be the NCR No. 330/2001, dated 12.04.2001 in respect of misplacement of said documents. Needless to mention it is further contended by the appellant that since the said document (Ex. DW2/A) was introduced in cross-examination of the appellant by respondent nos. 1-3, the factum of misplacement of said documents stands duly proved, permitting the appellant to tender secondary evidence of the same. However, upon a

scrupulous analysis of the records of the Ld. Trial Court, the said contention fails to impress this Court. On the contrary from a through reading of the material brought on record, this Court finds itself in consensus with the finding of the Ld. Trial Court that the said NCR was never produced in evidence before the Ld. Trial Court by the appellant. Correspondingly, even this Court records that PW-9/SI (Retd.) Dinesh Prasad explicitly affirmed during the course of his cross examination that the NCR, “... *regarding loss of original documents by the complainant is not the part of the charge-sheet and same was not handed over to me despite of demanding by me from the complainant...*”. Clearly, under such circumstances, the appellant, in the considered opinion of this Court, is precluded to assert and rely on the said documents, asserting that it/the appellant had laid foundational evidence as to why the original evidence has not been furnished, permitting him/the appellant to lead secondary evidence thereof.

35. Even otherwise, this Court further finds it difficult to concede that merely because the said NCR was eventually put as Ex. DW2/A, during the course of cross examination of the appellant by/on behalf of the accused persons/respondent nos. 1-3, same would prove the factum of alleged loss of the aforementioned original documents, considering that the said document/Ex. DW2/A, gives no indication of the misplacement/loss of the said documents dated 25.11.2000, even in its contents. In fact, from a reading of Ex. DW2/A, it is noted that except for a specification of alleged loss of two General Power of Attorneys and two bills, there is no explication of the any other documents so as to indicate that the same related to the property in question. Needless to mention, the appellant has even otherwise alleged loss of Agreement to Sell,

Declaration-cum-Acknowledgment, Deed of Will, Receipt and General Power of Attorney, all dated 25.11.2000, which find no mention/specification under the said NCR. Ergo, under such circumstances, this Court reiterates that the appellant has failed to lead any plausible reason and/or factual foundation¹ in terms of the provisions under Section 65(c) of the Indian Evidence Act, 1872 (*hereinafter referred to as the 'Evidence Act'*) for laying secondary evidence in the instant case, in relation to the said documents. Ergo, in the considered opinion of this Court, documents Mark-A to E cannot be permitted to be lead as secondary evidence, for the foregoing reasons/want of foundational evidence in order to permit leading of such secondary evidence by the appellant. Reference in this regard is made to the decision of the Hon'ble Apex Court in ***Tharammel Peethambaran v. T. Ushakrishnan (Supra.)***, wherein the Hon'ble Court explicated the procedure to be followed for introducing secondary evidence, by noting as under;

“20. The broad parameters summarising the procedure to be followed for introducing secondary evidence are reiterated and read thus:

20.1 The fundamental principle of the Indian Evidence Act is that facts have to be established by primary evidence. Section 64 mandates that documents must be proved by primary evidence, which is considered the “best evidence”. Primary evidence is the rule, while secondary evidence is an exception admissible only in the absence of primary evidence. A party is generally required to produce the best evidence available; so long as the superior evidence (the original) is within a party's possession or reach, they cannot introduce inferior proof (secondary evidence). (Smt. J. Yashoda v. K. Shobha Rani, (2007) 5 SCC 730)

20.2 Before secondary evidence can be admitted, the party relying on it must lay a factual foundation. This involves two steps: First, the party must prove

¹ *Tara Rani v. Bishani Devi, 2026 SCC OnLine HP 2270.*

that the original document actually existed and was executed. Secondly, the party must establish valid reasons as to why the original cannot be furnished. (Kaliya v. State of Madhya Pradesh, (2013) 10 SCC 758)

20.3 Secondary evidence is inadmissible until the non-production of the original is accounted for in a manner that brings the case within the specific exceptions provided in Section 65. (H. Siddiqui (D) By Lrs. v. A. Ramalingam, (2011) 4 SCC 240 : AIR 2011 SC 1492) If the original itself is found to be inadmissible through failure of the party who files it to prove it to be valid, the same party is not entitled to introduce secondary evidence of its contents. (Smt. J. Yashoda v. K. Shobha Rani, (2007) 5 SCC 730.)

20.4 Section 65 of the Evidence Act is exhaustive and states the specific circumstances under which secondary evidence is permissible. To introduce secondary evidence, a party must satisfy the conditions of one of the clauses (a) through (g) of Section 65.

20.5 Further, admitting a document as secondary evidence does not automatically prove its contents. The secondary evidence must be authenticated by foundational evidence showing that the alleged copy is, in fact, a true copy of the original. For instance, if a party wishes to introduce a photostat copy, they must explain the circumstances under which the copy was prepared and who possessed the original at the time the photograph was taken. (Ashok Dulichand v. Madahav Lal Dube, (1975) 4 SCC 664; Chandra v. M. Thangamuthu, (2010) 9 SCC 712)

20.6 Mere admission of a document or making it an exhibit does not dispense with the requirement of proving it in accordance with the law. The court has an obligation to examine the probative value of the document and decide the question of admissibility before making an endorsement on the secondary evidence. If the foundational facts, such as the loss of the original or the explanation for its non-production, are not established, the court cannot legally allow the party to adduce secondary evidence. (Rakesh Mohindra v. Anita Beri, (2016) 16 SCC 483)

20.7 There is no requirement that an application must be filed to lead secondary evidence. While a party may choose to file such an application, secondary evidence cannot be ousted solely because no application was filed. It is sufficient if the party lays the necessary factual foundation for leading

secondary evidence either in the pleadings or during the course of evidence. (Dhanpat v. Sheo Ram, (2020) 16 SCC 209).”

(Emphasis supplied)

36. Similarly, the Hon’ble High Court of Bombay in ***Kashibai Namdeo Jadhav v. Yamunabai, 2016 SCC Online Bom 132***, in an akin context, remarked as under;

“78. In so far as the question of law formulated by this Court i.e. ‘whether under Section 65 of the Indian Evidence Act, 1872, secondary evidence in the form of oral evidence can be led or considered to prove the contents of the document allegedly lost’ is concerned, in my view, before allowing production of secondary evidence, it must be established that the original document is lost or destroyed or is being deliberately withheld by the party. Supreme Court in the case of Rakesh Mohindra v. Anita Beri, reported in 2016 ALL SCR 1 has held that the party who seeks to lead secondary evidence has to lay down the factual foundation to establish the right to give secondary evidence where the original document cannot be produced. It is held that neither mere admission of a document in evidence amounts to its proof nor mere making of an exhibit of a document dispenses with its proof, which is otherwise required to be done in accordance with law.

79. It is held by the Supreme Court that the pre-conditions for leading secondary evidence are that such original documents could not be produced by the party relying upon such documents in spite of best efforts, unable to produce the same which is beyond their control. The party who seeks to produce secondary evidence must establish for the non-production of primary evidence. Unless, it is established that the original document is lost or destroyed or is being deliberately withheld by the party in respect of that document sought to be used, secondary evidence in respect of that document cannot be accepted. In the facts of this case, the plaintiffs could not prove before the learned trial Judge that any of the alleged divorce deed was executed and lost and could not have produced and thus they were entitled to lead secondary evidence under Section 65 of the Indian Evidence Act, 1872. In my view, the party who seeks to lead secondary evidence has to establish that such party is not able to produce the primary document which beyond his control or that the same is lost or destroyed or is being

*deliberately withheld by the party in respect of that document sought to be used. **Unless these mandatory conditions of Section 65 of the Indian Evidence Act, 1872 are complied with, such party cannot be allowed to lead secondary evidence.** The substantial question of law no. (i) is accordingly answered in negative in the facts of this case.”*

(Emphasis supplied)

37. Notwithstanding the foregoing, it is noted from the record that the prosecution has even otherwise, not been able to prove the execution of the aforesaid documents by respondent no. 1. In this regard, it is explicitly observed that respondent no. 1/DW-1, during the course of his cross-examination by/on behalf of Ld. Addl. PP for the State, explicitly denied the execution of the aforesaid documents as well as his signatures on the documents Mark-A to E. Apposite here to reproduce the relevant extracts from cross examination of DW-1/respondent no. 1, as under;

“XXXXXX By Ld. APP for the State.

**** *** ****

**** It is wrong to suggest that I had mortgaged the aforesaid documents with the complainant for the purpose of obtaining loan of Rs.25 lakhs from the complainant.*

*At this stage, the witness is shown a document titled as **Declaration cum Acknowledgment marked as Mark 'C'** and asked with a specific question whether the aforesaid document was executed by him to which, witness states that the document is forged and signatures on it does not belong to him.*

*The witness is again shown certain documents viz. Deed of Sale Agreement marked as Mark 'B', Deed of Will marked as Mark 'C', Receipt marked as Mark 'E', GPA marked as Mark 'A' and asked with a specific question whether the aforesaid documents were executed by him to which, witness states that the documents are forged and does not bear my signatures. ***”*

(Emphasis supplied)

38. Ergo, upon respondent no. 1’s denial to the execution of the aforesaid document/Mark-A to E, it was incumbent on the

prosecution to prove the execution thereof. However, it is seen from the record, in particular, from the deposition of PW-10/IO/SI Om Prakash and PW-3/Ashok Aggarwal that the prosecution has been unable to prove such execution, beyond a pale of doubt. In this regard, it is noted that PW-10 asserted during the course of his deposition that the photocopies of the aforesaid documents (Mark A to E), received by him/PW-10 from the appellant were twice sent for forensic examination, *i.e.*, determining their correspondence with the sample handwriting and signatures of respondent no. 1. However, as per PW-10, both the times, no affirmative report on verification could be received as the documents were found to be faint, being photocopies. Correspondingly, it is observed that though, PW-3/Ashok Aggarwal affirmed in his deposition that documents Mark-A to E bore his signatures, however, during the course of his cross examination by/on behalf of the accused persons, PW-3 affirmed that respondent no. 1, “... *had not put the signatures on the above documents at the above places in my presence...*”. In fact, as aforenoted, PW-3 was specifically re-examined by Ld. Addl. PP for the State on the said aspect on the assertion that he had not understood the meaning of the term, ‘execution’. However, as noted herein, PW-3 reiterated even during the course of his re-examination that when he/PW-3, “... *put signatures on the above documents the signatures of accused Kishan Lal and Surender Aggarwal were already on these documents i.e. both of them have not signed the above documents in my presence...*”. Needless to mention that PW-3 further denied the suggestion by Ld. Addl. PP for the State that the said documents/Mark-A to E were executed and prepared in his/PW-3’s presence and further denied that both, appellant and

respondent no. 1 had signed the said documents in his/PW-3's presence. Further, as aforementioned that though PW-2 during the course of his examination-in-chief asserted that the IO had verified from the stamp vendor that respondent no. 1 had purchased non-judicial stamp papers on 25.11.2000, however, no such assertion is forthcoming either in the deposition of PW-10/SI (Retd.) Om Prakash or in deposition of PW-9/SI (Retd.) Dinesh Prasad. Needless to mention that prosecution made no endeavour to even produce the said stamp vendor as witness before the Ld. Trial Court, besides, the Notary Public, namely, Arun Kumar Gupta, who is asserted to have notarized the said documents was proclaimed by PW-2 to have already left for heavenly abode on 15.01.2002. Needless in this regard to further mention that nowhere in their depositions, PW-9 or PW-10 asserted of having made any enquiry regarding the said fact. Consequently, it is seen from the records that except for a general assertion of the appellant/PW-2 and PW-3 that the documents Mark A to E, in respect of the property in question were executed by respondent no. 1, nothing is forthcoming on record to unambiguously prove such execution.

39. Correspondingly, this Court further acquiesces with the finding of the Ld. Trial Court that considering that a huge sum of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) was asserted by the appellant to be loaned to respondent no. 1 in cash, in the aforementioned facts and circumstances, it was required of the prosecution to prove appellant's source of such income. However, it is seen from the record that not only are any documents in respect of such transaction or appellant's source of money grossly wanting, rather, there are also material and irreconcilable

inconsistencies in the depositions of PW-2 and PW-3 of the appellant's source of such funds. In this regard, this Court deems it apposite to note that during the course of his deposition, PW-2/appellant avowed that the source of such funds were his *dharamkanta* business and rental income, also from approximately ten properties. However, in this regard it is observed even by this Court that nowhere during the course of entire prosecution evidence, any documentary proof in respect of the alleged business of the complainant or with respect to appellant's alleged rental income is forthcoming. In fact, during the course of his cross examination, PW-2 affirmed that though in the ITRs/Income Tax Returns filed by him for the years 1999-2000 and 2000-2001, he/appellant might have shown the rental income, however, PW-2 proclaimed that he did not have the records of said ITRs for the years 1999-2000 and 2000-2001 in his possession. Needless to mention, PW-2 further expressed inability to produce any documentary proof in respect of alleged rental income in the said years. In fact, PW-10 during the course of his cross examination affirmed that even during the course on investigation, the appellant had not handed over any document/material in respect of his source of income.

40. Pertinently, in utter variance to the deposition of PW-2/appellant, PW-3/Ashok Aggarwal avowed during the course of his deposition before the Ld. Trial Court that as per his knowledge, “... *my brother Surender Aggarwal had borrowed part of the amount of Rs. 25 Lacs from my mother and remaining some he had arranged from a committee...*”. Here, it is pertinent to reiterate that though, Ld. Counsel for the appellant contended that the appellant's initial answer pertaining to business of

dharamkanta and sources of income in his/PW-2's cross examination pertained to a general question, and not particularly the sources of income utilized for the grant of the loan in question, however, the said contention does not find favour with this Court. In fact, in this regard, it is apposite to note that the appellant, upon being explicitly cross examined on the said aspect, reiterated that the source the loan amount was from his/PW-2's business, from his mother as well as from committees/chit funds. Quite evidently, even in his cross examination, PW-2 continued to avow his business to be one of the sources of his funds for the alleged loan amount. However, it is reiterated that no document respect of such business income is forthcoming on record. Correspondingly, this Court further yields to the finding of the Ld. Trial Court that considering that despite PW-3's assertion that their mother, Smt. Bharpai Devi, was a homemaker, she/Smt. Bharpai Devi was in a position to save a sum of Rs. 20,00,000/- (Rupees Twenty Lakhs only), which was given to her to PW-2, her testimony on this aspect was necessary. However, it is seen from the record that Smt. Bharpai Devi was never produced as witness before the Ld. Trial Court nor any document regarding such alleged loaning/giving of amount by Smt. Bharpai Devi to PW-2 forthcoming on record. Needless even for this Court to record that PW-10/IO/SI Om Prakash, asserted in his cross examination that he did not, "... *record the statement of Bharpai Devi from whom the complainant had alleged having received a sum of Rs. 20 Lakh...*". Congruently, PW-9/SI (Retd.) Dinesh Yadav, *inter alia* proclaimed during the course of his cross examination, "... *I took the statement of PW Bharpai Devi on its face value and did not make any effort to verify the source of the amount advanced by her to the*

complainant Surender Aggarwal...”. Ergo, in respect of the foregoing, this Court concedes with the finding of the Ld. Trial Court that neither the transaction of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) has been proved by the prosecution nor the appellant’s source of such money forthcoming, casting a sizeable dent in the case of the prosecution.

41. Concomitantly, this Court finds itself in consensus with the finding of the Ld. Trial Court that the prosecution has neither been able to unambiguously prove the lending of sum of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) by the appellant to respondent no. 1 in light of the foregoing, nor has any evidence emerged on record to demonstrate that respondent no. 1 paid the interest to the appellant on such alleged loan. However, even in the considered opinion of this Court, considering that it is the appellant’s own case that respondent no. 1 paid the initial installments/interests for four months, ingredients of offence of cheating under Section 420 IPC are not proved in the instant case. In fact, even the appellant’s own avowal belies the ingredients of Section 420 IPC, considering that *mens rea* to cheat must exist from the inception of the transaction/entering into agreement in view of the decisions in *V. Ganesan v. State (Supra.)* and *Raju Krishna Shedbalkar v. State of Karnataka (Supra.)*, which is not the case here in view of appellant’s assertion that respondent no. 1 made payment of interest for four months. Here, this Court deems it pertinent to note that the contention of the Ld. Counsel for the appellant that respondent no. 1’s *mens rea* to cheat the appellant is manifest from the fact that since appellant’s and respondent no. 1’s first meeting in October, 2000, and the eventual agreements’ execution on 25.11.2000, respondent no. 1, with utter

malafide, dishonest and fraudulent intention, got registered a non-cognizable report, alleging loss of original title documents by the appellant on 11.11.2020 and further got published, an advertisement to the same effect. However, the said contention of the Ld. Counsel for the appellant further fails to impress this Court, considering that the prosecution has been unable to prove either the execution of the said documents by respondent no. 1 on 25.11.2000 or of the appellant's loaning a sum of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) to respondent no. 1 or of even his/appellant's source of income, for the aforementioned reasons.

42. Portentously, another confounding aspect in the instant case that though it is the case of the appellant that respondent no. 1 ought to be held liable for the reason of creation of an equitable mortgage by respondent no. 1 in favour of the appellant by handing over of original chain of documents of property in question. However, such contention too fails to impress this Court, considering that such original chain of documents was neither produced before either the Ld. Trial Court or before this Court by/on behalf of the appellant. In fact, the Ld. Trial Court duly recorded under the impugned order that though an application was filed by the appellant to bring certified copies of such chain of documents of the property in question on record, however, such documents were never placed on record of the Ld. Trial Court. In fact, no such application for leading additional evidence was even filed before this Court by/on behalf of the appellant, despite ample opportunities, casting further aspersions in the prosecution's story.

43. Noticeably, another disconsolate feature in the instant case is that though it is the case of the prosecution that respondent

no. 1 paid interest on alleged loan amount till 25.03.2001, however, after appellant's misplacement of documents Mark-A to E, respondent no. 1 paid no interest on the loan amount. However, despite the same, admittedly the appellant moved before the concerned Court only in the year 2002, with no reasons for such delay, forthcoming either from the material brought on record or even under the deposition of any of the prosecution witnesses, including the appellant herein. Ergo, considering that there has been a substantial and unexplained delay in the registration of present FIR, same, in the considered opinion of this Court, becomes a noteworthy factor, not ruling out a possibility of embellishment and exaggeration, besides casting further indentation in the case put forth against the accused persons. Needless to observe at this stage, it is trite law¹ that delay in lodging the FIR creates a doubt in the prosecution case, if the said delay is not properly explained. Reference in this regard is made to the decision in ***Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1**, wherein the Hon'ble Supreme Court, on the aspect of delay in registration of FIR, remarked as under;

“50. Delay in setting the law into motion by lodging of complaint in court or FIR at police station is normally viewed by the courts with suspicion because there is possibility of concoction of evidence against an accused. Therefore, it becomes necessary for the prosecution to satisfactorily explain the delay. Whether the delay is so long as to throw a cloud of suspicion on the case of the prosecution would depend upon a variety of factors. Even a long delay can be condoned if the informant has no motive for implicating the accused.”

(Emphasis supplied)

44. Similarly, the Hon'ble Supreme Court in ***Jai Prakash Singh v. State of Bihar*, (2012) 4 SCC 379**, reiterated in an akin

¹ *Kishan Singh v. Gurpal Singh*, (2010) 8 SCC 775; and *Jasbir Singh v. State*, 2022 SCC OnLine Del 1427.

context, as under;

“12. The FIR in a criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question...”

(Emphasis supplied)

45. In as much as the charges under Sections 323/341/506 (part-II) IPC read with Section 34 IPC against respondent nos. 2 and 3 are concerned, this Court further concedes with the findings of the Ld. Trial Court that the prosecution has not led any evidence to substantiate the said charges, except the mere deposition of PW-2/appellant. Needless to note in this regard that nowhere in his deposition, PW-2 asserted of any specific time of commission of such alleged offences, rather, the reasons for not promptly recording the said facts to the police station forthcoming, notwithstanding the fact that PW-2 admitted in his deposition that PS. Sarai Rohilla was near the alleged spot of assault. Further, even the exact words used by the said respondents, to attract the provisions under Section 506 IPC not emerging under the deposition of PW-2, besides PW-2 has not even explicated the reason for not seeking medical assistance despite his avowal that he received internal injuries. Needless to mention that the

concerned IO made no endeavor to examine any public witnesses or place on record any other document/material to prove the presence of respondent nos. 2 and 3 at the alleged place of occurrence of that of commission of alleged offence by the said respondents. Clearly, except for the testimony of PW-2, no material is brought on record to prove the said charges against respondent nos. 2 and 3, beyond a pale of doubt in the instant case.

46. Ergo, in light of the foregoing, it is reiterated that from the material placed on record and arguments addressed by/on behalf of the appellant and the respondents, in the considered opinion of this Court, the prosecution/appellant has failed to discharge the burden to prove its case ‘*beyond reasonable doubt*’ against the appellants, including respondent nos. 1, 2 and 3. On the contrary, in light of the various contradictions, omissions, lacunae, hereinunder observed, benefit of doubt must accrue in favour of respondent nos. 1, 2 and 3. Needless to reiterate that not only is the version of the appellant replete with material variations, omissions, lacunae and improvements, bringing it outside the purview of sterling testimony, rather, as aforesaid, prosecution has made no endeavor to join any other independent witnesses in the instant case; to lend credence to the case put forth against the accused persons. Needless to mention, it is trite law¹ that the prosecution has to prove the charge beyond reasonable doubt and the accused should be considered innocent, till it is established otherwise. It is equally a settled law² that in case where two views are possible, the one in favour of the accused and the other adversely against it, the view favoring the accused must be accepted.

¹ *Meena v. State of Maharashtra*, (2000) 5 SCC 21.

² *Raghunath v. State of Haryana*, (2003) 1 SCC 398, *Dhan Kumar v. Municipal Corporation of Delhi*, (1980) 1 SCC 605 and *State of U.P. v. Nandu Vishwakarma*, (2009) 14 SCC 501.

47. As a concluding remark, this Court deems it further pertinent to note that the appellant has not been able to tender 'sufficient cause' to explain, delay in preferring the present appeal. In this regard, it is noted that against the impugned judgment dated 08.07.2022, the instant appeal was preferred by the appellant only on 05.11.2022, with a delay of 60 (sixty) days. In this regard, this Court deems it pertinent to outrightly refer to the decision of the Hon'ble High Court of Delhi in ***Kareemul Hajazi v. State (NCT of Delhi)***, 2011 SCC Online Del 60, wherein the Hon'ble Court in unambiguous terms held that the reasonable period of limitation for a victim's appeal should be 60 days from the date of the order appealed from. Markedly, the relevant extract(s) from the said dictate is reproduced as under;

"12. In the present case, we tend to agree with the submissions made by the learned counsel for the respondents 2 to 4 that the reasonable period of limitation for filing of an appeal by a victim ought to be regarded as 60 days from the date of order appealed from. We say this because under Section 374 read with Article 115(b)(i) of the Limitation Act, the convict's right of appeal to the High Court bears a limitation period of 60 days. Similarly, even the State's appeal with regard to inadequacy of sentence under Section 377 read with Article 115(b) of the Limitation Act in respect of an appeal to the High Court is required to be filed within 60 days. Furthermore, the application seeking special leave to appeal by the complainant under Section 378(4) read with Section 378(5) has to be filed within 60 days in all cases where the complainant is not a public servant. Of course, the period of limitation where the complainant is a public servant is much longer, i.e., six months. Furthermore, the limitation for an appeal by the State Government or by the Central Government under Section 378(1) and (2) is 90 days as pointed out above. It is clearly discernible from the above that the period of limitation, which has been prescribed for public servants and / or the State Government and the Central Government is greater than the period of limitation, which has been prescribed in respect of convicts and complainants. Therefore, since the victim is in a similar position to that of a

complainant and is a private individual, a lesser period of limitation than that provided to the State Government/ Central Government ought to be considered as reasonable. It is in this background that we accept the views of the learned counsel for the respondents 2 to 4 that the reasonable period of limitation for a victim's appeal should be 60 days from the date of the order appealed from."

(Emphasis supplied)

48. Noticeably, the appellant, under his application under Section 5 of the Limitation Act, 1963 (*hereinafter referred to as the 'Limitation Act'*), seeking condonation of delay, *inter alia* averred, as under;

“*** 3. Without prejudice to the above, in case the limitation period for filing an appeal by a victim against an order of acquittal is presumed to be on par with an appeal otherwise filed by the State against an order of acquittal before the Court of Session i.e. then in that case, the Appellant submits that **there would be a delay of 23 days in filing the present appeal.** The said period of delay has been calculated, **excluding the period of 08.09.2022 to 10.10.2022 i.e. the period taken for preparation of certified copy of the impugned judgment by the branch, in terms of provisions of S. 12(2) of the Limitation Act.**

4. The **Appellant prays that the said period of delay of 23 days** be condoned by the Hon'ble Court as it was for bona fide reasons completely beyond the control of the Appellant that the delay was occasioned.

5. In this regard, it may be noted that after pronouncement of judgment by the Ld. Trial Court, the **Appellant approached his counsel who had conducted the matter before the Ld. Trial Court for the purposes of filing an appeal and also gave the mandate of preparation of appeal.** However, despite following-up repeatedly, the appeal was not prepared in a timely fashion. In such circumstances, the **Appellant made a decision to approach the present counsel through whom the accompanying appeal is being filed and asked the previous counsel for files relating to the matter.** When the said files, which were handed over to the present counsel were seen, it was noticed that the files were incomplete and that most of the crucial documents, including portions of evidence etc. were missing from the file. Since the appeal could not have been prepared in the absence of the entire Trial Court record in a piece-meal

manner, it was deemed appropriate that a certified copy of the entire Trial Court record would be obtained and appeal would be drafted on that basis. In any case, a certified copy of the impugned judgment was required for the purposes of filing the appeal. In such circumstances, an application was filed for obtaining the entire Trial Court Record (including the impugned judgment) on 08.09.2022. Despite multiple follow-ups, considering the bulkiness of the file, certified copy was not prepared by the branch. It was only after repeatedly pursuing the matter with the branch that the certified copy was finally prepared on 10.10.2022 and handed-over to the Complainant.

6. However, it may be noted that the time-period between the Dussehra break and the Diwali break was unusually busy for the counsel for the Appellant from the point of view of work. At the same time, the file in question was extremely bulky and it took significant time to peruse use the records of the Ld. Trial Court and prepare the appeal. Further, the Courts and office of the counsel was closed for holidays for multiple days due to festivals. Be that as it may, substantial work was put-in and the appeal was prepared. On the first draft of the appeal being prepared, the same was discussed and deliberated upon with the Complainant and after some back and forth (suggestions, changes etc.), the appeal was finalized for filing. Thereafter, the annexures to the appeal were also prepared. Considering the festive period and also the bulkiness of the file and the time consumed in analyzing the record of the Ld. Trial Court, preparation of the appeal took time and it is for this reason that a delay of 23 days has been caused in preparing and filing the present appeal.

7. In the Appellant's submission, the delay has been caused for reasons completely beyond his control. There was no intention to delay in the matter and delay in filing the appeal is bona fide.

*8. Therefore, it is most respectfully prayed that this Hon'ble Court be pleased to condone the delay in filing the appeal, if at all, it is found that a period of limitation is otherwise applicable to appeals filed by victims under the Cr.P.C. against orders of acquittals. ***"*

(Emphasis supplied)

49. Quite evidently, it is seen from above that the appellant has attributed the delay to the reasons of omission of

earlier counsel, delay in obtaining certified copies of the impugned order and the records of the Ld. Trial Court and the delay occasioned due to heavy workload in festive season. Ergo, as aforementioned, Ld. Counsel has prayed for condonation of delay of 23 days in filing the present appeal. However, in this regard it is outrightly noted that considering that the period of sixty days to prefer an appeal lapsed on 06.09.2022, any subsequent time, expended by the appellant in obtaining certified copy of the impugned judgment, cannot, in the considered opinion of this Court, excluded in the strict mandate of the provision under Section 12 of the Limitation Act and the repeated avowal of the superior courts. In fact, law is trite that in order to claim benefit of Section 12 Limitation Act, application for obtaining certified copy of impugned order/judgment must be made, before the expiry of the limitation period. Reference in this regard is made to the decision in *V. Nagarajan v. SKS Ispat & Power Ltd., (2022) 2 SCC 244*, wherein the Hon'ble Apex Court, remarked, as under;

*“31. The import of Section 12 of the Limitation Act and its Explanation is to assign the responsibility of applying for a certified copy of the order on a party. A person wishing to file an appeal is expected to file an application for a certified copy before the expiry of the limitation period, upon which the “time requisite” for obtaining a copy is to be excluded. However, the time taken by the court to prepare the decree or order before an application for a copy is made cannot be excluded. If no application for a certified copy has been made, no exclusion can ensue. ***”*
(Emphasis supplied)

50. Appositely, in respect of the foregoing to further note that this Court is conscious of the repeated avowals of the superior courts that there is no presumption under law¹ that the delay in approaching courts was deliberate on the part of the litigant and

¹ *J.M. Ramachandra & Sons v. Customs Excise & Gold (Control) Appellate Tribunal, 2001 SCC OnLine Del 1082.*

that the courts are advised by superior courts to adopt a pragmatic, justice-oriented approach, in variance to, technical interpretation, while considering an entreaty for condonation of delay. However, this Court is equally conscious that the superior courts have also persistently avowed¹ that an application for condonation of delay, *“should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.”* As a corollary, application for condonation of delay, which is drafted in an extremely casual manner so as to even be bereft of material particulars, besides failing to disclose sufficient cause such as a bald statement of a party’s approaching various counsel, in the considered opinion of this Court, cannot be deemed to be sufficient cause to condone delay. Ergo, in light of the said principles, when the appellant’s reasons for condonation of delay are scrupulously analyzed, this Court finds itself difficult to be convinced that the Ld. Counsel for the appellant/appellant has been able to make out ‘*sufficient cause*’ for not timely preferring the present revision. Needless to note that not only under the appellant’s application under Section 5 of the Limitation Act, any date, time or particulars of the appellant’s approaching the erstwhile and present Ld. Counsel forthcoming, nor is the exact period of delay sought to be condoned properly computed. Clearly, the application has been drafted with utmost casual approach, failing to demonstrate any reasonable/justifiable cause, so as to convince this Court to grant any relief or indulgence in favour of the appellant, even on the aspect of delay/limitation at this stage, making the said application

¹ *Esha Bhattacharjee v. Raghunathpur Nafar Academy*, (2013) 12 SCC 649.

further liable to be outrightly rejected/dismissed.

51. Conclusively, in view of the above discussion, the present appeal deserves to be rejected/dismissed and is hereby ***dismissed*** on merits as also on the aspect of limitation. Accordingly, the judgment dated 08.07.2022 passed by Ld. MM-04, Central, Tis Hazari Courts, Delhi in case bearing, '***State v. Kishan Lal & Ors., Cr. Case No. 301961/2016***', arising out of ***FIR No. 114/2003, PS. Sarai Rohilla, inter alia*** acquitting respondent no. 1 of charges under Section 420 IPC and respondent nos. 2 and 3 of charges under Sections 323/341/506 (part-II) IPC read with Section 34 IPC, respectively, is hereby ***upheld***. Needless to further mention that though this Court holds highest regard for the decisions relied upon by the Ld. Counsel for the appellant in support of appellant's case, however, the same would not come to the aid of the appellant, in the manner as proposed, as the facts and circumstances of the present case are clearly distinguishable.

52. **Trial Court Record** be sent back along with a **copy of this order/judgment**.

53. **Appeal file** be consigned to **record room after due compliance**.

**Announced in the open Court
on 30.06.2026.**

(Abhishek Goyal)
ASJ-03, Central District,
Tis Hazari Courts, Delhi