

**IN THE COURT OF GAURAV RAO, SPECIAL JUDGE (CBI)  
(PC ACT)-01, ROUSE AVENUE DISTRICT COURTS, NEW  
DELHI.**

**CC No. 105/2019  
RC No. 16(A)/2017  
CBI v. Shubham Yadav  
CNR No. DLCT11-000472-2019  
Under Section 409/420/468/471/201 IPC &  
section 13(2) r/w 13(1)(c)/13(2)  
r/w 13(1)(d) of the PC Act, 1988**

**Central Bureau of Investigation**

.....Prosecution

Versus

**Shubham Yadav**  
S/o Sh. Bharat Singh Yadav,  
R/o House No. A-2/466, 1<sup>st</sup> Floor,  
Sector-8, Rohini, Delhi.

.....Accused

**Date of institution : 03.04.2018  
Date of arguments : 19.05.2026  
Date of judgment : 03.06.2026  
Decision : Convicted**

**AND**

**CC No. 104/2019  
RC No. 16(A)/2017  
CBI v. Sonu  
CNR No. DLCT11-000470-2019  
under Section 409/420/468/471/201 IPC &  
Section 13(2) r/w 13(1)(c)/13(2)  
r/w 13(1)(d) of the PC Act**

CC No. 105/2019  
&  
CC No. 104/2019

CBI v. Shubham Yadav  
CBI v. Sonu

**Central Bureau of Investigation**

.....Prosecution

Versus

**Sonu**

S/o Sh. Karan Singh  
R/o House No. 23, Block-L,  
Majnu Ka Tilla, Aruna Nagar,  
New Delhi.

.....Accused

**Date of institution : 03.04.2018**

**Date of arguments : 19.05.2026**

**Date of judgment : 03.06.2026**

**Decision : Convicted**

### **JUDGMENT**

1. This common judgment shall dispose of CC No. 105/19 & 104/19, both arising out of RC No. 16(A)/2017. Both these charge sheets arise out of the same FIR and were investigated by the same IO. Both the charge sheets are substantially the same, over-lapping. The accused persons are employees of the same bank/branch and the nature of allegations, the period of crime is also the same, so is the investigation conducted by the IO. Same set of documents are on record in both the matters. Further in both the matters a common order on charge was passed by Ld. Predecessor of this court and same witnesses have been examined by the prosecution, though their number is less in CC No. 104/19. In fact same/substantially the same evidence has been recorded on the same dates and defence

is also similar, as same Ld. Defence Counsel is representing both the accused persons. Furthermore similar arguments were raised at bar by the prosecution and the defence. Hence to avoid repetitiveness, time management and when no prejudice whatsoever will be caused to the accused persons, this common judgment is being passed.

**BRIEF FACTS AS PER THE CHARGE SHEET IN CC NO. 105/19**

2. It is the prosecution case that the instant case was registered on the basis of complaint dated 07.04.2017 of Sh. R.K. Thakral, Dy. General Manager, Regional Office, Delhi Metro Region-1 (DMR-I), Bank of Baroda Building, 12th Floor, 16 Sansad Marg, New Delhi alleging therein that during the demonetization period from 10.11.2016 to 30.12.2016, incident of fraud took place at Bank of Baroda, Azadpur Branch, Delhi.

2.1 It is its case that the Ministry of Finance (Department of Economic Affairs), Govt. of India published the Gazette Notification N.2652 dt. 08.11.2016 and S.O 3407 (E), vide which existing series of value of Rs.500/- and Rs.1000/- (Specified Bank Notes) (in short SBNs) were declared ceased to be legal tender w.e.f. 09.11.2016. In pursuance of above mentioned Gazette Notification, RBI vide letter No. RBI/2016-17/112 dated 08.11.2016, issued guidelines in respect of Implementation of the Government scheme. RBI circular is as under:-

*"In terms of Gazette Notification No. 2652 dated November 08, 2016 issued by Government of India, Rs 500/- and Rs.1,000/- denominations of Bank Notes of the existing series issued by Reserve Bank of India (hereinafter referred to as Specified Bank Notes) shall cease to be legal tender with effect from November 09, 2016, to the extent specified in the Notification. A new series of Bank Notes called Mahatama Gandhi (New) Series having different size and design, highlighting the cultural heritage and scientific achievements of the country, will be issued. Bank Branches will be the primary agencies through which the members of public and other entities will be exchanging the Specified Bank Notes for Bank Notes in other valid denominations or depositing the Specified Bank notes for crediting to their accounts, upto and including the December 30, 2016. Therefore, banks have to accord highest priority to this work."*

2.2 It is its case that in pursuance of instructions/guidelines of RBI, the Bank of Baroda also issued parallel guidelines for their staff vide Circular No. 108/157 dated 09.11.2016 and 108/154 dated 12.11.2016 on the captioned subject and also customized special menu in their computer system to be used for exchange or depositing of SBNs currency during demonetization.

2.3 It is further its case that before demonetization, at the time of deposit of cash amount in the bank, customer gave the cash to the cashier along with the pay-in-slip, having two parts i.e. left side smaller part "customer counterfoil" and right side larger part "bank Voucher". Cashier/Single Window Operator (in short SWO) upon receipt of the cash, counted the same and tallied it with the details mentioned by the customer on the pay-in-slip including the detail of denominations of currency notes.

Further he put his stamps & initials on the counterfoil and the bank voucher part of the pay-in-slip and thereafter, handed over the counterfoil to the customer and kept the bank voucher with him. Entry was made in the computer system through TM menu and voucher was sent to back office for posting and verification by a senior officer.

2.4 It is further it's case that during the demonetization period, due to huge rush of depositors, for convenience, the work related to making entry in computer system of the bank, along with the work of posting/verification was also being done by the officers of the branch at back office. Cashiers/SWOs-A were only collecting cash from the customers and after cross checking the particulars (including denominations of currency notes) from the customer counter foils & bank voucher with the cash deposits, used to issue the customer counterfoil from the pay-in-slip to the customer under the bank stamp and his/their signatures. Bank vouchers were kept by the cashier and same were handed over to the back office usually in small bunches in short intervals for making entry and verification/posting of the same in the finacle system of the bank. During demonetization, upon receipt of the bank voucher from the cashier, the entering officer used to enter the details of the transactions mentioned on the bank voucher in the finacle system, through OHDTM menu. Upon entry of the transaction detail, a transaction number was generated in the system which number was written on the face of the bank voucher. Thereafter, bank voucher was forwarded to the verifying officer who, after conducting verification, used to post the

transaction in the system and put his initials on the face of the bank voucher. The bank vouchers were then deposited in record room of the bank in bundles. Besides this, all the cashiers were also required to maintain Scroll Register, wherein details of cash amount deposits along with relevant account numbers were written.

2.5 It is further it's case that in the month of February 2017, on receiving notices from the Income Tax Department for depositing SBNs, two customers of Bank of Baroda, Azadpur Branch (1) Mr. Vinesh Kumar, the proprietor of M/s Gopichand & Co. New Delhi (2) Mr. Sushil Kumar, the proprietor of M/s Dheneshwar Trading New Delhi approached the Branch Head of the Bank of Baroda, Azadpur Branch for Issuance of the certificate for the denomination of the cash deposited by them in their accounts during demonetization period. During certification, it came to the notice of bank that the particulars of denominations of currency notes mentioned in the bank vouchers kept in bank record for the deposits i.e. Rs 5,50,000/-, dated 28.11.2016 in A/c No. 21420200006095 of M/s Dhaneshwar Trading and Rs 2,00,000/- dated 22.11.2016 in A/c No. 2142020000026 of M/s Gopichand & Co. were different from the particulars of denominations of currency notes mentioned in related customer counterfoils issued by the bank for the said deposits. During the primary enquiry at branch level, it was revealed that Shubham Yadav, Cashier/SWO-A of Bank of Baroda, posted at Azadpur Branch (Employee Code No. 112063) (hereinafter referred to as the accused) had changed the bank

vouchers along-with the detail of denominations of the deposited currency notes for the said deposits. The Branch Head informed the matter to the Deputy General Manager, Regional Office, DMR-I of Bank of Baroda, Delhi through his letter dated 08.02.2017. In this regard the accused also admitted his guilt during bank enquiry on 09.02.2017 and also gave written admission to the customers namely M/s Dhaneshwar Trading and M/s Gopichand & Co. in front of the branch head Sh. O.N. Singh.

2.6 It is further it's case that in the meantime one more customer Mr. Ram Sewak Yadav maintaining A/c No. 21420200006495 at Azadpur Branch of Bank of Baroda, approached the branch for the same reason for his cash deposits of Rs. 50,000/- dated 22.11.2016 & Rs. 2,00,000/-dated 29.11.2016. Again it was found that the particulars of denominations of currency notes mentioned in the bank vouchers kept in bank record for the reported deposits i.e. Rs. 50,000/-, dated 22.11.2016 and Rs.2,00,000/- dated 29.11.2016 in A/c No. 21420200006495 of Sh. Ramsewak Yadav were different from the particulars of denominations of currency notes mentioned in related customer counterfoils issued by the bank for the said deposits. This matter was again sent to the Deputy General Manager, Regional Office, DMR-I of Bank of Baroda, Delhi by the branch head through his letter dated 13.02.2017. Thereafter on 16.02.2017, the Branch Head also informed the Deputy General Manager, Regional Office, DMR-1 that prima facie the accused is involved in the case.

2.7 It is further it's case that on receiving the letter dated 08.02.2017 from Azadpur Branch of Bank of Baroda, the DGM Regional Office, DMR-I of Bank of Baroda referred the matter to Mrs. Surbhi Singh, the then Manager of Bank of Baroda, Kingsway Camp Branch, Delhi through letter dated 09.02.2017 to carry out detailed investigation in the matter. After conducting the departmental investigation, Mrs Surbhi Singh submitted her Investigation Report dated 16.02.2017 in which she found an unauthorized replacement of legal tender in smaller denominations with SBNs aggregating Rs 2,46,000/- out of total deposit of Rs. 7,50,000/- i.e. Rs. 2,00,000/- dated 22.11.2016 made in A/c 21420200000326 of M/s Gopichand & Co. & Rs. 5,50,000/- dated 28.11.2016 made in 21420200006095 of M/s Dhaneshwar Trading and found the accused responsible for the same.

2.8 It is further it's case that on receiving the letters dated 13.02.2017 & 16.02.2017 regarding deposits by Sh. Ramsewak Yadav, the DGM Regional Office, DMR-I of Bank of Baroda again referred the matter to Mrs. Surbhi Singh through his letter dated 20.02.2017 to carry out detailed investigation in the matter. During this bank investigation, Sh. Sonu admitted in his written reply to Mrs. Surabhi Singh that he have made the entry of the deposit of Rs. 2,00,000/- dated 29.11.2016 of Sh. Ramsewak Yadav in his Scroll Register in the denominations of Rs. 100/- and SBNs of Rs. 1000/-. After conducting the departmental investigation, Mrs. Surbhi Singh submitted her

investigation report dated 06.03.2017 in which she found an unauthorized replacement of whole amount Rs. 50,000/- from the deposits of Rs. 50,000 dated 22.11.2016 and Rs. 1,00,000/- from the deposits of Rs. 2,00,000/- dated 29.11.2016 (Total Rs 1,50,000/-) made in A/c 21420200006495 of Ram Sewak Yadav in legal tender currency notes in smaller denominations with SBNs with malafide intention and found the accused and Mr. Sonu, Employee Code No. 116817 and also SWO-A, posted at Azadpur Branch, Delhi, accountable, respectively for this. On the basis of above said investigation reports, the DGM Bank Of Baroda, DMR-1, suspended the accused on 24.02.2017 and also issued a Caution Letter to Mr. Sonu on 28.03.2017.

2.9 It is further it's case that after registration of this case, during bank's further scrutiny five more cases of similar irregularities made by the accused were noticed by the bank in the following two accounts:-

- i. In the A/c 21420400006919 of M/s Ginger Trading Co. for the deposit of Rs. 700000/-dated 23.11.2016;
- ii. In the A/c No 21420200000236 of M/s Kaka Kohli & Sons for the deposits of (1) Rs. 2,20,000/- dated 24.11.2016. (ii) Rs 6,50,000/-dated 28.11.2016. (iii) Rs 3,50,000/- dated 29.11.2016 and (iv) Rs. 1,50,000/-dated 18.11.2016.

2.10 It is it's case that the matter was informed to the DGM, DMR-1 by the Branch Head of Bank of Baroda, Azadpur Branch, Delhi through his letters dated 11.04.2017 and 15.04.2017 who referred the matter to Mr. Susheel Kumar

Srivastava, the then Chief Manger of Bank of Baroda, SME Loan Factory, DMR-1, New Delhi, through his letter dated 15.04.2017 to carry out detailed investigation in the matter. After conducting the departmental investigation, Mr. Susheel Kumar Srivastava, submitted his investigation reports dated 21.04.2017 in which he found an unauthorized replacement of legal tender denominations with SBNs aggregating to Rs. 5,50,000/- with malafide intention from the deposits of Rs. 7,00,000/- dated 23.11.2016 in A/c 21420400006919 of M/s Ginger Trading Co. and Rs. 2,20,000/- dated 24.11.2016, Rs. 6,50,000/- dated 28.11.2016, Rs. 3,50,000/- dated 29.11.2016 & Rs. 1,50,000/- dated 18.11.2016 in A/c No. 21420200000236 of M/s Kaka Kohli & Sons. He found the accused responsible for the same and information regarding the said irregularities was also furnished to ACB/CBI/Delhi by Dy Gen. Manager of Bank of Baroda, DMR-1, Delhi through letter No. RO/DMR-I/RVD/63 dated 21.04.2017 and the same was also taken up for investigation.

2.11 It is further it's case that M/s Dhaneshwar Trading was maintaining account No. CA 21420200006095 with Bank of Baroda, Azadpur Branch, New Delhi and it's Munim Sh. Pawan Kumar Sharma, vide bank pay-in-slip No.482747 dt. 28.11.2016 deposited Rs. 5,50,000/- in denomination of 5000 x Rs. 100, 700 x Rs.50, 500 x Rs.20 and 500 x Rs. 10. He filled the bank voucher as well as counterfoil of the said pay-in-slip, in his handwriting and specifically mentioned the denomination of the currency notes tendered for depositing in the account, on the back of counterfoil. As per the detail mentioned in the bank

voucher No.482747 and counterfoil thereof, the accused received the aforesaid amount of Rs.5,50,000/- and after tallying the denomination with the voucher and counterfoil, he returned the counterfoil to Sh. Pawan Kumar after putting the cashier stamp and writing the numerals of the received amount with his initials. He put cashier stamp with his initials on front side as well as back side of the counterfoil. But subsequently, in place of voucher No.482747, he got filled another bank voucher having serial No.65293 dated 28.11.2016, from Sh. Nand Kishore (a sweeper & a private person working in the bank) showing deposit of Rs.5,50,000/- in denomination of 23 x Rs.1000, 46 x Rs 500, 4540 x Rs. 100, 700 x Rs.50, 500 x Rs 20 & 500 x Rs.10. He put the cashier stamp and wrote numerals of the received amount with his initial on the said forged bank voucher and forwarded the same for entry, verification and posting to the back office. Ms. Pooja Verma, Assistant Manger made entry of this transaction in the system of the bank through her ID and mentioned the transaction number on the voucher. Thereafter, Ms. Nisha Meena, Assistant Manager, verifying and posting officer, verified the transaction and posted the same in system through her ID. During investigation, Sh. Pawan Kumar identified his handwriting on the counterfoil of Pay-in-slip No 482747 but denied his handwriting on forged voucher No. 65293. Ms. Pooja Verma, Ms. Nisha Meena @ Nisha Gupta, Sh. Ankit Pandey, Sh. Joginder Pal and Sh. O.N. Singh, all bank officials, also identified handwriting of numerals and initials of the accused on the forged voucher No 65293, counterfoil of voucher No.482747 as well as the relevant entry in his scroll register. Sh.

Nand Kishore also identified his handwriting on the forged voucher No. 65293 dated 28.11.2016. The handwriting expert opinion on the Counterfoil of pay-in-slip No. 482747 and forged voucher No. 65293, as received from CFSL/CBI Delhi, affirmed the handwriting of Sh. Pawan Kumar for the particulars of Counterfoil of pay-in-slip No.482747 and the handwriting of the accused for the numerals of the received amounts alongwith initials over the bank stamp on Counterfoil of pay-in-slip No. 482747 and forged voucher No.65293.

2.12 It is further it's case that M/s Ginger Trading Co. was maintaining account No.CA 21420400006919 with Bank of Baroda, Azadpur Branch, New Delhi and it's Munim Sh. Jagat Singh, vide bank pay-in-slip No.521960 dated 23.11.2016 deposited Rs. 7,00,000/- in denomination of 7000 x Rs. 100. He filled the bank voucher as well as counterfoil of the said pay-in-slip, in his handwriting and specifically mentioned the denomination of the currency notes in counterfoil as well as on the voucher, tendered for depositing in the accounts. The accused received the aforesaid amount of Rs.7,00,000/- as per the details mentioned in the counterfoil and bank voucher No.521960 and after receipt of the aforesaid amount and tallying the denomination with the voucher and counterfoil, returned the counterfoil to Sh. Jagat Singh after putting the cashier stamp and writing numerals of the received amount with his initials. But subsequently, in place of voucher No. 521960, the accused filled another bank voucher having serial No 381380 dated 23.11.2016, in his handwriting, showing deposit of Rs 7,00,000/- in the

account of M/s Ginger Trading co. in denomination of 50 x Rs 1000, 100 x Rs. 500 & 600 x Rs 100. He put the cashier stamp and wrote the numerals of the received amount with his initial on the said forged bank voucher and forwarded the same for entry, verification and posting to the back office. Ms. Pooja Verma made entry of this transaction in the system of the bank through her ID and mentioned the transaction number on the voucher. Thereafter, Sh. Joginder Pal Singh, Officer, verifying and posting officer verified the transaction and posted the same in system through his ID. During investigation, Sh. Jagat Singh identified his handwriting on the counterfoil of pay-in-slip No 521960 but denied his handwriting on forged voucher No. 381380. Ms. Pooja Verma, Ms. Nisha Meena @ Nisha Gupta, Sh. Ankit Pandey, Sh. Joginder Pal and Sh. O.N. Singh also identified the handwriting of the accused for the numerals of the received amount and initials on the forged voucher No. 381380, counterfoil of pay-in-slip No. 521960 as well as the relevant entry made by the accused, in his scroll register. The handwriting expert opinion on the Counterfoil of pay in slip No. 521960 and forged voucher No. 381380, as received from CFSL/CBI Delhi, affirmed the handwriting of Sh. Jagat Singh for the particulars of Counterfoil of Pay-in-slip No.521960 and the handwriting of the accused for the numerals of the received amounts alongwith initials over the bank stamp on Counterfoil of Pay-in-slip No. 521960 and forged voucher No. 381380.

2.13 It is further it's case that M/s Gopichand & Co. was maintaining account No.CA 21420200000326 with Bank of

Baroda Azadpur Branch, New Delhi and it's Munim Sh. Arun Kumar, vide bank pay-in-slip No.215437 dated 22.11.2016 deposited Rs.2,00,000/- in denomination of 2000 x Rs 100. Sh. Vinesh Kumar, Proprietor of the company had filled in the bank voucher as well as counterfoil of the said pay-in-slip in his handwriting and specifically mentioned the denomination of the currency notes in counterfoil as well as on the voucher, tendered for depositing in their accounts. The accused received the aforesaid amount of Rs.2,00,000/- as per the detail mentioned in the counterfoil and bank voucher No.215437 and after receipt of the aforesaid amount and tallying the denomination with the voucher and counterfoil he returned the counterfoil to Sh. Arun Kumar after putting the cashier stamp and writing numerals of the received amount with his initials. But subsequently, in place of voucher No.215437, he filled another bank voucher having serial No.381953 dated 22.11.2016, in his handwriting, showing deposit of Rs. 2,00,000/- in the account of M/s Gopichand & Co in denomination of 71 x Rs 1000 & 258 x Rs.500. He put the cashier stamp and wrote the numerals of the received amount with his initial on the said forged bank voucher and forwarded the same for entry, verification and posting to the back office. Ms. Pooja Verma made entry of this transaction in the system of the bank through her ID and mentioned the transaction number on the voucher. Thereafter, Sh. Ankit Pandey, Sr. Manager, verified the transaction and posted the same in system through his ID on the basis of bank voucher No. 381953 provided by the accused. During investigation, Sh. Vinesh Kumar identified his handwriting on the counterfoil of Pay-in-slip No 215437 but

denied his handwriting on forged voucher No. 381953. Sh. Arun Kumar, Munim has also identified handwriting of Sh. Vinesh Kumar on the counterfoil of Pay-in-slip No.215437 but denied his handwriting on forged voucher No. 381953. Ms. Pooja Verma, Ms. Nisha Meena @ Nisha Gupta, Sh. Ankit Pandey. Sh. Joginder Pal and Sh. O.N. Singh also identified the handwriting of the accused for the numerals of the received amount and initials on the forged voucher No. 381953, counterfoil of Pay-in-slip No.215437 as well as the relevant entry made by the accused, in his scroll register. The handwriting expert opinion on the Counterfoil of Pay-in-slip No. 215437 and forged voucher No. 361953, as received from CFSL/CBI Delhi, affirmed the handwriting of Sh. Vinesh Kumar for the particulars of Counterfoil of Pay-in-slip No.215437 and the handwriting of the accused for the numerals of the received amounts alongwith initials over the bank stamp on Counterfoil of Pay-in-slip No. 215437 and forged voucher No. 381953.

2.14 It is further it's case that M/s Kaka Kohli & Sons was maintaining A/c No.21420200000236 with Bank of Baroda, Azadpur Branch, New Delhi and it's Munim Sh. Sandeep, vide bank pay-in-slip No.195626 dated 18.11.2016 deposited Rs.1,50,000/- in denomination of 1500 x Rs. 100. Sh. Sandeep had filled in the bank voucher as well as counterfoil of the said pay-in-slip, in his handwriting. No denomination of the currency notes was found in counterfoil. But Sh. Sandeep and Sh. Sanjay Kohli, Proprietor claimed that vide above mentioned voucher, 1500 notes of Rs. 100 denomination were deposited in the bank.

The accused received the aforesaid amount of Rs.1,50,000/- as per the detail mentioned in the counterfoil and bank voucher No. 195628 and after receipt of the aforesaid amount and tallying the denomination with the Voucher and counterfoil he returned the counterfoil to Sh. Sandeep after putting the cashier stamp and writing the numerals of the received amount with his initials. But subsequently, in place of voucher No 195628, he got filled another bank voucher having serial No 704238 dated 18.11.2016 from Sh. Nand Kishore showing deposit of Rs 1,50,000/- in the account of M/s Kaka Kohli & Sons in denomination of 75 x Rs. 1000 & 150 x Rs.500. He put the cashier stamp and wrote the numerals of the received amount with his initial on the said forged bank voucher and forwarded the same for entry, verification and posting to the back office. Sh. Ankit Pandey made entry of this transaction in the system of the bank through his ID and mentioned the transaction number on the voucher. Thereafter, Ms. Nisha Meena, Assistant Manager, verified the transaction and posted the same in system through her ID on the basis of bank voucher No. 704238 provided by the accused.

2.15 It is further it's case that similarly, Sh. Sandeep, vide bank pay-in-slip No 195634 dated 24.11.2016 deposited Rs. 2,20,000/- in denomination of 2200 x Rs. 100 in the account of M/s Kaka Kohli & Sons and he had filled in the bank voucher as well as counterfoil of the said pay-in-slip, in his handwriting. The accused received the aforesaid amount of Rs 2,20,000/- as per the details mentioned in the counterfoil and bank voucher No. 195634 and after receipt of the aforesaid amount and tallying the

denomination with the voucher and counterfoil, he returned the counterfoil to Sh. Sandeep after putting the cashier stamp and writing the numerals of the received amount with his initials. But subsequently, in place of voucher No. 195634, he filled-up another bank voucher having serial No 500798 dated 24.11.2016 in his handwriting showing deposit of Rs.2,20,000 in the account of M/s Kaka Kohli & Sons in denomination of 200 x Rs 500 and 1200 x Rs 100. He put the cashier stamp and wrote the numerals of the received amount with his initial on the said forged bank voucher and forwarded the same for entry, verification and posting to the back office. Ms Pooja made entry of this transaction in the system of the bank through her ID and mentioned the transaction number on the voucher. Thereafter, Sh. Ankit Pandey verified the transaction and posted the same in system through his ID on the basis of bank voucher No. 500798 provided by the accused.

2.16 It is further it's case that again Sh. Sandeep had also, vide bank pay-in-slip No. 195641 dated 28.11.2016 deposited Rs 6,50,000/- in denomination of 6100 x Rs.100, 600 x Rs.50, 100 x Rs.20 & 800 x Rs 10 in the account of M/s Kaka Kohli & Sons. Sh Sandeep had filled in the bank voucher as well as counterfoil of the said pay-in-slip, in his handwriting. The accused received the aforesaid amount of Rs.6,50,000/- as per the detail mentioned in the counterfoil and bank voucher No 195641 and after receipt of the aforesaid amount and tallying the denomination with the voucher and counterfoil, he returned the counterfoil to Sh. Sandeep after putting the cashier stamp and writing the numerals

of the received amount with his initials. But subsequently, he altered the denomination in bank voucher No. 195641 dated 28.11.2016 by manipulating the denomination of the currency notes tendered to him. He altered/changed the figure 6100 x Rs 100 by figure 5100 x Rs 100. He also added 100 notes Rs.1000. He put the cashier stamp without his initials and amount received on the said forged bank voucher and forwarded the same for entry, verification and posting to the back office. Ms. Pooja made entry of this transaction in the system of the bank through her ID and mentioned the transaction number on the voucher. Thereafter, Ms. Nisha Meena verified the transaction and posted the same in system through her ID on the basis of bank voucher No. 195641 provided by the accused.

2.17 It is further it's case that Sh. Sandeep had, vide bank pay-in-slip No 195544 dated 29.11.2016, deposited Rs.3,50,000/- in denomination of 3400 x Rs.100, 100 x Rs 50 & 500 x Rs.10 in the account of M/s Kaka Kohli & Sons. had filled in the bank voucher as well as counterfoil of the said pay-in-slip, in his handwriting. The accused received the aforesaid amount of Rs.3,50,000/- as per the detail mentioned in the counterfoil and bank voucher No. 195644 and after receipt of the aforesaid amount and tallying the denomination with the voucher and counterfoil, he returned the counterfoil to Sh. Sandeep after putting the cashier stamp and writing the numerals of the received amount with his initials. But subsequently, in place of voucher No. 195644, he got filled another bank voucher having serial No 114592 dated 29.11.2016 from Sh. Nand Kishore

showing deposit of Rs 3,50,000/- in the account of M/s Kaka Kohli & Sons in denomination of 66 x Rs. 1000, 68 x Rs.500, 2400 x Rs 100, 100 x Rs 50 & 500 x Rs.10. He put the cashier stamp and wrote the numerals of the received amount with his initial on the said forged bank voucher and forwarded the same for entry, verification and posting to the back office. Ms. Pooja made entry of this transaction in the system of the bank through her ID and mentioned the transaction number on the voucher. Thereafter. Ms. Nisha Meena verified the transaction and posted the same in system through her ID on the basis of bank voucher No. 114592 provided by the accused.

2.18 It is further it's case that during investigation Sh. Sandeep identified his handwriting on the counterfoils of Pay-in-slip Nos. 195628 dated 18.11.2016, 195634 dated 24.11.2016, 195641 dated 26.11.2016, 195644 dated 29.11.2016 and voucher No. 19641 dated 28.11.2016 but denied his handwriting on forged voucher No.704238 dated 18.11.2016, 500798 dated 24.11.2016 and 114592 dated 29.11.2016. He also stated that he did not change the figures in voucher No. 195641 dated 28.11.2016 and deposited only legal tender notes as mentioned in the related counterfoil. Ms. Pooja Verma, Ms. Nisha Meena @ Nisha Gupta, Sh. Ankit Pandey, Sh. Joginder Pal and Sh. O.N. Singh also identified the handwriting of the accused for the numerals as well as his initials on the forged vouchers and counterfoils mentioned above, as well as the relevant entries made by him in his scroll register. Sh. Nand Kishore also identified his handwriting on Voucher No. 704238 dated 18.11.2016 & 114592 dated

29.11.2016. The handwriting expert opinion on the Counterfoils of Pay-in-slip Nos. 195628, 195634, 195641 & 195644 and forged voucher Nos. 704238, 500798, 195641 & 114592, was received from CFSL/CBI Delhi which affirmed the handwriting of Sh. Sandeep Kumar for the particulars of Counterfoil of Pay-in-slip Nos. 195628, 195634, 195641 & 195644 and the handwriting of the accused for the numerals of the received amounts alongwith initials over the bank stamp on Counterfoils of Pay-in-slip Nos. 195628, 195634, 195641 & 195644 and forged Voucher Nos. 704238, 500798, 195641 & 114592. The expert opinion also affirmed the handwriting of Sh. Nand Kishore on the forged bank voucher Nos. 704238 and 114592.

2.19 It is further it's case that Sh. Ram Sewak Yadav was maintaining A/c No.21420200006495 with Bank of Baroda, Azadpur Branch, New Delhi. He, vide bank pay-in-slip No.539603 dated 22.11.2016, deposited Rs 50,000/- in denomination of 500 x Rs.100. Sh. Ram Sewak Yadav filled in the bank voucher as well as counterfoil of the said pay-in-slip, in his handwriting. The accused received the aforesaid amount of Rs. 50,000/- as per the detail mentioned in the counterfoil and bank voucher No.539603 and after receipt of the aforesaid amount and tallying the denomination with the voucher and counterfoil, he returned the counterfoil to Sh. Ram Sewak Yadav after putting the cashier stamp and writing the numerals of the received amount with his initials. But subsequently, in place of voucher No.539603 he filled another bank voucher having serial No.381480 dated 22.11.2016 in his handwriting showing deposit

of Rs.50,000/- in the account of Sh. Ram Sewak Yadav in denomination of 50 x Rs.1000. He put the cashier stamp and wrote the numerals of the received amount with his initial on the said forged bank voucher and forwarded the same for entry, verification and posting to the back office. Sh. Ankit Pandey made entry of this transaction in the system of the bank through his ID and mentioned the transaction number on the voucher. Thereafter, Sh. Joginder Pal, Officer, verified the transaction and posted the same in system through his ID on the basis of forged bank voucher No. 381480 provided by the accused. Sh. Ram Sewak Yadav identified his handwriting on the counterfoil of Pay-in-slip No.539603 dated 22.11.2016 but denied his handwriting on forged voucher No. 381480 dated 22.11.2016 and 114591 dated 29.11.2016. Ms. Pooja Verma, Ms. Nisha Meena @ Nisha Gupta, Sh. Ankit Pandey, Sh. Joginder Pal and Sh. O.N. Singh also identified the handwriting of the accused for the numerals and initials on the forged voucher No.381480 dated 22.11.2016 and on counterfoil of Pay-in-slip No.539603 dated 22.11.2016. The handwriting expert opinion on the Counterfoil of voucher No. 539603 and forged voucher No.381480, as received from CFSL/CBI Delhi affirmed the handwriting of Sh. Ramsewak Yadav for the particulars of Counterfoil of Pay-in-slip No. 539603 and the handwriting of the accused for the numerals of the received amounts alongwith initials over the bank stamp on Counterfoil of Pay-in-slip No. 539603 and forged voucher No. 381480.

2.20 It is further it's case that Sh. Nand Kishore, during investigation, admitted that he had filled the three bank vouchers including the denominations of currency notes, bearing No.114592 dated 29.11.2016 of Rs 3,50,000/- and No.704238 dated 18.11.2016 of Rs. 1,50,000/- both related to M/s Kaka Kohli & Sons and voucher No.65293 dated 28.11.2016 of Rs. 5,50,000/- related to M/s Dhaneshwar Trading, on the instructions of the accused. The accused gave him the altered/overwritten bank vouchers for the said deposits on the respective dates and asked him to fill-up fresh vouchers without cutting. Sh. Nand Kishore has also corroborated the same in his statement recorded U/s 164 Cr.PC. It is it's case that the Expert Report No. CFSL-2018/0-0019/974 dated 21.03.2018 on the handwriting, has been received from CFSL/CBI/New Delhi which confirmed the handwriting of accused on the questioned documents.

2.21 It is further it's case that the investigation established that the cash deposits of (1) Rs 5,50,000 dated 28.11.2016 in A/c No 21420200006095 of M/s Dhaneshwar Trading, (2) Rs 2,00,000/- dated 22.11.2016 in A/c No. 21420200000326 of M/s Gopichand & Co., (3) Rs 50,000 dated 22.11.2016 in A/c No. 21420200006495 of Mr. Ram Sewak Yadav, (4) Rs. 7,00,000/- dated 23.11.2016 in A/c 21420400006919 of M/s Ginger Trading Co. and (5) Rs 2,20,000 dated 24.11.2016, (6) Rs 6,50,000/- dated 28.11.2016, (7) Rs 3,50,000/-dated 29.11.2016 and (8) Rs. 1,50,000, dated 18.11.2016 in A/c No. 21420200000236 of M/s Kaka Kohli &

Sons were received by the accused as per the details of GC notes mentioned in bank pay-in-slip tendered by depositors to him. He acknowledged the same by putting cashier stamps and writing the numerals of the received amount with his initials on the counterfoils of bank pay-in-slip. Counterfoils are also having details of currency notes tendered to be deposited by the depositors in their respective accounts. But the accused fraudulently & dishonestly destroyed/altered the original bank vouchers and in place thereof, he fraudulently prepared forged bank vouchers of the same amount but changed denomination of the currency notes therein. He dishonestly mentioned the denominations of SBNs in the forged vouchers which were not deposited by the depositors. Thereafter he put bank stamp and wrote the numerals of the received amount with his initials on the forged vouchers and sent them for making entry and posting in the accounts of the respective customers. He thus committed offence of criminal misconduct as he, by abusing his official position, has obtained pecuniary advantage to the tune of Rs 8,46,000/- for himself or for any other person, by depositing SBNs (which were declared ceased to be legal by Govt. of India) concealing the name of depositor of SBNs. He also committed offence of forgery and use of forged documents by preparing forged vouchers and using them for making entries in bank records. He also committed an offence of cheating as he deceived the bank through forged vouchers to accept the SBNs of the unknown persons without disclosing their identities, caused damage to the reputation of the bank and dishonestly & in violation of instructions issued by RBI, Govt. of India and Bank

of Baroda, delivered legal tender currency to unauthorized person/persons which was entrusted to him by the bank to deliver to the bank customers as per legal norms. He also committed the offence of causing disappearance of evidence of offence by destroying the original bank vouchers and also committed the offence of criminal breach of trust by public servant/banker by way of misappropriating the entrusted legal tenders currency notes of the bank customers.

2.22 It is it's case that the aforesaid, facts & circumstances and acts constitute the offences punishable under section 201, 409, 420, 468 & 471 IPC and 7, 13(2) r/w 13 (1) (c) & 13 (1) (d) of the PC Act 1988 on the part of the accused and sanction for his prosecution was accordingly obtained from the competent authority.

### **Cognizance & Charge**

3. Vide order dated 16.04.2018, the Ld. Predecessor of this court took cognizance of offences under section 201, 409, 420, 468 & 471 IPC and section 7, 13 (2) r/w 13(1)(c) & 13(1)(d) of the PC Act, 1988.

3.1 Vide order dated 03.11.2018, charge for commission of offences punishable under section 409/420/468/471/201 IPC and under section 13(2) read with section 13(1)(c), 13(2) read with Section 13(1)(d) of the PC Act, 1988 was framed against accused Shubham Yadav to which he pleaded not guilty and

claimed trial.

### **Prosecution Evidence**

4. In order to prove its case, prosecution examined 24 witnesses in all. So as to avoid repetition and for the sake of brevity, the deposition of these witnesses is not being adverted to in detail herein below as the same has been dealt with at length at the time of appreciating the factual as well as the legal aspects of the case and while considering the rival contentions raised at bar viz-a-viz their deposition. Nonetheless their role, sum & substance of their deposition has been discussed succinctly herein below:-

4.1 **PW-1 Sh. Rakesh Kumar Bhatia** is/was the sanctioning authority who proved the sanction order dated 26.03.2018 as Ex. PW1/A alongwith forwarding letter Ex. PW1/B.

4.2 **PW-2 Sh. O. N. Singh** was posted as Chief Manager, Bank of Baroda, Azadpur Branch at the relevant time. While supporting the prosecution story in entirety, he deposed about having been approached by certain bank customers seeking issuance of certificates for the denomination of the cash deposited by them in their accounts during denomination period and that during certification anomalies were found in the particulars of denominations of currency notes & serial numbers mentioned in the bank vouchers kept in bank record and

particulars of denominations of currency notes mentioned in related Customer Counter Foils issued by the bank in respect of those customers for the said deposits. He deposed that during the primary enquiry it was revealed that accused Shubham Yadav, who had accepted the deposits, exchanged the bank vouchers alongwith the details of denominations of the deposited currency notes for the said deposits and he also admitted his guilt, gave written admission to the customers namely M/s Dhaneshwar Trading and M/s Gopichand & Co. in front of him i.e. Ex. PW2/A & Ex. PW2/B respectively.

He also deposed about informing the matter to the Deputy General Manager, Regional Officer, DMR-1 of Bank of Baroda vide his letter Ex. PW2/C and marking of enquiry by him to Ms. Surbhi Singh who during her investigation found accused Shubham Yadav accountable for unauthorized replacement of legal tender with SBNs.

He further deposed about similar complaints from other bank customers including Sh. Ram Sewak Yadav and fresh information to the Deputy General Manager as well as confession of his guilt by accused Shubham Yadav vide Ex. PW2/D & Ex. PW2/E respectively. He also deposed about fresh investigation by Ms. Surbhi Singh during which one Sonu admitted his guilt and that during joint surprise check of CBI & bank officials, some more cases of similar irregularities made by Shubham Yadav were found in the accounts of M/s Ginger Trading Co. and M/s Kaka Kohili & Sons, which irregularities were also informed to the Deputy General Manager vide letters Ex. PW2/F (colly) & Ex. PW2/G (colly) who got the matter investigated by Mr. Sushil

Kumar Srivastava, Chief Manager who gave his report holding accused Shubham Yadav accountable for unauthorized replacement of legal tender denomination with SBNs.

He proved production cum seizure memos i.e. Ex. PW2/H to Ex. PW2/J vide which documents mentioned therein were handed over Inspector H.V. Attri and also identified initials of accused Shubham Yadav on various counterfoils and bank vouchers Ex. PW2/K (colly). He also identified the handwriting of Sonu on counterfoil and bank voucher Ex. PW2/L (colly) as well scroll register Ex. PW2/M (colly). He also proved bank circular Ex. PW3/D1 and certificates under section 2A of the Banker's Book of Evidence Act as Ex. PW2/X1 & Ex. PW2/X2 respectively.

4.3 **PW3 Sh. Ravi Kant Thakral**, was posted as Deputy General Manager, Regional Head, Bank of Baroda and he deposed on similar lines as deposed by PW13. Additionally, he deposed about the investigations assigned by him to Ms. Surbhi Singh, Manager vide Ex. PW3/A & Ex. PW3/C and her reports Ex. PW3/B & Ex. PW3/E as well as the fact that he suspended accused Shubham Yadav vide order Ex. PW3/D. He also deposed about the complaint made by him against accused Shubham Yadav with CBI i.e. Ex. PW3/F. He also deposed about assigning the matter for investigation to Mr. Sushil Kumar Singh, Chief Manager vide Ex. PW3/G who submitted his report to him vide Ex. PW3/H and sending of information to the CBI vide letter Ex. PW3/I.

4.4 **PW4 Ms. Surbhi Singh**, was posted as Manager at Bank of Baroda, Kingsway Camp Branch, New Delhi from October 2016 till July 2017 and she deposed on similar lines as deposed by PW2 & PW3.

4.5 **PW5 Sh. Ram Sewak Yadav** is/was the account holder of current account No. 21420200006495 at Bank of Baroda, Azadpur Branch, New Delhi and he deposed in terms of the prosecution story, on similar lines as deposed by PW2 & PW3. He deposed that during the period of demonetization, he was not accepting the currency notes of Rs. 500 & Rs. 1,000 and was accepting only the currency notes of valid denomination for depositing the same in his bank account. He deposed that on 22.11.2016, he had deposited an amount of Rs. 50,000/- with 500 currency notes in the denomination of Rs. 100 to the then Cashier Shubham Yadav and he proved the customer counter foil of the pay-in-slip for the said deposit filled in his own handwriting as Ex.PW5/A. He deposed about receipt of notice from Income Tax Department for depositing the currency notes of Rs. 500 & 1000 in his aforesaid account though he had deposited only legal tender on 22.11.2016 & 29.11.2016 in the sum of Rs. 50,000/- and Rs. 2 lac respectively. He deposed that bank voucher Ex. PW5/B is not his, not in his handwriting.

4.6 **PW6 Sh. Sandeep Kumar** deposed that he was working as Muneem in Kaka Kohli & Sons and used to deposit payments in current account bearing no. 21420200000236 at Bank of Baroda, Azadpur Branch, Delhi. He further deposed that

vide customer counterfoil dated 29.11.2016 bearing serial No. 195644 i.e. Ex. PW2/K (colly) {also Ex. PW6/A} he had deposited an amount of Rs. 3,50,000/- in the denomination of Rs. 100X3400=3,40,000/-, Rs. 50X100=5,000/- and Rs. 10X500=5,000/-. He identified his handwriting on the said counterfoil at Q7. Similarly he identified his writing at point Q20 of customer counterfoil dated 28.11.2016 bearing serial No. 195641 i.e. Ex. PW6/B vide which an amount of Rs. 6,50,000/- was deposited in the denomination of Rs. 100X6100=6,10,000/-, Rs. 50X600=30,000/-, Rs. 20X100=2,000/- and Rs. 10X800=8,000/-; at point Q23 on customer counterfoil dated 24.11.2016 bearing serial No. 195634 i.e. Ex. PW6/C vide which an amount of Rs. 2,20,000/- was deposited in the denomination of Rs. 100X2200=2,20,000/- and at point Q26 on customer counterfoil dated 18.11.2016 bearing serial No. 195628 i.e. Ex. PW6/D vide which an amount of Rs. 1,50,000/- was deposited. He further deposed that in the said counterfoil, the denominations of currency notes have not been mentioned because this was the first counterfoil vide which cash was deposited during the period of demonetization and that before the period of demonetization he did not use to fill details of denomination, however, during the period of demonetization, he always used to mention details of denomination of currency notes in order to avoid any enquiry and to show that they have deposited cash only in legal tender.

He deposed about receipt of income tax notice by the CA of the firm to clarify about the deposits made by their firm in the currency notes of Rs. 500/- and Rs. 1,000/- during the period of demonetization and that as during the period of demonetization,

the firm was receiving only the currency notes of legal tender and not the notes of Rs. 500/- and Rs. 1,000/-, so they checked the customer counterfoils of their deposits during the period of demonetization of pay in slip book of the firm and found that they had deposited cash only in legal tender and not in the currency notes of Rs. 500/- and Rs. 1,000/-. He deposed that accordingly they approached the Bank of Baroda at Azadpur Branch where the Bank Manager, after checking their customer counterfoils as well as bank vouchers for the said deposits, found that bank vouchers of their deposits have been changed and the bank reported the matter to the higher authorities for enquiry. He deposed that their customer counterfoils in original, for the period of demonetization were taken into possession by the Bank Manager through his employer and owner of the firm namely Sh. Sanjay Kohli. He further deposed that the particulars in bank vouchers bearing serial No. 114592 dated 29.11.2016 of Rs. 3,50,000/- Ex. PW6/E; No. 500798 dated 24.11.2016 of Rs. 2,20,000/- Ex. PW6/G, No. 704238 dated 18.11.2016 of Rs. 1,50,000/- Ex. PW6/H are not in his handwriting and that he did not make the alteration in bank voucher bearing serial No. 195641 dated 28.11.2016 of Rs. 6,50,000/- Ex. PW6/F and that the handwriting of the figure 100 and 1,00,000 written on top are not his.

He further deposed that during the period of demonetization, there were three cashiers in the Bank of Baroda who were concerned with the deposits made by him namely Shubham Yadav, Sonu and Madan and he correctly identified accused Shubham.

4.7 **PW7 Sh. Jagat Singh** deposed that he was working as Muneem with M/s Ginger Trading Company owned by Mr. Vipin Anand and looking after the work of finance including collection of cash from customers & deposits/withdrawals. He deposed that the payments received by the said firm used to be deposited in the bank bearing over draft account No. 21420400006919 at Bank of Baroda, Azadpur Branch, Delhi and whenever, he deposited the cash in the aforesaid account, he filled the columns of bank pay in slip having customer counter foils and bank vouchers in his handwriting with the dates & details including the name of the firm and in respect of the account number, a stamp of the firm was there with him which he used to put on the pay in slips. He deposed that the details of the currency notes being deposited were also filled up by him and he used to hand over the said pay in slip book alongwith cash to be deposited to the cashier of the bank, who after counting and matching the cash from the bank vouchers/customer counter foils, used to put cash receipt stamp on the bank vouchers as well as the customer counter foils with his signatures and then after tearing the bank voucher from the pay in slip, used to return the book to him having customer counter foils for the said deposits. He identified his handwriting at point Q3 of customer counterfoil dated 23.11.2016 bearing serial No. 521960 Ex. PW2/K (colly) vide which he had deposited an amount of Rs. 7,00,000/- in the denomination of Rs. 100X7000=7,00,000/-. He deposed about receiving a call from Bank of Baroda, Azadpur Branch to clarify about the denomination of deposit of Rs. 7 lacs dated 23.11.2016

made by the firm during the period of demonetization and that he alongwith Mr. Vipin Anand visited the bank alongwith customer counter foil and met the Branch Manager there who after checking the details of their deposits from the bank record, asked whether they had deposited the currency notes of Rs. 500 and 1000 in their deposits of Rs. 7 lacs on 23.11.2016. He deposed that as during the period of demonetization, their firm was receiving only the currency notes of legal tender and not the notes of Rs. 500/- and Rs. 1,000/-, so they checked the customer counterfoils of their deposits during the period of demonetization and found that they had deposited the cash only in the denomination of Rs.100 X 7,000 = Rs.7,00,000/- and not in the currency notes of Rs. 500/- and Rs. 1,000/-. He further deposed that during checking of their customer counterfoil as well as Bank Voucher by the Bank Manager, it was found that the particulars of denomination of currency notes as well as the serial number on the bank voucher were totally different from the denomination and serial number mentioned on their counterfoil. He further deposed that the details in bank voucher dated 23.11.2016, bearing serial No. 381380 for the deposit of Rs.7,00,000/- Ex.PW7/A are not in his handwriting and that during the period of demonetization, he had deposited the above-said cash with the then cashier i.e. accused Shubham Yadav.

4.8 **PW8 Sh. Susheel Kumar Srivastava** the then Chief Manager, SME, DMR-I, Bank of Baroda Building, Parliament Street, New Delhi proved the inquiry conducted by him against accused Shubham Yadav, his findings and his inquiry report Ex.

PW3/H. He further deposed about the difference in the serial number and denomination of the deposited currency notes on the customer counterfoils Ex. PW2/K (colly) & Ex. PW7/A, Ex. PW6/C & Ex. PW6/G, Ex. PW6/A & Ex. PW6/E and that though the serial number on the customer counterfoil Ex. PW6/B and bank voucher Ex. PW/F is the same, however, there is alteration/addition in the denomination of currency notes mentioned on the aforesaid bank voucher. He further deposed that the denomination of currency notes have not been mentioned in customer counterfoil Ex. PW6/D, however, in the bank voucher Ex. PW6/H the denominations of currency notes have been mentioned and that the handwriting in both the aforesaid documents was different.

He further deposed that the Scroll Register of Bank of Baroda Ex. PW8/A (colly) bears the name of Shubham Yadav and that the entry for deposit of Rs. 1,50,000/- dated 18.11.2016 as was accepted by the then Cashier is at serial No. 48 of page No. 43; for deposit of Rs. 7,00,000/- dated 23.11.2016 is at serial No. 9 of page No. 37; for deposit of Rs. 2,20,000/- dated 24.11.2016 is at serial No. 94 of page No. 40; for deposit of Rs. 6,50,000/- dated 28.11.2016 is at serial No. 193 of page No. 48 and for deposit of Rs. 3,50,000/- dated 29.11.2016 is at serial No. 71 of page No. 50.

4.9 **PW9 Sh. Vipin Anand** deposed on the same lines as deposed by PW7 and also proved the seizure of the customer counterfoil Ex. PW2/K (colly) vide Ex. PW9/A1.

4.10 **PW10 Sh. Joginder Pal**, Officer Scale I, Bank of Badora Azadpur Branch deposed on the same lines as deposed by PW2 as regards the procedure for exchange and deposit of SBNs during the demonetization period. Though he identified the accused, who was working as Cashier, however, he failed to identify his initials or numerals on the customer counterfoils Ex.PW2/K (colly), Ex.PW5/A, Ex.PW6/A, Ex.PW6/B, Ex.PW6/C, Ex.PW6/D and the bank voucher Ex.PW7/A, Ex.PW5/B, Ex.PW6/E, Ex.PW6/F, Ex.PW6/G and Ex.PW6/H.

He was cross examined by Ld. PP for the CBI and he admitted that his statement under section 161 Cr.P.C. as Ex.PW10/A1. He also failed to identify the handwriting on Ex. PW8/A (colly) as that of accused Shubham Yadav.

He admitted that bank voucher No. 381480 Ex.PW5/B was entered by Ankit Pandey, Senior Manager & posted by him through his ID i.e. JP058166, voucher No. 65293 was entered by Ms. Pooja, Officer & posted by Nisha, Officer, voucher No. 381953 was entered by Ms. Pooja & posted by Mr. Ankit Pandey, voucher No. 381380 was entered by Ms. Pooja, & posted by him through his above-said ID, voucher No. 704238 was entered by Mr. Ankit Pandey & posted by Ms. Nisha, voucher No. 500798 was entered by Ms. Pooja, & posted by Mr. Ankit Pandey, voucher No. 195641 was entered by Ms. Pooja & posted by Ms. Nisha, voucher No. 114592 was entered by Ms. Pooja & posted by Ms. Nisha and voucher No. 114591 was entered by Ms. Pooja, & posted by Ms. Nisha.

He further deposed that page 5 of Ex. PW17/A (colly) is screenshot of the finacle system regarding the cash transaction

for the amount of Rs. 7 lakhs pertaining to account no. 21420400006919 dated 23.11.2016 which was entered by Ms. Pooja Verma and posted by him and that page 4 of Ex. PW24/A (colly) is screen-shot of the finacle system regarding the cash transaction for the amount of Rs. 7 lakhs pertaining to account no. 21420400006919 dated 23.11.2016 and that both the above documents are exactly the same because they bear the same date and time as well as the amount and the account number are the same. He deposed that there is no transaction ID on Ex. PW17/A (colly) though the said document should have a transaction ID, however, the transaction ID i.e. 001523106 is duly reflected in Ex. PW24/A (colly) and that may be at the time when the screenshot was obtained, may be due to scrolling of the page, the transaction ID/column got shifted on the screen. He deposed that he had verified the said transaction on the TM (Transaction Maintenance) after verifying the same from the voucher dated 23.11.2016 i.e. Ex. PW7/A. He similarly deposed about page 3 of Ex. PW17/A (colly) and Ex. PW24/A (colly) regarding the cash transaction for the amount of Rs. 50,000/- pertaining to account no. 21420200006495 dated 22.11.2016 which was entered by Sh. Ankit Pandey and posted by him and that he had verified the said transaction on the TM (Transaction Maintenance) after verifying the same from the voucher dated 22.11.2016 i.e. Ex. PW5/B.

4.11 **PW11 Sh. Sanjay Kohli**, Proprietor/owner of M/s Kaka Kohli & Sons, deposed on the same lines as deposed by PW6. He also proved seizure memo Ex. PW11/A regarding seizure of counterfoils Ex. PW6/A to Ex. PW6/D.

4.12 **PW12 Pawan Kumar Sharma**, Munim of M/s Dhaneshwar Trading, deposed that he used to collect the cash from the customers/parties of the firm and deposit the same in the bank, on behalf of the said firm. He deposed that he filled the counterfoil bearing No. 482747 dated 28.11.2016 Ex. PW2/K (colly) {also Ex. PW12/A} in his handwriting vide which Rs. 5.50 lacs were deposited in the current account No. 21420200006095 of the said firm at Bank of Baroda, Azadpur, Delhi. He further deposed that the details of denomination of currency notes are mentioned on overleaf of the said customer counterfoil, which is also in his handwriting and that he had deposited currency notes in the denomination of Rs. 100/-, Rs. 50/-, Rs. 20/- and Rs. 10/- only and there were no denomination of currency notes of Rs. 1,000/- or Rs. 500/- in the said deposit. He further deposed that the deposit was accepted by Cashier accused Shubham Yadav and that the bank counterfoil bearing No. 65293 dated 28.11.2016 i.e. Ex. PW12/B is not in his handwriting as well as the details of the currency notes mentioned in this bank counterfoil are not the same as in the customer counterfoil Ex. PW12/A and even the serial numbers are different.

He proved that vide Ex. PW12/C, Ex. PW12/A as well as handwritten statement of accused Shubham Yadav i.e. Ex. PW2/A, as was written & signed in his presence, were seized by the CBI. He also proved that his specimen handwriting Ex. PW12/D was taken.

4.13 **PW13 Sh. Sushil Kumar Garg**, Partner of M/s Dhaneshwar Trading deposed on the same lines as deposed by PW12.

4.14 **PW14 Sh. Tarun Pal**, LDC, Delhi Jal Board, proved the specimen signatures/handwritings S-1 to S-20 of Jagat Singh i.e. Ex. PW14/A1 (colly), S-21 to S-40 of Sh. Vinesh Kumar i.e. Ex. PW14/A2 (colly), S-41 to S-58 of Sh. Pawan Kumar Sharma i.e. Ex. PW12/D (colly), S-59 to S-78 of Sh. Ram Sewak Yadav i.e. Ex. PW14/A3 (colly), S-99 to S-170 of Sh. Sandeep Kumar i.e. Ex. PW14/A4 (colly) and S-203 to S-324 accused Shubham Yadav i.e. Ex. PW14/A (colly) as were voluntarily given by them to the IO Insp. H.V. Atri, in his presence.

4.15 **PW-15 Sh. Durga Prasad**, UDC, BSNL Corporate Office proved the specimen signatures/handwritings S-171 to S-202 of Sh. Nand Kishore i.e. Ex. PW15/A1 (colly) as was voluntarily given by him to the IO Insp. H.V. Atri, in his presence.

4.16 **PW16 Ms. Lavang Lata**, Sr. Scientific Assistant (Documents), Government Scientific Expert, CFSL, CBI, New Delhi proved her report as Ex. PW16/A1 along with letter vide which the report was sent to the CBI along with envelope as Ex. PW16/A2 and Ex. PW16/A3.

4.17 **PW17 Ms. Nisha Gupta**, Assistant Manager, Bank of Baroda deposed on the same lines as deposed by PW2 as regards

the process of exchange & deposits of SBNs during the demonetization period. While identifying the accused she also identified his initials as well as the numerals on customer counterfoil No. 521960 Ex.PW2/K (colly), customer counterfoil No. 215437, customer counterfoil No. 482747, customer counterfoil No. 539603 Ex.PW5/A, customer counterfoil No. 195644 Ex.PW6/A, customer counterfoil No. 195641 Ex.PW6/B, customer counterfoil No. 196534 Ex.PW6/C & customer counterfoil No. 195628 Ex.PW6/D and bank vouchers No. 381380 Ex.PW7/A, bank voucher No. 381953, bank voucher No. 65293, bank voucher No. 381480 Ex.PW5/B, bank voucher No. 114592 Ex.PW6/E, voucher No. 195641 Ex.PW6/F, voucher No. 500798 Ex.PW6/G & voucher No. 704238 Ex.PW6/H. She also identified the entries in Ex. PW8/A (colly) for the above deposits as that of accused Shubham Yadav. She also identified the screen shots Ex. PW17/A1 (colly) of the transactions done during the demonetization period i.e. the details of entry & posting of the cash transactions and deposed that as per Ex. PW17/A1 (colly) the bank voucher No. 381480 dated 22.11.2016 for the amount of Rs. 50,000/- in the name of Ram Sewak Yadav has been entered by the then Sr. Manager Sh. Ankit Pandey (ID No. AP088828) & posted by officer Sh. Joginder Pal (ID No. JP058166); the bank voucher No. 65293 for the deposit of M/s Dhaneshwar Trading dated 28.11.2016 for the amount of Rs. 5,50,000/- has been entered by Ms. Pooja Verma (ID No. PV105322) & posted by her through her ID i.e. NM107492; the bank voucher No. 381953 for the deposit of M/s Gopi Chand & Co. dated 22.11.2016 for the amount of Rs. 2,00,000/- has been entered by Ms. Pooja Verma

(ID No. PV105322) & posted by the then Sr. Manager Sh. Ankit Pandey (AP088828); the bank voucher No. 381380 for the deposit of M/s Ginger Trading Co. dated 23.11.2016 for the amount of Rs. 7,00,000/- has been entered by Ms. Pooja Verma (ID No. PV105322) & posted by officer Sh. Joginder Pal (JP058166); the bank voucher No. 704238 for the deposit of Kaka Kohli & Sons dated 18.11.2016 for the amount of Rs. 1,50,000/- has been entered by Sh. Ankit Pandey (ID No. AP088828) & posted by her through her ID NM107492; the bank voucher No. 500798 for the deposit of Kaka Kohli & Sons dated 24.11.2016 for the amount of Rs. 2,20,000/- has been entered by Ms. Pooja Verma (ID No. PV105322) & posted by Sh. Ankit Pandey (ID No. AP088828); the bank voucher No. 195641 for the deposit of Kaka Kohli & Sons dated 28.11.2016 for the amount of Rs. 6,50,000/- has been entered by Ms. Pooja Verma (ID No. PV105322) & posted by her through her ID NM107492; the bank voucher No. 114592 for the deposit of Kaka Kohli & Sons dated 29.11.2016 for the amount of Rs. 3,50,000/- has been entered by Ms. Pooja Verma (ID No. PV105322) & posted by her through her ID NM107492 and the bank voucher No. 114591 for the deposit of Ram Sewak Yadav 29.11.2016 for the amount of Rs. 2,00,000/- has been entered by Ms. Pooja Verma (ID No. PV105322) & posted by her through her ID NM107492. She also proved the production cum seizure memo dated 05.03.2018 as Ex. PW17/A2 (colly).

She deposed about the screen-shots Ex. PW17/A1 (colly) & Ex. PW24/A (colly) on the same lines as deposed by PW10 and proved that she had verified the transactions on page nos. 1,

9, 7 and 8 of Ex. PW17/A1 (colly) on the basis of voucher Ex. PW12/B, Ex. PW6/H, Ex. PW6/F, Ex. PW6/E.

4.18 **PW18 Ms. Kusum Dimri**, Law Officer Delhi Metro Region-1 Bank of Baroda, Connaught Place, Delhi proved the seizure memo Ex. PW18/A1 (colly) vide which she had handed over the documents mentioned therein to the CBI.

4.19 **PW19 Sh. Nand Kishore** deposed that he was working as Sweeper/Cleaner at Bank of Baroda, Azadpur Branch and that in absence of peon, he had to perform the work of peon, which included carrying bundles of cash, providing vouchers to the back office from cashier as well as outdoor/indoor activities related to the bank. He further deposed that during demonetization accused Shubham Yadav provided him overwritten bank vouchers and asked him to fill up the fresh vouchers. He deposed that voucher No. 114592 Ex. PW6/E, voucher No. 704238 Ex. PW6/H and voucher No. 65293 Ex. PW12/B were filled by him on the directions of accuse Shubham Yadav and he identified his handwriting at point Q43, Q50 and Q35 respectively on the same. He further deposed that he handed over the overwritten as well as the vouchers filled by him to the accused who put his signature & stamp on the vouchers. He identified the accused's his initials at point Q41 on Ex. PW6/E, at point Q48 on Ex. PW6/H and at point Q33 on Ex. PW12/B. He also identified his specimen signatures & handwriting Ex. PW15/A1 (colly) and his statement Ex. PW19/A (colly) was recorded by the then Ld. Metropolitan Magistrate, Tis

Hazari Courts and he also proved the envelope Ex. PW19/B and Ex. PW19/C regarding the said statement.

4.20 **PW20 Sh. Ankit Pandey**, Sr. Manager (Marketing), Regional Office, Delhi Metro Region-I, Bank of Baroda, Parliament Street, Delhi deposed on the similar lines as deposed by PW2, PW10 as regards the procedure of deposit of the SBNs during the demonetization period and the use of Finacle system. He identified the initials of the accused as well as stated that numerals in the counterfoils and the bank vouchers in question, except voucher no. 195641, as that of accused Shubham Yadav. He also identified the entries in the scroll register Ex. PW8/A (colly) to be in the handwriting of the accused. He also proved seizure memos Ex. PW20/A (colly), Ex. PW20/B (colly) and document Ex. PW20/C (colly) as well as identified his signatures & stamp on the statement of account of the accused as well as account holders/customers i.e. Ex. PW20/E (colly) and Ex. PW3/E, Ex. PW3/D2, Ex. PW3/D3, Ex. PW3/D6, Ex. PW3/D7 & Ex. PW3/D8. He also deposed about screen-shots Ex. PW17/A1 (colly) and Ex. PW24/A (colly) on similar lines as deposed by PW10 and PW17.

4.21 **PW21 Sh. Vinesh Kumar**, owner of M/s Gopi Chand & Company, deposed that on 22.11.2016 he had handed over the pay in slip duly filled by him alongwith Rs. 2 lac (100X2000) to his munim Mr. Arun to deposit the same in his firm's current account at Bank of Baroda, Azadpur Branch and had dropped him in front of bank. He further deposed that after the deposit, he

came back to the firm and handed over customer counterfoil (receipt) of the said deposit to him and that while going through the statement of account, he noticed that same is showing the deposit of old currency on 22.11.2016, whereas he had deposited the currency notes of Rs. 100/- as during demonetization, his firm was not receiving the notes of Rs. 500/- and Rs. 1,000/-. He deposed that he visited the bank with customer counterfoil of deposit and asked the bank to issue a certificate for the deposited currency mentioned in the customer counterfoil issued against cash deposit of Rs. 2 lac, on which the bank found, after checking the record that the particulars & denomination of the currency notes and serial numbers mentioned on his customer counterfoil were totally different from the bank vouchers available in the bank record. He identified the customer counterfoil dated 22.11.2016 bearing serial No. 215437 as Ex. PW21/A while stating that the encircled portion is in his handwriting and he also identified the initials of the accused at Q4. He further deposed that bank voucher No. 381953 dated 22.11.2016 i.e. Ex. PW21/B is not in his handwriting and the details of the currency notes mentioned therein are not the same as mentioned in customer counterfoil Ex. PW21/A. Further the serial numbers of the customer counterfoil and the bank voucher are different and that the said bank voucher is not a part of pay in slip vide which he had deposited the said amount in the bank. He identified the initials of the accused at point Q30 on Ex. PW21/B and also identified the seizure memo Ex. PW21/C (colly) vide which he had handed over Ex. PW2/B, as was confessed, written & signed by the accused in his presence during inquiry by PW2,

to PW22. He also identified his specimen handwriting/signatures as Ex. PW14/A2 (colly).

4.22 **PW22 Sh. H.V. Attri**, Inspector, ACB, CBI, New Delhi is the IO of the case who deposed in detail as regards the investigation conducted by him. While proving various documents, their seizures on similar lines as deposed by prosecution witnesses he also proved FIR as Ex. PW22/A1 as well as recording of statement of various witnesses during the investigation. Additionally he proved the forwarding letter Ex. PW22/A2 (colly) vide which the documents were submitted to CFSL for examination and expert opinion.

4.23 **PW23 Ms. Pooja Verma**, the then Assistant Manager, Bank of Baroda, Azadpur Branch proved the entries made by her in the Finacle system on the basis of voucher Ex. PW7/A, Ex. PW21/B, Ex. PW12/B, Ex. PW6/E, Ex. PW6/G and deposed that she had participated in the in-house inquiry conducted by the bank. She also deposed about the screen-shots on similar lines as deposed by PW10, PW17 and PW20.

4.24 **PW24 Sh. Sushant Kumar Ashwani**, Chief Manager, Bank of Baroda proved that he had provided the cash transaction details, screenshots of cash transaction and certificate under section 65B of the Indian Evidence Act to the CBI vide letter dated 13.12.2022 i.e. Ex. PW24/A (colly).

## Statement of Accused

5. After conclusion of prosecution evidence, statement of accused Shubham Yadav was recorded u/s 313 Cr.P.C. on 10.11.2022 wherein he denied the entire incriminating evidence put to him while claiming that he has been falsely implicated. Accused examined one witness in his defence.

5.1 It will also be worthwhile to mention that additional statement of the accused u/s 313 Cr.P.C. was recorded on 18.09.2025 as in terms of orders dated 27.01.2023 certain witnesses were recalled for further examination and one additional witness was also examined i.e. PW24. After the additional statement was recorded, the accused examined two more witnesses in his defence.

## Defence Evidence

6. **DW1 Sh. Chandra Shekhar Sharma**, Scale 1 Officer, Vigilance Department, Bank of Baroda, Zonal Office, C.P, New Delhi proved the certified copies of the Departmental Inquiry instituted against Mr. Madan Kumar alongwith its covering letter dated 15.11.2022 as Ex. DW1/A (colly).

6.1 After prosecution witnesses were recalled and additional evidence was led by the prosecution, the accused examined two more witnesses in his defence.

6.2 **DW2 Sh. Shiv Singh Adhikari**, AGM, Reserve Bank of India, Sansad Marg, New Delhi-110001 proved circular dated 08.11.2016 as Ex. DW2/A (colly) and email dated 04.11.2025 as Ex. DW2/B (colly) and he deposed that the data regarding deposit of cash in Bank of Baroda, Azadpur Branch during the demonetization period is not available with the RBI as RBI does not maintain any such record.

6.3 **DW3 Sh. Brijesh Kumar Tripathi**, Chief Manager, Bank of Baroda, New Subzi Market, Azad Pur, Delhi-110033 produced circulars dated 10.11.2016, 12.11.2016 & 14.11.2016 and deposed that he has brought the consolidated statement as regard exchange and deposit as was being sent in compliance with Annexure-VI(A) of the above mentioned circular i.e. Ex. DW3/A (colly).

### **Findings in CC No. 105/19**

7. I have heard the rival contentions raised at bar by Ld. PP for the CBI as well as the Ld. Defence Counsel, carefully considered & examined the evidence recorded in the matter and perused the documents placed on record by the prosecution in this case. I have also gone through the written arguments filed by Ld. Defence Counsel as well as the supporting case laws.

7.1 Ld. Defence Counsel Sh. Hitendra Kapur relied upon **Krishnegowda and ors Vs. State of Karnataka Criminal Appeal No. 635/2006 Supreme Court of India dated 28.03.2017,**

Har Swarup Verma Vs. State of Delhi Crl.A. no. 228/2003 dated 24.11.2025, Ramu Appa Mahapatar Vs. The State of Maharashtra Criminal Appeal No. 608/2013 Supreme Court of India dated 04.02.2025, Delhi Race club (1940) Ltd. and ors Vs. State of Uttar Pradesh and anr Criminal Appeal No. 3114/2024 Supreme Court of India dated 23.08.2024, N Raghavender Vs. State of Andhra Pradesh CBI Criminal Appeal No. 5/2010 Supreme Court of India dated 13.12.2021, Parshadi Lal Vs. State Govt. of NCT of Delhi Crl. Rev. P. No. 424/2011 date 23.04.2012, in support of his arguments.

7.2 Ms. Jyoti Solanki and Ms. Bindu, Ld. PPs for the CBI relied upon Asit Kumar Adak v. CBI 2015 SCC online CAL5044, Tahir v. State (Delhi) on AIR 1996 SC307, Arjun Pandit Rao Khotkar v. Kailash Kusan Rao Gorannatya and others AIR 2020 SUPREME COURT 4908, State of Jharkhand v. Lalu Prasad Yadav Cr. M.P. No. 1811 of 2014, Ram Singh v. State of UP AIR 1967 SUPREME COURT 152, State of Rajasthan v. Raja Ram (2003) 8 SCC 180, M. Narsinga Rao v. State of AP Supreme Court 2001 CRI. L. J. 515, Madhukar Bhaskar Rao Joshi v. State fo Maharashtra 2000 AIR SCW 4018, Syed Ahmed v. State of Karnatka 2012 (8) SCC 527, Krishna Mochi & ors. v. State of Bihar Appeal (Crl.) 761/2001 dated 15.04.2022, Tahir v. State (Delhi) (1996) 3 SCC 338, Koli Laxman Bhai v. State of Gujarat 1999 SCC 8624, Gura Singh v. State of Rajasthan (2001) 42 ACrC 393, CM Sharma v. State of Andhara Pradesh (2013) 2 SCC (Crl. 89), State of U.P. v. M.K. Anthony AIR 1985 SC 48 Supreme Court, Sushil Kumar Tiwari v. Hare Ram Sah & ors.

2025 LiveLaw (SC) 864, Bhogni Bhai v. State of Gujarat AIR 1983 SC 759, Faqira v. State of UP AIR 1976 SC 915, State of Punjab v. Karnail Singh AIR 2003 SC 3609, State of Haryana v. Tek Singh 1999 SC, Neeraj Dutta v. State (Govt. NCT of Delhi) 2022 LiveLaw (SC) 1029, B. Hanumantha Rao v. State of Andhra Pradesh AIR 1992 SC 1201, Iqbal Moosa Patel v. State of Gujarat 2011 SCC (Cri.) 654, Gurubachan Singh v. Satpal Singh 1990 SCC (Cri) 151, Mangal Lal v. State of Punjab 878-SB of 1997 dated 30.08.2001, Darshan Lal v. CBI CrI. A No. 73/2001 dated 31.7.2009 Delhi High Court, Prem Chand Vs. State of Maharashtra 2023 LiveLaw (SC) 168, Munna Lal Vs. State of UP 2023 LiveLaw (SC) 60, Hema Vs. State AIR 2013 SC 1000, Prahlad Saran Gupta Vs. Bar Council of India 1997 (3) SCC 585, Murari Lal Vs. State of MP 1980 AIR 531, Balbir Singh Vs. State of Punjab AIR 1957 SC 216, Sathyan Vs. State of Kerala 2023 LiveLaw SC 627 and Dashrath v. State of Maharashtra 2025 INSC 654 in support of the prosecution arguments.

### Year of Demonetization

7.3 It is the matter of record and of common knowledge to all that the Government of India, on 08.11.2016, declared the existing series of currency notes of the value of Rs.500/- and Rs.1000/- {specified bank notes (SBNs)} as ceased to be legal tender w.e.f. 09.11.2016. The purpose of this exercise was to combat corruption and eliminate black money & counterfeit currency used for unlawful activities & terror funding. It also

aimed at flushing out the unaccounted cash & bring it into banking system, move the country from a tax non compliant society to a tax compliant society and promote a shift to digital transactions thereby increasing transparency in the economy.

7.4 Following the directives of the Government of India, the Reserve Bank of India (RBI) issued guidelines for implementation of the said Government Scheme. A new series of Bank Notes called Mahatama Gandhi (New) Series having different size & design, highlighting the cultural heritage & scientific achievements of the country were to be issued and the Bank Branches were to be the primary agencies through which the members of public & other entities could exchange the said ceased legal tender/SBNs for Bank Notes in other valid denominations or deposit the SBNs for crediting to their accounts, up-to and including the December 30, 2016. The ceased currency notes/SBNs thus could be deposited with the banks and also be exchanged for legal tender over the counter across all the banks.

7.5 The announcement of the Government of India was followed by cash shortages, long queues at the bank and race against time for the public to deposit SBNs, exchange the same with the new currency notes. During this period, a section of bank officials colluded with individuals holding the ceased legal tender/SBNs for converting them into new currency, often in exchange for a huge commission. There were reports of misuse of Jan Dhan Accounts, backdated entries, unauthorized exchange,

collusion with certain jewellers, petrol pump owners & businessman, allowing deposit of SBNs even after the deadline.

7.6 It is the prosecution case that accused Shubham Yadav, who was working as Cashier/SWO-A at Bank of Baroda, Azadpur Branch, New Delhi, was one such bank official who exploited his position at the bank and dishonestly & fraudulently misappropriated the bank property i.e. currency notes entrusted to him for delivery to legitimate customers and caused illicit/unjust enrichment to himself or unknown individuals. It is it's case that during the demonetization period, while working as Cashier/SWO-A at Bank of Baroda, Azadpur Branch, Delhi, he replaced the legal tender deposited by certain account holders with SBNs, after forging the bank vouchers of the pay-in-slips through which legal tender was deposited by the account holders.

7.7 It is it's case that in terms of the instructions/guidelines of the RBI, the Bank of Baroda had issued parallel guidelines for it's staff vide circulars no. 108/157 dated 09.11.2016 & 108/164 dated 12.11.2016 and also customized special menu in their computer system to be used for exchange or deposit of SBNs during the demonetization period.

### **Procedure for deposit of SBNs during demonetization**

7.8 PW2 Sh. O.N. Singh, who was working as Chief Manager, Bank of Baroda, Azadpur Branch, New Delhi explained the procedure of deposit of cash by the customers as

under:-

*“The customers who want to deposit their cash in their accounts, visit the branch and approach to the cash deposit counters where cashiers are to receive cash from the customers alongwith the pay in slip. Actually, the pay in slip contain two parts, right side larger portion is bank voucher and left side shorter portion is customer counterfoil. Both the voucher as well as counterfoil contains same serial number. Upon receipt of the cash, the cashier tallies the cash with the number/denomination of currency notes mentioned in the pay in slip by the customer. After tallying the same, the cashier put the cash receipt stamp of the bank and writes the numerals of the received amount with his initials on both part of the pay in slip i.e. bank voucher and the customer counterfoil and thereafter return the counterfoil to the customer. The cashier noted the details of the deposit by the customer in cash receipt scroll register for the purpose of tallying the cash. Thereafter, cashier enters the details of the voucher in the computer system. Thereafter, the cash receipt vouchers are to be sent to the back office for posting in computer system by the bank officers. The officer verifies the entry in the computer system and then post the same to make the effect of the deposit in the account of the customer. After that the vouchers are marked as posted and verified by crossing the same and sent the same in the record of the bank which are then kept in the custody of the Daftary of the Bank.*

*During demonetization period, there were 4 cashiers posted in the Bank of Baroda, Azadpur Branch namely Mr. Madan Kumar, Mr. Shubham Yadav, Mr. Sonu and Mrs. S. Sodhi. During demonetization, due to heavy rush there was a bit change in the procedure of receipt of cash from the customers. The cashiers were not entering the bank voucher details in the computer system. The cashiers were only accepting the cash from the customers and entering the details of the cash receipts in the cash receipt scroll register and returning the counterfoils to the customers with bank stamp and initials. Thereafter the cashier were sending the receipt bank vouchers to the back office for entry and posting. The bank vouchers were entered and verified in the computer system in back office by the Bank Officers. During the demonetization period, whenever a customer visits the branch, the visit was for two purposes i.e. 1) for exchange of specified bank notes (in the denomination of Rs.500/- and Rs.1,000/-) and 2) for deposition and payment of cash in the accounts. When a customer visits the branch for exchanging the notes, he has to carry a copy of valid ID*

*proof document alongwith original ID proof. There was a separate counter opened for exchange of SBN notes. In this counter the customer is required to fill a form meant for exchange of notes and submits the same alongwith the copy of the ID proof and SBN notes he wishes to exchange. The form contains the details of the customers and the SBN notes to be exchanged. After obtaining the same, the officer verifies the details of the customer contained in the form from the original ID and then exchanges the notes.*

*In the back office, two officers are required i.e. one for entry and one for posting of the bank voucher details in the computer system (Finacle). It is after entry and posting of bank vouchers in the Finacle that the balance is reflected in customer's account in Finacle system. For a cash deposit transaction, the details to be entered in the Finacle system includes name of the account holder, account number, number of notes deposited by the customer and total amount deposited. During the demonetization period, the same was done through OHDTM Menu in Finacle. Upon entry of the transaction detail, a transaction number is generated in the system. This transaction number is written on the face of the bank voucher. The bank voucher is then forwarded to the verifying officer, who is posting officer of the voucher. On the receipt of the bank voucher, the verifying officer enters the transaction number in the Finacle system through the menu TM or HCASHDEP. The details mentioned on the bank vouchers are then verified by the officer with the details entered in the system. After verification, the officer posts the transaction in the system and mark the bank vouchers. After this the bank voucher is kept in the voucher buckets which were later shifted to record room of the bank in bundles.”*

### **Initiation of bank inquiry upon visit by bank customers**

7.9 According to the prosecution, the misdeeds of accused Shubham Yadav came to fore when the customers of Bank of Baroda, Azadpur Branch namely Sh. Vinesh Kumar, proprietor of M/s Gopi Chand & Co. and Sh. Sushil Kumar, proprietor of M/s Dhaneshwar Trading, on receiving notices from the Income Tax Department for depositing SBNs of Rs. 500/- &

Rs. 1,000/- in their accounts, approached PW2 Sh. O.N. Singh for issuance of certificate qua the denomination of cash deposited by them in their accounts during the demonetization period. During the certification, as proved by PW2, it came to the bank's notice, after checking the record, that particulars of denomination of currency notes & serial numbers mentioned in the bank vouchers kept in the bank record for the deposits in the above accounts were different from the particulars of denomination of currency notes mentioned in related customer counter foils issued by the bank for the said deposits. An enquiry was conducted by PW2, at the branch level, which revealed that accused Shubham Yadav accepted the above deposit and entered the same in the cash scroll register maintained by him. Further more, he exchanged the bank vouchers alongwith the details of denomination of the deposited currency notes for the said deposits. Not only this, accused Shubham Yadav also admitted his guilt and gave written admission to the account holders of M/s Dhaneshwar Trading & M/s Gopi Chand & Co. in presence of PW2, which admissions dated 09.02.2017 are on record as Ex. PW2/A & Ex. PW2/B respectively.

7.10 PW2 further proved that he informed the matter, regarding difference in cash denomination in customer counter foil & bank voucher in cash transaction, to the Deputy General Manager (PW3) vide letter dated 08.02.2017 Ex. PW2/C, who marked the matter to Ms. Surbhi Singh (PW4) for carrying out detailed investigation vide letter Ex. PW3/A. Ms. Surbhi Singh submitted her report i.e. Ex. PW3/B in which she found

unauthorized replacement of legal tender in smaller denomination with SBNs and held Shubham Yadav, Single Window Operator-A (SWO-A) accountable for the same.

7.11 PW2 further proved that in the meanwhile, another customer of the bank namely Sh. Ram Sewak Yadav having account no. 21420200006495 approached him for certification of cash deposit of Rs. 50,000/- dated 29.11.2016 & Rs. 2 lakhs dated 22.11.2016 in his account and during inquiry, he found similar discrepancy in the bank vouchers, kept in the bank record for the above deposits as against the related customer counter foils issued by the bank. Inquiry further revealed that it was the accused who made entry of deposit of Rs. 50,000/- dated 29.11.2016 in account no. 21420200006495 of the said deposits in his cash scroll register while the entry of deposit of Rs. 2 lakhs dated 22.11.2016 in the above account was made by Sonu (accused in CC No. 104/2019) who was also working as SWO-A in the bank.

7.12 This matter, as proved by PW2, was again reported by him to Deputy General Manager (DGM), vide letter dated 13.02.2017 i.e. Ex. PW2/D and he further proved that vide his letter dated 16.02.2017 Ex. PW2/E he informed the DGM that he had prima-facie found Shubham Yadav involved in the same, who had already confessed his guilt in cases related to M/s Gopi Chand & Co. and M/s Dhaneshwar Trading. The Deputy General Manager again marked the matter to Ms. Surbhi Singh (PW4) vide Ex. PW3/C to carry out detailed investigation, during which

investigation Sonu admitted his guilt in written reply to the extent that he had made entry of deposit of Rs. 2 lakhs dated 29.11.2016 in account no. 21420200006495 of Sh. Ram Sewak Yadav. Ms. Surbhi Singh further found, vide her report Ex. PW3/E unauthorized replacement of legal tender in smaller denomination with specified bank notes and held accused Shubham Yadav & one Sonu accountable for the said irregularities. As proved by PW2 on the basis of Ms. Surbhi Singh's report, Shubham Yadav was suspended vide Ex. PW3/D and caution letter was issued to Sonu.

7.13 PW2 further proved that a joint surprise check of CBI and Bank of Baroda was conducted at Bank of Baroda Branch, Azadpur, Delhi and thereafter a complaint dated 07.4.2017 i.e. Ex. PW3/F was submitted by the Deputy General Manager to the CBI. PW2 also proved that after surprise check & scrutiny of accounts & deposit, more cases of similar irregularities, made by accused Shubham Yadav, qua accounts of M/s Ginger Trading Co. and M/s Kaka Kohli & Sons were found which were again informed to the Deputy General Manager vide letters dated 11.4.2017 & 15.4.2017 i.e. Ex.PW2/F (colly) & Ex. PW2/G (colly) and that enquiry was marked to Mr. Sushil Kumar vide letter Ex. PW3/G, who vide his report Ex. PW3/H found unauthorized replacement of legal tender denominations with SBNs and held accused Shubham Yadav accountable for the same.

7.14 As proved by PW2, the forged bank vouchers, the

original/genuine counterfoils and the scroll register maintained, at the bank, by accused Shubham Yadav and the other SWO-A Sonu were handed over to Inspector H.V. Attri (IO/PW22) vide Ex. PW2/I and Ex. PW2/J. These bank vouchers & counterfoils are discussed in detail herein below, account wise.

**M/s Gopi Chand & Company bearing account no. 21420200000326**

7.15 As proved by PW2, one of the initial bank customer who approached the bank, upon receipt of Income Tax Notice for depositing SBNs in it's account, was the proprietor of M/s Gopi Chand & Company i.e. Sh. Vinesh Kumar (PW21).

7.16 PW21 categorically proved that on 22.11.2016, he had handed over pay-in-slip bearing no. 215437 i.e. Ex. PW21/A, duly filled by him, to his Munim Mr. Arun alongwith Rs. 2 lac in the denomination of Rs. 100/- for depositing in his account and after depositing the amount, his munim handed over the counterfoil to him. He proved that on finding discrepancy in his account statement which reflected deposit of old currency on 22.11.2016, whereas, he had deposited legal tenders of Rs. 100/-, he visited the bank and upon checking the bank record, the particulars & denomination of the currency notes on his counterfoil and the bank voucher were totally different. While identifying Ex. PW21/A in his writing and also identifying the initials of accused Shubham Yadav at point Q4 on the same, he stated that bank voucher no. 381953 dated 22.11.2016 i.e. Ex.

PW21/B is not part of the pay-in-slip vide which amount of Rs. 2 lac was deposited in the bank on 22.11.2016. On the said bank voucher Ex. PW21/B, he identified the initials of accused Shubham Yadav at point Q30. He also proved that accused Shubham Yadav had confessed his guilt in writing vide Ex. PW2/B, admitting that he had changed the voucher and that he handed over Ex. PW2/B to the IO vide Ex. PW21/C (colly). The fact that it was PW21 who had handed over Ex. PW2/B to the IO itself proves its genuineness. The image of the said written admission as was also proved by PW2 and other prosecution witnesses is reproduced hereunder:-


①

शुभम यादव के नाम पर बैंक ऑफ इंडिया काठमांडू ब्रांच  
 22/11/2016 को जमा खाता संख्या 2142020-10-316 एचएल  
 Cheque and no. में 200000 रुपये (दो लाख रुपये) जमा  
 स्वीकार किया है जिसमें नोटों का अंकन निम्न  
 वगैरह का अंकन किया है-  
 100 x 2000 = 200000  
 दो लाख रुपये मात्र

A Shubham Yadav  
 112003  
 07/12/18

Ext. PW2/B  
 Sh. Judge CBI  
 7/12/18.

शुभम यादव (अभिज्ञान) के उपरोक्त वचन दफ्तरे लायने  
 दिने हैं

B  (SS)

7.17 The relevant portion of deposition of PW21 regarding the enquiry at the bank and admission of guilt by accused Shubham Yadav reads as under:-

*“Enquiry was conducted in my presence by Sh. O. N. Singh, Branch Head. It revealed that the bank voucher of our said deposit dated 22.11.2016 for Rs. 2 lac has been changed by Cashier Mr. Shubham Yadav. Mr. Shubham Yadav confessed and gave in writing before the Branch Head and me that he has changed the voucher. The written admission of Shubham Yadav was handed over to me.....At this stage, I have been shown original handwritten statement already Ex. PW2/B of accused Sh. Shubham Yadav, which was written and signed before me”.*

7.18 Thus PW21 proved that Ex. PW21/B i.e. the bank voucher is a forged one and it bears the initials of accused Shubham Yadav. It was argued by Ld. Defence Counsel that as far as the above alleged confession is concerned, the same was obtained by PW2 by exerting pressure upon the accused as he was a newly recruited employee of the bank and was made a scapegoat to cover the misdeeds & other wrong doings of the bank officials during the period of demonetization. However, I find no merits in his arguments. I find absolutely no reason as to why PW2 would exert pressure upon the accused or why he would compel him to give a false confession. It is to be noted that this confession was given in the presence of independent witness/PW21 as duly proved by him, which itself proves that the confession was made voluntarily and not without any pressure, threat etc. Most importantly, accused Shubham Yadav never complained before any higher authorities of the bank or the RBI or the union/association or any other forum including police that he had been pressurized to give a false confession. Had he been indeed compelled to give a false confession, he would have

definitely complained about it and having not done so itself proves that the confession was voluntarily. I also find no reason why at the behest of PW21, PW2 would compel the accused to give a false confession or admit something which he never did. The defence could not prove any motive which might have weighed with PW2 for extracting false confession from his employee on the asking of a bank customer/account holder.

7.19            Though it was argued by Ld. Defence Counsel that PW21 during the period of demonetization, in collusion with the senior bank officials had deposited SBNs & not legal tenders in his account and thus was the beneficiary of the said confession, however, the arguments are without any basis and contrary to the record. Counterfoil Ex. PW21/A leaves no doubt that only legal tender was deposited and not SBNs. This counterfoil, as stands duly proved on record, bears the initials of the accused and also the numerals on it are in his handwriting. This fact stands fairly proved from the testimony of the prosecution witnesses as well as the CFSL result Ex. PW16/A1 (colly). It also stands proved on record that the bank voucher Ex. PW21/B is a forged voucher and it also bears the initials of accused Shubham Yadav. This itself rules out extraction of any forceful confession or else how can the defence explain the initials on the forged voucher Ex. PW21/B. The initials on the counterfoil Ex. PW21/A exists as the accused had accepted the amount and affixed his initials & bank stamp as a confirmation of deposit of legal tenders. Accused's initials on the bank voucher Ex. PW21/B exists as he had got prepared the said forged voucher to fraudulently reflect deposit

of SBNs and affixed his initials on the same along with the bank stamp to lend authenticity to it before it was sent to the back office for entry into the Finacle System. The very fact that voucher Ex. PW21/B bears a different serial number as against the customer counterfoil Ex. PW21/A itself proves that the said voucher was a forged one or else being part of same pay-in-slip the bank voucher ought to have been bearing the same number as appearing on customer counterfoil.

7.20            Though PW21 during his cross-examination stated “*It is correct that Shubham Yadav has never confessed vide Ex. PW2/B that he had changed the currency notes*”, however, the admission vide Ex. PW2/B was regarding the change of voucher and not regarding changing the currency notes. Obviously, the currency notes were also changed in terms of the voucher as being the Cashier accused retained the legal tender with him which he subsequently changed/replaced with the SBNs, however, as far as the admission is concerned, same is confined to change of voucher. Nonetheless, PW21 did state “*Vol. Shubham Yadav has orally stated in my presence that he has changed the currency notes*”. Furthermore, the currency notes/legal tender being changed with the SBNs is evident from Ex. PW21/B.

7.21            No doubt, PW21 admitted that he personally had not deposited the amount with accused Shubham Yadav on 22.11.2016 and it was deposited by his Munim Sh. Arun, however, he did state that whenever his Munim came back from

the bank he used to ask him the name of the bank employee with whom the amount was deposited. Furthermore, it is the admitted position that accused Shubham Yadav was working as a Cashier with the bank and was present in the bank on that day & performed his duty as a Cashier. The counterfoil vide which the amount was deposited i.e. Ex. PW21/A bears his initials as was proved by PW21 and the other prosecution witnesses including PW2 & PW20. Therefore, no doubt remains that the money was deposited with accused Shubham Yadav only. Non-examination of Munim Sh. Arun has not dented the prosecution story in any manner. The law is well-settled that it is a quality and not the quantity/number of witness which matters. Section 134 of the Indian Evidence Act does not require any minimum number of witnesses to be examined for proving a particular fact (*Sunil Kumar V. State Govt. of NCT of Delhi SC 2004 (1) Criminal CC 524, Krishna Mochi and others Vs. State of Bihar (2002) 6SCC 81*).

7.22 In *Ram Karan Vs. State of Rajasthan 1997 (2) FAC 131*, it was held as under:

*"In our system of administration of justice no particular number of witnesses is necessary to prove or disprove a fact. If the testimony of a single witness is found worth reliance, conviction of an accused may safely be based on such testimony. In our system we follow the maxim that evidence is to be weighed and not counted. It is the "quality" and not the "quantity" of the evidence which matters in our system. This cardinal principle of appreciation of evidence in a case has been given a statutory recognition in Section 134 of the Evidence Act of 1872."*

7.23 Further reliance may be placed upon the law laid down in *Ambika Prasad and others Vs. State, (2002) 2 CRIMES 63 SC*, *Jawahar v. State, (Delhi) 2007(4) R.C.R.(Criminal) 336* and *Appabhai v. State of Gujarat AIR 1988 SC 696*.

7.24 Furthermore, though the amount was deposited by Sh. Arun, however, PW21's statement that he had given Rs. 2 lac to Sh. Arun in the denomination of Rs. 100/- and it was he & not Sh. Arun who had filled the pay-in-slip Ex. PW21/A and his identification of his handwriting on the same as well as initials of accused Shubham Yadav at point Q4 sufficiently proves the prosecution's case, even in the absence of Sh. Arun. Same takes care of defence arguments that testimony of PW2 is hearsay. His testimony coupled with other material on record including the CFSL result duly corroborates and establishes the prosecution case against the accused that it was he who had accepted the deposit from PW21 and subsequently forged the bank voucher as well as replaced the legal tender with SBNs. PW21's identification of his handwriting on Ex. PW21/A and his testimony qua Ex. Ex. PW2/B renders him a material witness.

7.25 It makes no difference that on 13.11.2016, SBNs were deposited in the account of PW21 as is reflected in Ex. PW3/D8 at point B to B as the said amount/deposit is not in dispute. Similarly, merely because PW21 stated that a sum of approximately Rs. 14 lac was available with him in SBNs on 08.11.2016 or that SBNs were deposited in the account of M/s Gopichand & Co on different occasions during demonetization

period is of no significance as the dispute in the case at hand is only with respect to deposit dated 22.11.2016 whereby, legal tenders deposited in the account of PW21 were changed with the SBNs, after forging the bank voucher. No doubt “OHDDEP” is not mentioned against the said deposit dated 13.11.2016 in the statement of account and “BY CASH” is mentioned instead, however, it is to be seen that the demonetization came into effect on the intervening night of 8th/9th November 2016 and the SBNs were deposited in the bank on 13.11.2016 i.e. within 4-5 days of the announcement of demonetization. Further, numerous directions, updates were received by the banks regularly from RBI, Government, Regional Offices of the banks concerned. There was huge rush in the banks, new menus were created in the Finacle system in which the entries were being made in the bank in respect of the deposits and as stated by PW3 there can be a possibility of error committed by the officer who posted the said entry. In fact PW3 categorically stated in this regard as “*However, there may be a mistake by the staff due to very heavy rush in those days and amount shown in the complaint as SBN is correct.....I can say the amount shown in the complaint is correct and in the certified copy of the statement of account may be incorrect because that amount shown in the complaint is based upon a thorough investigation whereas in the statement of account there is a possibility of mistake*”.

7.26 Again it has to be remembered that the said entry is not in dispute. Same applies to deposits dated 19.11.2016, 23.11.2016, 28.11.2016 and 29.11.2016. As per Ex. PW3/D8

“OHDDEP” i.e. SBNs were deposited, however, PW21 categorically denied having deposited SBNs and stated that he had deposited only legal tenders. PW21 was not even once called upon, by the defence, to produce the counterfoils nor any direction was sought to the bank to produce the bank vouchers of these deposits to discredit PW21’s statement in this regard. Accordingly, I find no reason to disbelieve him. As discussed above, none of these deposits are in question and there is no allegations of forging of bank vouchers qua these deposits and no grievance of the bank customers either qua these deposits. There might be certain errors in statement of account Ex. PW3/D8 or for that matter the other account statements and for certain deposits the nature of deposit i.e. “BY CASH” or “OHDDEP” may be incorrectly recorded but the fact remains that for deposit dated 22.11.2016 in the account of M/s Gopichand & Co. the accused had indeed changed the bank voucher/counterfoil, forged it/got it forged to reflect deposit of SBNs on that day though in reality legal tenders were deposited by the account holder.

7.27 It is also to be noted that in case the bank had indeed colluded with the customer to show deposit of legal tenders and not SBNs by the customers in their account though actually the customers had deposited SBNs only, as is the defence contention, then what the defence has completely failed to explain is why only in respect of deposit dated 22.11.2016 forged customer counterfoil Ex. PW21/A would be created and why not for the other deposits also in case & is argued by defence that on number of occasions SBNs were deposited but in collusion with the bank

they were shown as legal tenders. The very fact that the customer/PW21 is aggrieved only with one deposit and not the others itself shows the genuineness of the case. If indeed SBNs were deposited on these dates then PW21 would have definitely received income tax notice for such deposits as well to clarify the same and the fact that no such notice for these deposits was received itself proves that only legal tender was deposited by PW21 on those dates. It further lends credence to PW3's statement that there might be some error in these statements as regards the words appearing against the deposits "BY CASH" or "OHDDEP".

7.28 No doubt, PW21 during his cross-examination stated *"It is correct that whenever any amount was deposited with the bank in SBNs during the period of demonetization, the same is shown as deposited by 'Cash' and whenever the amount was deposited by way of legal tender i.e. Rs.5/-, Rs.10/-, Rs.20/-, Rs.50/-, Rs.100/-, the entry is shown as 'OHDDEP'. It is correct that entry at point A in Ex.PW3/D8 with regard to the deposit of sum of Rs.2,00,000/- denotes that the entire amount has been deposited by way of legal tender."*, however, the testimony of prosecution witnesses leaves no doubt that the said statement made by PW21 is/was incorrect to that extent. Being a layman, he was not expected to be versed with all the banking words, codes/terminology etc. It stands proved on record that "OHD means Old High Denomination" hence, the OHD reflected in Ex. PW3/D8 is the SBNs and not legal tenders. Vide Ex. PW21/A, 2000 currency notes of Rs. 100/- (legal tender) were deposited

whereas, as per the forged voucher Ex. PW21/B, 71 SBNs of Rs. 1,000/- & 258 SBNs of Rs. 500/- were shown to have been deposited in the account of M/s Gopi Chand & Company. This is the reason why in Ex. PW3/D8, the statement of account of M/s Gopi Chand & Company reflects deposit of “OHDDEP”, which entry was made by the back office on the basis of forged bank voucher Ex. PW21/B. Moreover PW21 during his cross-examination had stated *“I was informed by the bank officials that there is a special code in the statement of account which denotes that the amount was deposited by way of SBNs”*. This special code is nothing but “OHDDEP” as is reflected against the deposit in question i.e. dated 22.11.2016 in account statement Ex. PW3/D8.

7.29 No doubt PW21 stated that after going through Ex. PW3/D8 he cannot identify the amounts which he had deposited by way of SBNs and that he also cannot tell as to how he was able to gather that he had deposited currency notes of Rs. 100/- on 22.11.2016 though Ex. PW3/D8 reflects deposit of SBNs, however, it is to be seen that after a lapse of more than 3 years a witness cannot be expected to remember such minute facts or incidents. Moreover, he did state about the special code used by the bank denoting depositing of SBNs, which code as discussed above was duly mentioned in the account statement and also stated that he had checked his counterfoil vide which only legal tenders had been deposited and not SBNs.

7.30 Ld. Defence Counsel also pointed out the

discrepancy between the statement of PW21 and PW2 regarding the income tax notice as though on one hand PW21 did not state, during his examination in chief, anything about receipt of any income tax notice and during his cross-examination stated that he had not received any notice from the Income Tax Department as well as denied having stated so in his statement under section 161 Cr.P.C i.e. Ex. PW21/DA, however, on the other hand PW2 claimed that he was approached by PW21 on receiving notice from the Income Tax Department regarding deposit of SBNs in the account of M/s Gopi Chand & Co. As far as the said discrepancy is concerned, same is immaterial & insignificant. To begin with these minor inconsistencies are bound to occur with passage of time. Furthermore, absence of income tax notice has not affected prosecution case in any manner as forgery of bank voucher and replacement of legal tender with SBNs stands duly proved on record. Even if there was no notice from the Income Tax Department that would in no way alter the proven facts that accused Shubham Yadav had forged the bank vouchers to give an impression of deposit of SBNs. No doubt had the income tax notice been produced it would have further boosted the prosecution case but the fact remains that the said notice was merely a trigger and the investigation which ensued unearthed the criminal acts of the accused. Most importantly, the defence did not seek any direction to any of the witness to produce the income tax notice nor made any efforts to examine any official from the Income Tax Department to belie the prosecution story in this regard. Accordingly, mere failure of the prosecution to bring on record income tax notice has not affected its case. Nonetheless

it is also to be noted that PW21 did state during his examination in chief that *“After that, I visited the bank with customer counterfoil of deposit and asked the bank to issue a certificate for deposited currency mentioned in the customer counterfoil issued against our cash deposit of Rs. 2 lac”*. PW21 did state, during his cross-examination that the said certificate might be available at his office. The said certificate, as proved by PW2 was sought by PW21 and for that matter by other customers of the bank to prove deposit of legal tenders before the Income tax authorities as they had received notice for deposit of SBNs. This is the reason why in his statement Ex. PW21/DA he had mentioned about the receipt of income tax notice. Also during his cross-examination PW21 stated as *“It is correct that no notice was received by my firm by Income Tax Department qua 22.11.2016. It is wrong to suggest that I made a false statement to the CBI (vol. The portion A to A of Ex.PW21/DA is incorrectly recorded as I had stated about the entire period and not confined it to a particular day i.e. 22.11.2016)”*, which statement further establishes the prosecution case that he had indeed received income tax notice.

7.31 It was also argued by Ld. Defence Counsel that PW2 and PW21 contradicted each other as regards who had handed over Ex. PW21/A to the IO/CBI as on one hand PW21 claimed that he had handed over the same to the CBI in the bank, however, as per Ex. PW2/J the said document was seized by the IO/PW22 from PW2 Sh. O.N. Singh. It was argued that these contradictions establish that the said counterfoil is a forged

document and that the investigation was designed to falsely implicate the accused. However, I find no merits in the said argument. I find absolutely no reason whatsoever to believe that Ex. PW21/A is a forged document. The defence could not explain any motive which weighed with the IO, the bank officials, PW21 for falsely implicating the accused. I am not inclined to believe the defence and it is absolutely unpalatable that all these individuals would forge a document to falsely implicate the accused. As far as the discrepancy is concerned, Ex. PW2/J leaves no doubt that Ex. PW21/A was handed over to the IO by PW2 and the confusion/discrepancy arose only on account of passage of time. The said minute discrepancy which does not touch the merits of the case was bound to occur as a witness cannot be expected to remember such details. Furthermore, it was stated by PW21 “*My customer counterfoil were handed over by me to the CBI in the bank (vol. I was called at the bank with regard to this issue and there I handed over the same and receipt was issued by the Bank Manager for the purpose of my record)*”. This explains the discrepancy. The customer counterfoil/Ex. PW21/A was taken to the bank; a receipt was issued to him by the Bank Manager accordingly and it was there that the CBI seized it. After more than 2 and ½ years the witness cannot be expected to recall with precision the exact sequence of events and is bound to falter here & there.

**M/s Dhaneshwar Trading bearing account no. 21420200006095**

7.32 Just like M/s Gopichand & Co., the bank voucher vide which amount was allegedly shown/reflected to be deposited in the account of M/s Dhaneshwar Trading, a partnership firm, was forged by accused Shubham Yadav to give an impression of deposit of SBNs whereas, only legal tender was deposited in it's account. PW13 Sh. Sushil Kumar Garg, partner of M/s Dhaneshwar Trading, proved that their employee Sh. Pawan Kumar Sharma (PW12) was looking after bank transactions with Bank of Baroda and he used to collect cash & deposit it with the bank. He identified Pawan Kumar Sharma's handwriting on customer counterfoil of the pay-in-slip bearing no. 482747 i.e. Ex. PW12/A which is a genuine counterfoil and vide which an amount of Rs. 5,50,000/- was deposited in the above account on 28.11.2016. Corroborating PW2's statement, PW13 deposed that after receiving income tax notice for deposit of SBNs of Rs. 500/- & Rs. 1,000/- in their account, they approached the Manager, Bank of Baroda, Azadpur Branch, Delhi and upon checking the record, it was revealed that the bank voucher was different from counterfoil Ex. PW12/A. Once the amount was deposited vide Ex. PW12/A then the other portion of the pay-in-slip i.e. the bank voucher should have been bearing the same number i.e. 482747 instead the bank voucher dated 28.11.2016 i.e. Ex. PW12/B bears no. 65293. The difference in the number of the counterfoil and the bank voucher itself proves that the bank voucher is a forged one. It stands proved on record and has been discussed in this judgment that the said voucher

was got prepared by the accused through PW19 Sh. Nand Kishore.

7.33 No doubt, PW13 had himself not gone to the bank to deposit the cash on 28.11.2016 and he did state that he does not know with which Cashier the amount was deposited, however, the counterfoil Ex. PW12/A bears the initials of accused Shubham Yadav at point A (Q7) as were duly identified by PW2, PW20 & other prosecution witnesses and as also stands proved by CFSL result Ex. PW16/A1 which sufficiently proves that the cash was deposited with accused Shubham Yadav only. During the trial PW2 & PW20 identified the initials and writings of accused Shubham Yadav on all the genuine counterfoils as well as the forged bank vouchers in question which are collectively part of Ex. PW2/K (colly) and also exhibited individually. Also as per the scroll register i.e. Ex. PW8/A (colly) the amount in respect of M/s Dhaneshwar Trading was deposited with accused Shubham Yadav only who had made entry no. 194 in the same. The scroll register has been discussed in detail in the later part of this judgment. The fact that the forged bank voucher Ex. PW12/B bears his initials, writing at point Q33 & Q34 respectively, as stands duly proved on record, also leaves no doubt that it was he who had received the cash on 28.11.2016 from Sh. Pawan Kumar Sharma vide Ex. PW12/A for depositing in the account of M/s Dhaneshwar Trading providing him the opportunity to forge the bank voucher Ex. PW12/B for the said deposit.

7.34 Not only accused Shubham Yadav had accepted his

guilt in writing qua the deposits in the account of PW21, he had further voluntarily accepted his guilt vide Ex. PW2/A qua deposits in the account of PW13 which fact was duly proved by PW13 when he deposed as under:-

*“After having checked the bank counterfoil regarding deposit of the said amount, he found that the bank counterfoil was different from the customer counterfoil. In this regard, the Branch Manager had called the Clerk Shubham Yadav and showed him the pay in slip (customer counterfoil) and the bank counterfoil with regard to the deposit of said money and found that both were different one bearing different serial numbers. After having enquiry from Shubham Yadav by the Branch Manager, Shubham Yadav had accepted that the details of the currency notes which were reflected in our customer counterfoil Ex. PW12/A is the correct details of the currency notes deposited by our firm and not as per the bank counterfoil Ex. PW12/B. Further, in this regard, Shubham Yadav had given his statement in writing in our presence to the above fact, which was duly certified by Bank Manager under his seal and signature.*

*At this stage, I have seen Ex. PW2/A. I identify this document as it is the same handwritten statement of Shubham Yadav, which he had made in our presence. The same handwritten statement was given to us by the then Branch Manager. Shubham Yadav had signed aforesaid written statement Ex. PW2/A at point A in our presence and Bank Manager had also signed at point B thereon.”*

7.35 PW13 during his cross-examination categorically denied the defence suggestion that Ex. PW2/A was taken by PW2, under duress from accused Shubham Yadav. Though Ld. Defence Counsel argued that during his cross-examination, PW13 admitted that accused Shubham Yadav never gave in writing that he had changed the bank voucher in regard to the cash deposited in the account of Dhaneshwar Trading on 28.11.2016, which admission, according to him completely throws away the prosecution case based upon Ex. PW2/A,

however, in my considered opinion the said argument is absolutely misconceived. The image of Ex. PW2/A is reproduced hereunder:-

①

शुभम यादव कोडियार बैंक खाते में आणवत खाता संख्या  
 21920200006095 धनोदय खाते में फिनांक 28/11/2016  
 को अपने खाते में 5,50,000/- पांच लाख पचास हजार रुपये  
 स्वीकार किए हैं। प्रिन्सिपल अंतरण निम्न प्रकार है -


100 x 5000	=	500000
50 x 7000	=	350000
20 x 500	=	10000
10 x 500	=	5000
		5,50,000/-

पांच लाख पचास हजार रुपये मात्र

Ext. PW2/A  
 Jh  
 Jh  
 7/12/18

A Shubham Yadav  
 09/02/18 EC No. 112069

शुभम यादव (रुग्ण) ने उपरोक्त खाते में लेनदेन  
 एकीकृत की है

B  8/02/2018  
 (अधिकारी)

S

7.36 No doubt it is nowhere written or admitted by accused Shubham Yadav that he had changed the bank voucher, however, in Ex. PW2/A he did give break-up of the denomination of the currency notes as were deposited in the account of M/s Dhaneshwar Trading on 28.11.2016, out of total sum of Rs. 5,50,000/-. The said break-up does not include any SBNs but only legal tenders and is in consonance with customer counterfoil Ex. PW12/A. As against this, the bank voucher bearing no. 65293 i.e. Ex. PW12/B, which also bears his initials as stands duly proved on record, is a forged one created/got created by him to show deposits of SBNs. Though he did not admit, vide Ex. PW2/A about changing of the bank voucher with respect to cash deposit on 28.11.2016 in the account of M/s Dhaneshwar Trading, however, his mentioning different denomination of currency notes on Ex. PW2/A, as were admittedly received by him & which did not include any SBNs and which are in consonance with Ex. PW12/A whereas as per bank voucher Ex. PW12/B, 23 SBNs of Rs. 1,000/- & 46 SBNs of Rs. 500/- have been shown to have been deposited, itself sufficiently establishes his culpability. The confession, admission Ex. PW2/A need not be dissected and it has to be read as a whole. The sum & substance, the import of the confession has to be seen in the totality of the facts.

7.37 Further corroboration to the prosecution case was lend by Sh. Pawan Kumar Sharma (PW12) who deposed that he was employed with M/s Dhaneshwar Trading as Munshi/Munim and had deposited a sum of Rs. 5,50,000/- in it's account vide

counterfoil Ex. PW12/A (also Ex. PW2/K [colly]) which is in his handwriting. PW12's deposition also takes care of the defence arguments that the testimony of PW13 is merely hearsay. No doubt PW13 had not deposited the amount himself in the bank, but his testimony in the given facts & circumstances of the case and when considered in totality cannot be brushed aside as mere hearsay. Even if his testimony qua deposit of amount by PW12 is ignored/kept aside still his testimony, as discussed above, brings on record sufficient incriminating material against the accused. Coming back to PW12, he categorically deposed that he had mentioned the details of denomination of currency notes on the overleaf/back side of the counterfoil Ex. PW12/A in his handwriting and he had not deposited any SBNs but only legal tender. He categorically deposed that he had handed over the cash to accused Shubham Yadav who after accepting the same, affixed the bank stamp on the counterfoil and handed over to him. He categorically proved that the bank voucher Ex. PW12/B is/was not filled by him, the serial number is different from Ex. PW12/A and so are the details of the currency notes and that Ex. PW12/B is not the part of the pay-in-slip vide which he had deposited the amount of Rs. 5,50,000/- with the bank. Infact, it was he who had handed over the written admission of guilt/statement i.e. Ex. PW2/A to the CBI vide production cum seizure memo Ex. PW12/C, which admission according to him was written & signed by accused Shubham Yadav in the presence of his employer (PW13) and the Bank Manager (PW2). Most importantly, accused Shubham Yadav's specimen handwriting & signatures were obtained during the course of investigation and

as per the CFSL result Ex. PW16/A1 (colly), it is his initials which appears on Ex. PW12/B which further proves that it was he who had prepared the said forged voucher. The CFSL result has been discussed in detail in the later part of this judgment.

7.38 PW12 during his cross-examination, on the attention being drawn to the portion encircled at point X on the backside of Ex. PW12/A, stated that the same was filled by him on the day when the cash was deposited. Though initially he did state that he does not remember whether the denomination of the currency notes mentioned at point X were written by him after the deposit or not but he immediately stated that the same was written by him when the amount was deposited. As far as the portion below X is concerned, he categorically stated that the same was written by accused Shubham Yadav, when he alongwith his employer i.e. PW12 Sh. Pawan Kumar Sharma had gone to meet the Bank Manager upon receipt of income tax notice, in their presence. PW12 categorically stated that the said portion was written by accused Shubham Yadav in his presence as well as in the presence of his employer i.e. PW13 and the Bank Manager i.e. PW2. As also stated by PW13, PW12 deposed that they had gone to the bank after receipt of notice from the income tax department. According to portion X, only legal tenders were deposited and no SBNs were deposited. The said portion is in consonance with the written admission/guilt of accused Shubham Yadav i.e. Ex. PW2/A. The words below portion X “MAI SHUBHAM YADAV CASHIER UPROKT DENOMINATION KE NAKDI SWEEKAR KARTA HUN” written by accused

Shubham Yadav coupled with the testimony of the other prosecution witnesses and Ex. PW2/A leaves no doubt that these words were written by him at the time when he wrote Ex. PW2/A.

7.39 I find no merits in the defence arguments that the denomination of the currency notes as mentioned at point X on Ex. PW12/A were also written subsequently and not at the time of deposit of the amount in the account for the simple reason that had those details been not there, the accused would not have mentioned the same details in Ex. PW2/A. Infact, nobody could have remembered as to what was the denomination of the currency notes deposited in the account around 3 months back and therefore, mention the same on the back of the counterfoil. Further, if the bank had to merely manipulate the record/customer counterfoil for the customer then, any denomination or any legal tender could have been mentioned and there would have been no need to mention such detailed and smaller denominations. Still if the defence contention is agreed with then, may be at the time of bank visit, during the inquiry, out of over-zealousness the denomination was got written at point X, however, still the accused cannot explain the writing below portion X i.e. “MAI SHUBHAM YADAV CASHIER UPROKT DENOMINATION KE NAKDI SWEEKAR KARTA HUN” and which writing coupled with the other material available on record is categoric admission of his guilt, misdeeds. By merely claiming that he was forced to write the same or was forced to give Ex. PW2/A & Ex. PW2/B does not help the cause of the accused as I

am not inclined to believe that the entire universe, as is being claimed by the accused, came together and plotted against him so as to falsely implicate him. The sheer number of public persons and the bank officials who had deposed against him itself rules out any false implication. Also the writing on the backside of Ex. PW12/A does not amount to any manipulation or fabrication. Whatever was written by the accused, the same was done in the presence of the branch In-Charge/PW2 and the independent witnesses i.e. PW12 & PW13. The purpose of writing the same was only for clarification and not for manipulating any record of deposit. There was no dishonest intention or any ulterior motive behind writing the same.

7.40 It is of no consequence that SBNs were deposited in the account of M/s Dhaneshwar Trading, as is reflected in Ex. PW20/C (colly) (also mark PW12/DA) as the said deposit is not in question. The deposit which is in question is of 28.11.2016 which though was legal tender, however, the same was shown as SBNs vide Ex. PW12/B. Also there was no bar in depositing the SBNs and the said deposits, if any, are not in dispute or the matter of concern of this court.

7.41 It has also been discussed above that the fact that the income tax notice was not brought on record makes no difference. Not only I find no reason to doubt PW13's statement that he had received the income tax notice in February 2017 to clarify deposit dated 28.11.2016 but to add to it no evidence was led by the defence to prove that PW13 was making false

statement in this regard. No effort was made to summon record from the income tax department or to examine PW13's CA but also not even once direction was sought to PW13 to produce the said notice. Had any such direction been sought and PW13 failed to produce the notice then the things would be otherwise. In the absence of the same I find no reason to doubt PW13's categoric statement to that effect which was further corroborated by PW12 and PW2. Merely because PW12 had not seen the income tax notice/mail is immaterial as he was merely an employee of the firm and the notice was of concern to the firm, its partners.

7.42 Just because no certificate was received by PW13, from the bank, regarding the cash deposited during the demonetization period is also of no consequence as not only PW13 was having counterfoil bearing the initials of bank employee and the bank stamp i.e. Ex. PW12/A to prove the deposit of legal tender but additionally he was provided with hand written statement/confession of accused Shubham Yadav i.e. Ex. PW2/A proving deposit of legal tender. As proved by PW13 he had handed over the copy of Ex. PW2/A to his CA.

7.43 Failure on the part of PW12, after being pointed out Ex. PW20/C (colly) {also Mark PW12/DA as well as Ex. PW3/D5}, to tell the denominations of the amounts deposited in the account of M/s Dhaneshwar Trading on 08.11.2016, 22.11.2016, 07.12.2016 etc. is of no consequence. Not only after a lapse of more than 3 years since the said deposits, a witness cannot be expected to remember the denomination of amount so

deposited but furthermore none of these deposits is in question. Whether they were indeed legal tender or SBNs is of no concern to the court. Similarly it is of no concern that there might be error in the said statement of account as regards the nature of deposits i.e. whether legal tenders “BY CASH” or SBNs “OHDDEP”. What this court is concerned with is deposit dated 28.11.2016 as the back voucher of the said deposit was forged and the legal tender deposited by the customer was replaced by the SBNs.

7.44 Why this witness remembered the denomination of currency notes deposited on 28.11.2016 and not the other deposits is for the fact that for the said deposit a detailed investigation was conducted at the bank and by the CBI in which he had participated and therefore it being not an ordinary but a special event, he remembered the same. This also explains why he failed to give the name of the other cashiers with whom the amounts were deposited on 08.11.2016, 11.11.2016, 22.11.2016 etc. He remembered the accused’s name due to registration of this case and having participated in its investigation as well as the bank inquiry/investigation.

**Ram Sewak Yadav bearing account no. 21420200006495**

7.45 In a similar fashion, bank voucher was forged in respect of deposit dated 22.11.2016 in the account of Sh. Ram Sewak Yadav (PW5) who was maintaining the above account with Bank of Baroda and the legal tender deposited by him were changed with SBNs. PW5 proved that vide bank pay-in-slip

No.539603 dated 22.11.2016 i.e. Ex. PW5/A (Ex. PW5/A1 & Ex. PW2/K [colly]), he deposited Rs 50,000/- in denomination of 500 x Rs.100/- after filling the bank voucher as well as counterfoil side of the pay-in-slip, in his handwriting with accused Shubham Yadav who after receiving the aforesaid amount returned the counterfoil to Sh. Ram Sewak Yadav after putting the cashier stamp and writing the numerals of the received amount with his initials at point Q10 and Q11 respectively. Further, the accused made entry in his cash scroll register Ex. PW8/A (colly) regarding the said deposit but subsequently, in place of voucher No.539603, he filled/got filled another bank voucher bearing serial No.381480 dated 22.11.2016 i.e. Ex. PW5/B (also Ex. PW2/K [colly]) showing deposit of Rs.50,000/- in the account of Sh. Ram Sewak Yadav in denomination of 50 x Rs.1000/-. He put the cashier stamp and wrote the numerals of the received amount with his initial on the said forged bank voucher and forwarded the same for entry, verification and posting to the back office. Voucher no. 381480 i.e. Ex. PW5/B was seized during the investigation vide Ex. PW2/J and as stands proved from the testimony of PW2, PW5 & other prosecution witnesses as well as CFSL result i.e. Ex. PW16/A1 (colly) the same bears the initials of accused Shubham Yadav as well as the numerals are in his handwriting at point Q36 and Q37 respectively. Voucher no. 381480 i.e. Ex. PW5/B does not bear the handwriting of Sh. Ram Sewak Yadav which would have been the case had the said voucher been the original voucher vide which Rs. 50,000/- was deposited by PW5 in his account. Also the serial number would have been 539603 as appears on Ex. PW5/A and not 381480.

7.46 Sh. Ram Sewak Yadav's deposition alongwith testimony of PW2 and other prosecution witnesses leaves no doubt that though legal tender was deposited by him, however, in a fraudulent manner, by forging and creating a new bank voucher i.e. Ex. PW5/B, accused Shubham Yadav showed a deposit of SBNs by PW5. The testimony of PW5 leaves no doubt that bank voucher no. 381480 i.e. Ex. PW5/B is a forged one. The said bank voucher is in English, whereas, according to Sh. Ram Sewak Yadav he used to fill in both the portions of the pay-in-slip himself, including the amount/denomination of the currency notes and made the relevant entries in Hindi as also stands proved from the counterfoil Ex. PW5/A. PW5 categorically deposed that during the demonetization period he was not accepting the currency notes of Rs. 500/- or Rs. 1,000/- i.e. SBNs and was only accepting currency notes of valid denomination for depositing in his account. He further proved that it was accused Shubham Yadav to whom he had handed over the cash i.e. 500 currency notes in the denomination of Rs. 100/- for depositing in his account vide Ex. PW5/A. While corroborating the testimony of PW2, PW5 proved that how on checking his customer counterfoil i.e. Ex. PW5/A and thereupon on his visit to the bank, upon receipt of Income Tax Notice, it was revealed upon checking the bank record that the denomination of the currency notes as mentioned in the customer counterfoil were totally different from the denominations as mentioned on the bank vouchers.

7.47 Failure on the part of PW5 to provide the copy of the Income Tax Notice to the bank officials or the CBI does not effect the prosecution story in any manner as the categoric deposition of PW5 & PW2 as well as the other material on record leaves no doubt that accused Shubham Yadav had indeed forged the bank vouchers to give an impression of deposit of SBNs though the customers/account holders had deposited only legal tenders. The notice, as discussed above, was merely a trigger and it was the bank's inquiry & investigation which unearthed the criminal acts of accused Shubham Yadav. Even if there was no Income Tax Notice, that would not in any manner lessen the liability, culpability of the accused. Existence of forged voucher; voucher in the handwriting of the accused with the different voucher number i.e. 381480; showing different value of currency notes being deposited; it being in English language i.e. Ex. PW2/K (colly) whereas the voucher number should have been 539603 in consonance with the counterfoil Ex. PW5/A; the voucher should have been in Hindi and the value of the currency notes deposited should have been 100 x Rs. 500/- & not Rs. 1,000/- x 50. For similar reasons merely because copy of the income tax notice was not retained by PW2 or that no income tax notice was shown by PW2 to Ms. Surbhi Singh (PW4) who had conducted the enquiry or to the other Chief Manager nor the CBI officials asked PW5 to show them the notice makes absolutely no difference. Nonetheless PW5 did state during his cross-examination *"In the month of February 2017, the Manger of bank of Baroda had handed over me a letter wherein it was acknowledged that, I had deposited the currency notes of Rs. 100*

*during the period 08.11.2016 to 09.12.2016. The said letter may be available in my record but I am not sure for that”.* After the above statement no efforts were made by the defence to seek production of the said document through PW5. Had any such direction been sought and PW5 failed to produce it, then may be the things might have been a little different but in the absence thereof I find no reasons to doubt the testimony of PW5 or the prosecution story as such.

7.48 As far as the words “naya note” appearing on the top of counterfoil Ex. PW5/A is concerned, PW5 explained that he had written the same after receiving notice from the Income Tax Department in the month of February 2017, which becomes evident from the different pen/ink with which the said words have been written as compared to other details on Ex. PW5/A. Even otherwise, the said words have no significance whatsoever. Furthermore, no question arises of Ex. PW5/A being a forged counterfoil once the same was duly identified by PW5 as being in his handwriting and it also bears the initials of accused Shubham Yadav at point A (Q10) and the numerals at point Q11 are also in his handwriting as duly identified by PW2 which further emerges from CFSL result Ex. PW16/A1 (colly). The word “naya note” does not amount to interpolation as was argued by Ld. Defence Counsel. This is more so when the mentioning of said words is not only irrelevant for the purpose of present trial, had no effect on the deposits made vide Ex. PW5/A, but were also duly admitted by PW5 having been written subsequently.

7.49 It also makes no difference that there were other Cashiers working at the bank during the relevant period or that PW5 had deposited cash with other Cashiers also during the period of demonetization because the material on record leaves absolutely no doubt that it was accused Shubham Yadav who had accepted the cash from Sh. Ram Sewak Yadav, initialed the counterfoil at point A (Q10) and subsequently forged bank vouchers for the payment deposited vide Ex. PW5/A on 22.11.2016. Nonetheless PW5 categorically stated that he did not know all the Cashiers but he knew only one Cashier i.e. accused Shubham Yadav with whom he used to deposit the money and that he also knew Cashier Sonu. Also the fact that PW5 stated that he cannot identify the signatures/initials of the Cashiers who were working at the bank is of no significance as the testimony of the prosecution witnesses and the material record including CFSL result and his own admission, during the course of inquiry by the bank, establishes his initials on the counterfoil and initials & handwriting on the forged bank voucher.

7.50 It is the admitted position that the accused was working as Cashier in the Bank and it has been discussed in the later part of this judgment that he was present in the bank on the day of deposit. Being posted as a Cashier his duty was to accept the cash from the customers and if not in scroll register Ex. PW8/A (colly) then it was for the accused to explain that in which register he was making entries qua the deposits. No efforts whatsoever were made to summon the bank record and prove that instead of Ex PW8/A (colly) there was some other register

which was being maintained by him. The scroll register being an important document containing details of cash deposited in the bank/Cashier on a particular date had there been any other register then in my considered opinion the accused would have got the same summoned to belie the prosecution case. Having not done so itself proves the falsity and hollowness of his claim.

**Kaka Kohli & Sons bearing account no. 21420200000236**

7.51 PW6 Sh. Sandeep Kumar proved that he was working as Munim in Kaka Kohli & sons and was looking after the finance work, including collection of cash from customers and deposit as well as withdrawal from account no. 21420200000236 maintained at Bank of Baroda, Azadpur Branch. He proved that he used to deposit the cash after filling the necessary columns of the customer counterfoil & bank voucher of the pay-in-slip in his own handwriting alongwith the details of denomination of currency notes and then handover the same along with cash to the Cashier who used to count & match the cash with the pay-in-slip and after affixing his signatures & cash receipt stamp handed over the counterfoil to him while retaining the bank voucher. He identified his handwriting on counterfoils bearing no. 195644, 195641, 195634 and 195624 at point Q17, Q20, Q23 and Q26 respectively i.e. Ex. PW6/A to Ex. PW6/D {also Ex. PW2/K (colly)}.

7.52 He further proved that the CA of the firm received income tax notice, seeking clarification regarding deposit of

SBNs of Rs. 1000 & Rs. 500 during the period of demonetization and as they were not accepting SBNs but only legal tender they checked the counterfoils and found out that they had only deposited legal tender and not SBNs. Accordingly, they approached the bank and the Bank Manager upon checking the customer counterfoils & the bank vouchers found out that the bank vouchers qua the deposits have been changed. He further proved that bank vouchers bearing serial no. 114592, 500798 & 704238 i.e. Ex. PW6/E, Ex. PW6/G & Ex. PW6/H are not in his handwriting and that he did not make the alterations; the handwriting of figure of 100 & 1,00,000 written on the top of voucher for the denomination in the bank voucher bearing no. 195641 i.e. Ex. PW6/F is also not his. As per counterfoil Ex. PW6/A only legal tender in the denominations of 100, 50 & 10 totaling to Rs. 3.5 lacs were deposited on 29.11.2016 and no SBN were deposited in the account of Kaka Kohli & sons. As against this as per bank voucher Ex.PW6/E dated 29.11.2016, 66 SBNs of Rs. 1000/- and 68 SBNs of Rs. 500/- were deposited, out of total amount of Rs. 3.5 lacs.

7.53 Similarly, as per counterfoil Ex. PW6/B only legal tender in the denominations of 100, 50, 20 & 10 totaling to Rs. 6.5 lacs were deposited on 28.11.2016 and no SBN were deposited in the account of Kaka Kohli & Sons. As against this, as per bank voucher Ex.PW6/F dated 28.11.2016, 100 SBNs of Rs. 1000/- were deposited, out of total amount of Rs. 6.5 lacs. Furthermore, there is an alteration, cutting in the column “pieces” and “Rs.” against denomination of Rs. 100/- in the said voucher.

As proved by PW6 he had not made the said interpolation on Ex.PW6/F.

7.54 As per counterfoil Ex. PW6/C only legal tender in the denomination of 100 totaling to Rs. 2.2 lacs were deposited on 24.11.2016 and no SBNs were deposited in the account of Kaka Kohli & sons. As against this as per bank voucher Ex.PW6/G dated 24.11.2016, 200 SBNs of Rs. 500/- were deposited, out of total amount of Rs. 2.2 lacs. Similarly, as per counterfoil Ex. PW6/D a sum of Rs. 1.5 lacs was deposited on 18.11.2016 in the account of Kaka Kohli & sons. Though this counterfoil does not contain the denomination of currency notes, however, according to bank voucher Ex.PW6/H dated 18.11.2016, 75 SBNs of Rs. 1000/- and 150 SBNs of Rs. 500/- were deposited, out of total amount of Rs. 1.5 lacs. Why in Ex. PW6/D the denomination of the currency notes has not been mentioned was explained by PW6 when he stated that this was the first counterfoil vide which cash was deposited during the demonetization period and before the period of demonetization he did not use to fill the details of denomination on the counterfoil but always mentioned the same during the period of demonetization.

7.55 PW6's testimony thus leaves no doubt that the bank vouchers Ex. PW6/E, Ex. PW6/G & Ex. PW6/H are forged bank vouchers whereas manipulations were made in voucher Ex. PW6/F, thereby rendering it also to be forged one. Furthermore, the very fact that these vouchers have a different number, except

Ex. PW6/F, as against the numbers appearing on the counterfoils, the same itself is sufficient proof of the fact that these vouchers are forged ones and created subsequently. It has been discussed in the later part of this judgment that the forged bank vouchers Ex. PW6/E & Ex. PW6/H were got prepared by accused Shubham Yadav through PW19 Sh. Nand Kishore who was working as Peon in the bank and thereafter he put the initials, wrote the numerals on the same.

7.56 During the course of arguments, Ld. Defence counsel pointed out that just like the other customers of the bank even income tax notice which was allegedly received by Kaka Kohli & sons was never brought on record and admittedly PW6 had not seen the alleged income tax notice, was unaware about its contents. However, the said aspect has already been dealt with above and it has been held that failure to bring on record the income tax notices has not dented the prosecution story in any manner. Moreover, PW6 was merely a Munim/employee and he had nothing to do with the income tax notice which according to him was received by the CA of the firm, as was also consistently deposed by PW11 Sh. Sanjay Kohli who is the owner/proprietor of M/s Kaka Kohli & Sons. There was no necessity for PW11 or his CA to apprise PW6 as regards the entire contents of the said notice and the fact that he was informed that there was some issue with regard to the deposit of cash and its denomination was sufficient as far as he is/was concerned. Also just because no inquiry was made from other accountant namely Laxmi Narayan has not affected the prosecution story in any manner for the

simple reason that the pay-in-slips for the deposits in question were filled by PW6 and not Laxmi Narayan. Also as stated by PW6 it was his duty to receive the payments & deposit the same in the account and not Laxmi Narayan's.

7.57 PW6's statement that M/s Kaka Kohli & Sons had deposited Rs. 9 lacs in the denomination of Rs. 500/- and Rs. 1000/- between 08.11.2016 to 29.11.2016 in its account at State Bank of Patiala is of no significance or importance whatsoever as the said deposits are/were not under dispute nor they were investigated and therefore is of no concern to this court. The defence on its part miserably failed to prove that SBNs were deposited in the account of M/s Kaka Kohli & Sons in Bank of Baroda, Azadpur Branch. Undoubtedly, PW6 stated that he was not aware about the term "SBNs" nor was apprised of the said term by the CBI, however, he did state that he was apprised about the legal tender i.e. notes of Rs. 100, 50, 20 and 10. The term "SBNs" was not necessarily known to all/general public during the period of or after demonetization. What was known to the general public/common man was that after 08.11.2016 was that Rs. 1000 and Rs. 500/- ceased to be legal tender. Just because PW6 stated that he does not remember whether the bounded pay-in-slips, maintained at Kaka Kohli & sons, out of which pay-in-slips were used for deposit of cash during the period 08.11.2016 to 29.11.2016, were shown to the CBI or not is immaterial as the counterfoils of the pay-in-slips in respect of the deposits whose corresponding bank vouchers were forged were duly shown and handed over to CBI as was duly proved on record. The remaining

pay-in-slips were not required for investigation and are absolutely immaterial for the purpose of present adjudication.

7.58 The minor inconsistency in the statement of PW6 as on one hand he stated that the customer counterfoils were taken into possession by bank manager through PW11 while during cross-examination he stated that they were not given to the bank but were only shown to the bank officials is absolutely inconsequential. Such minor inconsistencies are bound to occur with passage of time but they do not in any way touch upon the merits of the case. Most importantly, the customer counterfoils of the pay-in-slips were duly seized during the investigation as stands duly proved on record.

7.59 Just because no inquiry was made by the bank from him, regarding the deposit in question, is also of no consequence once PW6 categorically stated that on receipt of income tax notice he along with PW11 had visited the bank, with the customer counterfoils for the relevant deposits, where the discrepancy in their customer counterfoil and the bank voucher was revealed. Also the report of PW8 Sh. Susheel Kumar Srivastava i.e. Ex. PW3/H regarding those deposits is duly proved on record, as has been discussed in the later part of this judgment.

7.60 No doubt PW6 during his cross-examination stated *“I never used to write the denomination of the currency notes on the customer counterfoil, which was being retained by us”*,

however, that was a generalized statement and not made specifically for the counterfoils filled during the demonetization period. During his examination in chief he had categorically stated “*Before the period of demonetization, I did not use to fill details of denomination, however, during the period of demonetization, I always used to mention details of denomination of currency notes in order to avoid any enquiry and to show that we have deposited cash only in legal tender*”. Furthermore, PW11 while denying that denomination of currency notes deposited in the account was not mentioned in the counterfoil maintained by them stated that sometime they used to write denomination and sometimes they did not. In all the counterfoils Ex. PW6/A to Ex. PW6/C the denomination of the currency notes is duly mentioned and it is not mentioned only in Ex. PW6/D. Just because in counterfoils Ex. PW11/DA & Ex. PW11/DB, the denomination of the currency notes is not mentioned, same is absolutely immaterial for the simple reason that these counterfoils, produced by PW11 on being asked by the defence, are not in dispute and most importantly they pertain to deposits prior to 08.11.2016 i.e. the day of demonetization.

7.61 PW11 Sh. Sanjay Kohli, owner/proprietor of M/s Kaka Kohli & Sons while duly corroborating the testimony of PW6 further proved the handing over of the counterfoils Ex. PW6/A to Ex. PW6/D to the IO Insp. H.V. Attri (PW22) vide Ex. PW11/A and identified the handwriting of PW6 on them. No doubt as against PW6, who had stated that a sum of Rs. 9 lac in SBNs/ceased currency notes was deposited in the State Bank of

Patiala, PW11 stated that his firm had not deposited cash in the denomination of Rs. 500/- or Rs. 1000/- after 08.11.2016, however, the said statement was made by PW11 with reference to deposit with the Bank of Baroda, Azadpur Branch. Moreover he did state *“I can tell only after going through the record whether my firm was having the currency of denomination of Rs.500/- and Rs.1,000/- on 08.11.2016 and also about the value for which the said currency was available with the firm in cash on 08.11.2016”*. No doubt he also stated *“Again said no such record mentioning the number of denomination of Rs.500/- and Rs.1,000/- is maintained in my office”*, however, usually/normally/mostly a firm maintains the record of the funds/cash available with it and not in what denominations they are available. So if PW11 stated that no such record of denomination of the currency notes was maintained I find no reason to disbelieve him as in the normal course of business such record is not maintained. Merely because PW11 admitted that he had personally not visited Bank of Baroda for depositing cash amount between 08.11.2016 to 29.11.2016 is also of no significance as testimony of PW6 squarely proves that being the Munim he was depositing the amount in the bank on behalf of the firm.

7.62 The arguments regarding non seizure/handing over of income tax notices has already been dealt with and so also the certificate of the bank regarding deposit of legal tender. These are at best shortcomings in the prosecution case which do not materially affect the prosecution story. No doubt had these

documents been brought on record, they would have boosted the prosecution story but their absence has not affected the prosecution case which stands duly substantiated and proved. Furthermore, just like other prosecution witnesses the defence did not seek production of the income tax notice from PW11. Had the directions been sought and the witnesses failed to produce the notices than things would have been entirely different. Similarly failure on the part of PW11 to give the details of the contents of the notice after more than 2 years of its receipt is understandable as he could not be expected to remember those details after such huge passage of time. As regards non examination of the CA is concerned, once the essential facts necessary for the prosecution case were duly proved by PW6 & PW11 apart from other prosecution witnesses, his examination was not necessary.

7.63 It was also argued by Ld. Defence Counsel that when Ex. PW3/D7 i.e. statement of account of his firm w.e.f. 08.11.2016 till 29.11.2016 was shown to PW11, during his cross-examination, he stated that he had not seen the said statement of account prior to that day and also stated that he does not remember whether he had provided the statement of account for the said period to his CA or not, which statements according to Ld. Defence Counsel further belie the prosecution story that PW11 or his firm had received an income tax notice which compelled him to visit the bank where it was allegedly revealed that there is a difference in the bank voucher and the counterfoil for deposits in question. It was argued that in case any such

notice was ever received, then PW11 would have definitely seen the statement of account Ex. PW3/D7 and shown the same to his CA. However, I find no merits in the said arguments. Effect of absence of income tax notice has already been dealt with above. The fact that the bank vouchers in question i.e. Ex. PW6/E, Ex. PW6/G & Ex. PW6/H are forged ones stands duly proved on record and the counterfoils Ex. PW6/A to Ex. PW6/D are/were enough proof of deposit of legal tender and there was no requirement to go through the statement of account as well by PW11. Nonetheless, PW11 did state that “I had taken the statement of account in respect of my firm w.e.f. 08.11.2016 to 29.11.2016 from the bank”. The statement of account Ex. PW3/D7, regarding which the witness stated that he had not seen the same prior to that day i.e. prior to his deposition was not the one provided to PW11 by the bank or the one provided by PW11 to the IO. The said statement of account was in fact handed over to the IO by PW20 Sh. Ankit Pandey. Hence there was no occasion for PW11 or for that matter other account holders to go through the statements Ex. PW3/D4 to Ex. PW3/D8. All the account holders were obviously having their own statement of accounts, passbooks. Most importantly, their counterfoils are/were sufficient proof of deposit of legal tenders, even in the absence of statement of accounts.

7.64 It was also argued by Ld. Defence Counsel that according to the prosecution, the bank voucher Ex. PW6/E and Ex. PW6/F were forged by accused Shubham Yadav to show deposit of SBNs of Rs. 1,000/- and Rs. 500/- in the accounts of

M/s Kaka Kohli & Sons on 29.11.2016 & 28.11.2016, though vide Ex. PW6/A & Ex. PW6/B, only legal tender was deposited, however, in Ex. PW3/D7, no OHDDEP i.e. Old High Denomination Deposit is mentioned for the said deposits and instead “BY CASH” is mentioned. It was argued that “BY CASH” means deposit of legal tender and not SBNs and that in case the alleged purpose of forging the bank vouchers were to reflect & deposit SBNs/old currency/old high denomination notes, then the deposit in the statement of account Ex. PW3/D7 should have reflected as OHDDEP and not “BY CASH”. It was argued that the same itself proves that the entire story is a concocted one. However, I find no merits in the said arguments.

7.65 No doubt Ex. PW3/D7 does not reflect deposit of SBNs on 28.11.2016 & 29.11.2016, nonetheless, Ex. PW3/D7 does reflect deposit of SBNs on 24.11.2016 and 18.11.2016 though only legal tenders were deposited on all these dates. It stands proved on record that for all these deposits the bank vouchers in question i.e. Ex. PW6/E to Ex. PW6/H were forged/manipulated to reflect deposit of SBNs. The counterfoils for deposit dated 29.11.2016 and 28.11.2016 i.e. Ex. PW6/A & Ex. PW6/B and the other deposits unambiguously prove the deposit of legal tender whereas the forged bank vouchers reflect deposit of SBNs, in addition to legal tenders. It is the counterfoils and the forged bank vouchers which sufficiently establish the prosecution case against the accused.

7.66 As far as the statement of accounts is concerned, why “BY CASH” and not OHDDEP appears in the same for deposits dated 29.11.2016 and 28.11.2016 stands duly explained on record. As explained by the prosecution witnesses, especially the bank witnesses, during the demonetization period there was huge rush in the bank and as against the normal days when 200 customers approximately used to visit the bank, around 600 customers i.e. thrice the normal days were visiting the bank. It is also a matter of common knowledge that there was indeed huge/extreme rush in the banks during those days and the workload of the bank employees increased tremendously. Some errors being committed, while handling such huge rush and considering the number of transactions in a day, is/was not unnatural. Furthermore, PW3 stated that there can be a possibility of error committed by the officer who posted the said entries at the relevant time, more so, when as against normal practice, during demonetization, the entries in the system were made by the back office not the cashier. Fact remains that only cash was deposited and not SBNs vide Ex. PW6/A & Ex. PW6/B, however, subsequently forged vouchers for those deposits i.e. Ex. PW6/E & Ex. PW6/F were created/got created to reflect deposit of SBNs. If these forged vouchers were not created and intimation not received by the income tax authorities regarding deposit of SBNs in terms of these vouchers, then PW6 would not have received income tax notice. This further proves, as has been discussed above, that there might be certain errors/discrepancy in the statement of account.

7.67 In fact the reason behind the said discrepancy in the statement of account stands further explained from the following statement made by PW4 when she stated “*During the period of demonetization for initial few days, the bank notes (SBNs) were being deposited as the regular deposits, however, thereafter a menu was specified by the bank for deposit of SBNs*”. Also it is to be noted that the discrepancy in the statement of account viz-a-viz the forged vouchers exists only for 3 deposits pertaining to M/s Kaka Kohli & sons (2) and M/s Dhaneshwar Trading (1), out of total 8 deposits and in all these 3 deposits smaller denomination of currency notes are also mentioned i.e. of Rs. 10, 20 and 50 on the vouchers Ex. PW6/E, Ex. PW6/F and Ex. PW12/B respectively.

7.68 As far as entries dated 18.11.2016 & 24.11.2016 in Ex. PW3/D7 are concerned, no doubt the denomination of the currency notes so deposited is not mentioned in the counterfoil of the pay-in-slip i.e. Ex. PW6/D & Ex. PW6/C, however, PW6 & PW11 had categorically deposed that only legal tender was deposited on the said dates and not SBNs. I find no reason to disbelieve their testimony in this regard. Most importantly, bank vouchers Ex. PW6/H & Ex. PW6/G bear different serial numbers as against the numbers appearing on customer counterfoils Ex. PW6/D & Ex. PW6/C, which should not have been the case and both the bank vouchers and the counterfoils should have been bearing the same numbers. This itself proves that the bank vouchers were forged qua the said deposits.

7.69 As far as the word “RYAN INTERNATIONAL” appearing in statement Ex. PW3/D7, above the date 24.11.2016 is concerned, it was duly explained by IO/PW22 that the word/name RYAN INTERNATIONAL pertains to the entry just above the relevant entry at point A of Ex. PW3/D7 i.e. for debit of Rs. 14,800/- from the account of M/s Kaka Kohli & Sons and that the deposit of Rs. 2,20,000/- was by the clerk/munim of M/s Kaka Kohli & Sons and not by RYAN INTERNATIONAL.

7.70 The fact that PW11 had not shown or handed over the bounded pay-in-slip book maintained by him, for deposit of cash during the period 08.11.2016 to 29.11.2016, to CBI is also immaterial as the counterfoils of the pay-in-slips qua which the bank vouchers were forged for the deposits were duly seized during the investigation vide Ex. PW11/A and same stands proved on record as Ex. PW6/A to Ex. PW6/D. The remaining pay-in-slips were neither required during the investigation nor are a matter of concern to this court. Also, CBI was not required to take PW11’s specimen handwriting or signatures as the counterfoils of the pay-in-slips Ex. PW6/A to Ex. PW6/D are in the handwriting of PW6 & not PW11 and the forged bank vouchers Ex. PW6/E, Ex. PW6/G & Ex. PW6/H were/ were got forged by the accused and they bear his initials while interpolations were made on Ex. PW6/F.

7.71 Just because PW11 stated that he is not aware what SBNs stands for; nor he was explained the meaning of the said word during investigation by the CBI; he had never used the

word SBNs or legal tender in his statement as recorded by the CBI, however, the said word appears in his statement Mark PW11/DA is also inconsequential. PW11 did state that Mark PW11/DA is his statement except for the words “SBNs”, “legal tender”. It cannot be completely ruled out that these terms were used by the IO in statement Mark PW11/DA while he explained, made PW11 understand the meaning of the said words to him or used a different words with the same meaning as a layman would understand at the time when he recorded the said statement. Even if, there was no such statement, the testimony of PW11, duly corroborated by other prosecution witnesses including PW6, sufficiently proves the prosecution case against accused Shubham Yadav.

7.72 It was also argued by Ld. Defence counsel that the denomination of the currency as mentioned in Ex. PW6/G does not match with the record maintained by the bank regarding deposits made by M/s Kaka Kohli & Sons. The denomination mentioned on the voucher is “500x200” & “100x1200” and transaction ID mentioned on the voucher 001607400 when compared with Ex. DW3/A (colly) reveals that the denomination of the currency deposited is “500x240” & “1000x100”. Also there is another transaction ID mentioned on the voucher i.e. 001599609 and though the same has been crossed, however, as per Ex. DW3/A (colly) the denomination of the currency deposited is mentioned as “500x200” & “1000x22”. It was argued that all this creates serious doubts upon the prosecution

story and establishes that the entire record is/was fabricated by the bank to falsely implicate the accused.

7.73 As far as these arguments are concerned, the detailed discussion as above leaves no doubt that on 24.11.2016 only legal tender in the denomination of “2200 x Rs. 100” were deposited in the account of M/s Kaka Kohli & sons vide Ex. PW6/C. Bank voucher Ex. PW6/G was subsequently forged to reflect deposit of 200 SBNs of Rs. 500/-. As regards the transaction ID is concerned, it stands proved from the testimony of PW23 Ms. Pooja Verma that it was she who had entered the transaction details in the Finacle system on the basis of voucher Ex. PW6/G and written the transaction ID/number as was generated at that time at point X on the same. PW20 Sh. Ankit Pandey duly corroborated the said fact. Their testimony has been discussed in detail in the later part of this judgment. During the cross-examination of PW23 no question was asked as to why two transaction IDs appear on voucher Ex. PW6/G. Similarly no question was put to PW20 in this regard. These were the best witnesses to explain why two transaction IDs exist on the said voucher and the defence having not bothered to ask the relevant questions from these witnesses, it cannot now argue that the presence of two IDs renders the prosecution case doubtful. Presence of two IDs in no way affects the merits of the case.

7.74 As far as Ex. DW3/A (colly) or the two IDs in the same reflecting deposit of different SBNs is concerned, again this document was brought on record at the fag end of the trial. Why

this document was not procured earlier and why this document was not confronted with any of the bank officials including PW20 and PW23 could not be explained by the defence. Had this document being shown/confronted to the bank officials, the bank officials/prosecution would have been in a position to explain the same. It will not be incorrect to say that producing a document at such a stage of trial without giving the prosecution, its witnesses an opportunity to explain the same does prejudices the prosecution case. In fact Ex. DW3/A (colly) was merely got exhibited through DW3 and to him too the said entries were not put even once and thus there was no opportunity for him or for prosecution to explain the said anomaly. Furthermore, the document in itself cannot negate the categorical testimony of the prosecution witnesses which leaves no doubt that the voucher for the deposits were forged/got forged by the accused and accordingly the legal tenders were replaced with SBNs. Last but not the least Ex. DW3/A (colly) is not accompanied with any certificate u/s 65B of Indian Evidence Act thereby creating doubt on its authenticity.

7.75 For similar reasoning the defence arguments that as per Ex. DW3/A (colly) there was a deposit of SBNs i.e. “500x162” & “1000x1634” vide transaction ID no. 001577152 as well as a deposit of Rs. 1,71,500/- in the account of M/s Kaka Kohli & Sons on 25.11.2016 vide transaction ID no. 001578836, however, none of these amounts are reflected in the statement of account Ex. PW3/D7 loose their steam. Moreover, these entries are not in dispute/question, were not part of the investigation.

The very fact that the said deposits do not reflect in Ex. PW3/D7 itself proves that the said entries are false, incorrect. If indeed huge amount as is reflected in the entry was deposited the same would have definitely reflected in Ex. PW3/D7. Also there is nothing on record to suggest, nothing was proved by the defence that PW11 ever claimed that he deposited the said amount in his account or agitated to the bank for not reflecting the same in his statement of account. Same applies to non reflecting of deposit of Rs. 1,22,000/- in the denomination of “500x200” & “1000x22”. In fact the transaction ID for this entry is 001599609 i.e. the same transaction ID which has been cut in voucher Ex. PW6/G. This further proves that Ex. DW3/A (colly) does not reflect the true statement of the deposits. Also Ex. DW3/A (colly) talks of “EXCHG DATE” which means exchange date whereas the customers had deposited the amount in their account and not exchanged the SBNs with legal tender. Again at the cost of repetition, the defence should have sought clarification from the bank witnesses, account holders but for reasons best known to it, it did not do so and now it cannot expect this court, only on the strength of Ex. DW3/A (colly), to disbelieve the prosecution case duly substantiated by the prosecution witnesses and the material on record.

7.76 As far as entries dated 30.11.2016 are concerned, the same are of no concern to this court as the said entries were not a matter of investigation in the present case. It will also be pertinent to highlight that as far as the statement of accounts, including Ex. PW3/D7, are concerned as explained by PW3 it

cannot be completely ruled out that certain errors were made on account of heavy rush in the bank during the period of demonetization. Also entries dated 30.11.2016 were made in Ex. PW3/D7 on the basis of forged voucher, forged by Madan Kumar who was working as Cashier in the bank and for which disciplinary action was initiated against him as proved vide Ex. DW1/A. Might be Madan Kumar was also indulging in similar misdeeds, however, just because no FIR was registered against him nor PW6 or PW11 and other prosecution witnesses stated anything about him makes no difference. Madan's involvement noway lessens the accused's crime or provides him a shield. He cannot take cover behind Madan and cry foul despite having committed forgery and replacement of legal tender of the customers with SBNs. There is no and cannot be any parity in illegality. Just because somebody committed a crime and got scot free does not give the accused the license to commit the crime himself. Also there is nothing on record to connect Madan with any of the forged bank vouchers and the transactions in question but there is more than ample evidence connecting accused Shubham Yadav with the same. No question of shielding Madan or falsely implicating the accused to shield Madan arises given the amount of evidence against the accused. Moreover Madan did face departmental inquiry and was punished as well, as is evident from Ex. DW1/A.

M/s Ginger Trading Company bearing account no.  
21420400006919

7.77 PW7 Sh. Jagat Singh categorically proved that he was working as Munim in M/s Ginger Trading Company, which was owned by Mr. Vipin Anand (PW9) and looking after the finance work including collection of cash from customers as well as deposits/withdrawals from the firm's above account at the Bank of Baroda, Azadpur Branch, Delhi. He proved that whenever he deposited cash in the said account, he used to fill the columns in the bank pay-in-slip in his own writing, with dates & details, including the name of the firm and stamp of the firm as well as the details of the currency notes deposited. He identified his writing at point Q-3 on customer counterfoil bearing serial no. 521960 dated 23.11.2016 i.e. Ex. PW2/K (colly) vide which, he had deposited Rs. 7 lacs in the denomination of Rs. 100/- and categorically deposed that he had deposited the cash with the accused. He further proved that on receiving call from the bank regarding the payment as deposited on 23.11.2016, he alongwith PW9 visited the bank alongwith Ex. PW2/K (colly), met the Branch Manager who checked the bank record and it was revealed that the particulars of the denomination of the currency notes as well as the serial number on the bank vouchers were totally different from their customer counterfoil Ex. PW2/K (colly). He proved that the bank voucher bearing serial no. 381380 dated 23.11.2016 for deposit of Rs. 7 lacs i.e. Ex. PW7/A was not in his handwriting. He proved that during demonetization, the firm was receiving only legal tender and not

SBNs and during his cross-examination, he duly identified the signatures of the accused at point Q-1 on customer counterfoil Ex. PW2/K (colly) as well as at point Q-27 on the forged bank voucher Ex. PW7/A.

7.78 No doubt, when statement of account of M/s Ginger Trading Company i.e. Ex. PW3/D6 was shown to PW6 by the Ld. Defence Counsel during cross-examination, PW6 stated that he was unable to state as regards the denomination of the currency notes as were deposited on 23.11.2016 out of a total sum of Rs. 7 lacs, however, it is categorically mentioned against the said entry as “OHDDEP” i.e. Old High Denomination Currency/SBNs. PW6 had categorically deposed, during his examination in chief, that he had only deposited legal tender on 23.11.2016 and not any SBNs. Furthermore, as per Ex. PW2/K (colly) only legal tenders of Rs. 100 were deposited and not any SBNs.

7.79 It was argued by Ld. Defence Counsel that PW7, during his cross-examination, stated that during the period of demonetization i.e. 08.11.2016 to 23.11.2016 he had deposited SBNs twice or thrice in the account of M/s Ginger Trading Co. and after going through Ex. PW3/D6 he stated that on 08.11.2016, 10.11.2016 & 12.11.2016, he had deposited SBNs/currency notes of Rs. 500/- & Rs. 1,000/- and also stated that during the demonetization period, he had deposited a total sum of Rs. 15 lac in the account which were SBNs. Furthermore, he also stated that PW7/Ginger Trading Co. had also accepted

SBNs, from their customers, after 08.11.2016 and it was argued that it cannot be completely ruled out that on 23.11.2016 as well SBNs were deposited and not legal tender. It was also pointed out that as against PW7's claim of having deposited SBNs on 08.11.2016, 10.11.2016 & 12.11.2016, Ex. PW3/D6 reflects deposit of legal tender on the said date as the words "BY CASH" appears in Ex. PW3/D6 against those entries and not OHDDEP. Also on 29.11.2016 SBNs were deposited in the account as is reflect in Ex. PW3/D6 and not legal tenders as was other claimed by PW7. It was vehemently argued by Ld. Defence Counsel that the above discrepancy in the statement of PW7 and the statement of account Ex. PW3/D6 creates further doubt on the prosecution case and it cannot be ascertained as to what amount was exactly deposited by the account holder and it also cannot be ruled out that though SBNs were deposited, however, to avoid liability they in connivance with the bank officials fabricated the customer counterfoil to deposit the legal tender.

7.80 As far as these arguments are concerned, I find no merits in the same. At the outset, PW7 categorically denied that on 23.11.2016 i.e. the deposit in question, he had deposited SBNs of Rs. 500/- & Rs. 1,000/- totaling to Rs. 7 lacs and not legal tenders. As far as the other deposits are concerned i.e. deposits dated 08.11.2016, 10.11.2016, 12.11.2016 & 29.11.2016, same are not in dispute and not of concern to this court. It is to be noted that there was no bar to deposit SBNs during the demonetization period. In fact the banks were the designated places for deposit/exchange of SBNs and therefore if SBNs were

deposited in the account of M/s Ginger Trading Co. there is/was no illegality in the same. For similar reasons merely because the Branch Manager/PW2 might have also accepted cash during demonetization, there is no illegality in the same. The illegality in the case at hand is the forgery of bank vouchers and replacement of legal tenders deposited by the customers, with SBNs by the accused. The prosecution witnesses only stated that PW2 also accepted cash, which was otherwise denied by PW2 & there is no proof of acceptance of the cash by him, but they nowhere stated that he had forged the bank vouchers or embezzled or misappropriated the funds so deposited with him. Also the defence miserably failed to prove that the customers/account holders in question were personally known to PW2 or that they had handed over the amount to him and not to accused Shubham Yadav.

7.81 Similarly, just because in the statement of account Ex. PW3/D6, for the deposits on 08.11.2016, 10.11.2016 & 12.11.2016, it is mentioned as “BY CASH” and not “OHDDEP” though according to PW7, he had deposited SBNs/old high denomination currency is of no consequence as the said deposits are not in dispute/question. Nonetheless, PW7 had categorically stated that he had deposited SBNs on those dates. Possibility of error being committed by the officer who posted the said entry as there was huge rush in the bank at that time has already been discussed above. Same applies for OHDDEP being mentioned for deposit dated 29.11.2016, though according to PW7 he had deposited legal tenders on the said day. This court is merely

concerned with the forged bank voucher Ex. PW7/A reflecting deposit of SBNs though on that day legal tenders were deposited Ex. PW2/K (colly). Most importantly, accused Shubham Yadav cannot explain how the bank vouchers in question, including Ex. PW7/A, which bears different serial numbers & which serial numbers are not in consonance with the serial numbers of the customer counterfoil of the deposit of the same day in the account of the bank customers, bears his initials and also the numerals on them are in his handwriting which stands duly proved from the testimony of the prosecution witnesses.

7.82 Obviously PW7 and for that matter PW9 was right when he stated that after going through Ex. PW3/D6, he cannot give the denomination of the amount/currency deposited on 23.11.2016 out of total sum of Rs. 7 lacs as such details are never reflected in the statement of account. What is reflected in the statement of account is merely the total deposit or withdrawal and not the details of the currency notes/ denominations of the amount so deposited or withdrawn. That can only be ascertained through the customer counterfoil & bank voucher and Ex. PW2/K (colly) squarely proves that only legal tenders were deposited on 23.11.2016 and not any SBNs.

7.83 As far as non-handing over of the bounded pay-in-slip book, which was maintained by PW7 for the deposits in the bank, to the CBI or PW7 not knowing what SBNs stands for are concerned, same is immaterial as has already been discussed above where similar arguments raised regarding the other

prosecution witnesses has been dealt with and rejected. For similar reasons the argument raised qua PW9, for not knowing the term “SBNs” stands rejected.

7.84 Ld. Defence Counsel laid much emphasis on the statements made by PW7 during his cross-examination wherein he stated, after going through Ex. PW7/A, that after calculating the details of the currency mentioned on the said pay-in-slip/counterfoil, the total amount comes to Rs. 6,10,000/- and not Rs. 7,00,000/-, as was deposited in the account of M/s Ginger Trading on 23.11.2016 and that during investigation CBI had shown him a voucher wherein amount of Rs. 7,00,000/- in the denomination of Rs. 1000/- x 50 = Rs. 50,000/-, Rs. 500/- x 100 = Rs. 50,000/- & Rs. 100/- x 600 = Rs. 60,000/- were written whereas the denomination as mentioned in Ex. PW7/A is Rs. 1,000/- x 500/-, Rs. 500/- x 100 & Rs. 100/- x 600. Furthermore, PW7 stated that the said voucher, as was shown to him during the investigation, is not part of the pay-in-slips & counterfoils Ex. PW2/K (colly) and it was argued by Ld. Defence Counsel that the said statement of PW7 creates serious doubts upon the prosecution story. However, I find no merits in the said arguments.

7.85 To begin with, Ex. PW7/A is admittedly not in the handwriting of PW7 and it bears different serial number as against customer counterfoil bearing no. 521960 i.e. Ex. PW2/K (colly), which is in the handwriting of PW7. Ex. PW7/A is infact a forged bank voucher. Secondly, PW7 duly identified the initials

at point Q-27 on Ex. PW7/A to be of accused Shubham Yadav as stands duly proved on record. Thirdly, in my considered opinion, the statement made by PW7 regarding having been shown different voucher was incorrect to that extent and he made the said incorrect statement only on account of lapse of time. There is only difference in the total number of Rs. 1,000/- currency notes deposited as per voucher Ex. PW7/A as according to Ex. PW7/A, 500 notes of Rs. 1,000/- were deposited whereas according to PW7, the voucher which he had been shown had 50 notes of Rs. 1,000/-. The remaining denominations are the same. Hence, it was only on account of lapse of time and confusion that PW7 made the above statement. Fact remains that voucher Ex. PW7/A is a forged one and the said forgery was committed/got committed by the accused and it absolutely makes no difference that the amount as per the forged voucher comes to Rs. 6,10,000/- and not Rs. 7,00,000/-. Once the voucher stands proved to be a forged one, nothing else is required to be gone into.

7.86 As regards the defence arguments that there was no shortage of cash i.e. shortage of Rs. 90,000/- in the bank as though the total amount as per the voucher was Rs. 7 lacs, however, the total amount as per the denomination of the currency notes mentioned on the voucher comes to Rs. 6,10,000/- (Rs. 1000 x 500 + Rs. 500 x 100 + Rs. 100 x 600 = Rs. 6,10,000/-) and therefore there should have been shortage of Rs. 90,000/- is concerned, suffice would be to say that though the denomination is wrongly mentioned, however, against the

denomination the currency amounts mentioned are Rs. 50,000/-, Rs. 50,000/- & Rs. 6,00,000/- which totals to Rs, 7,00,000/-. Also the total has been mentioned as Rs. 7,00,000/- both in figure and words. It has to be remembered that this is a forged voucher and just because there was some error in committing the forgery, same is of no consequence. What is material is that the said voucher is a forged one. Also it is the accused's initials which appear below the numerals mentioned at point Q28 and at point Q28 he himself has reflected a deposit of Rs. 7,00,000/-.

7.87 As far as arguments based upon Ex. DW3/A is concerned, suffice would be to say that this court is not concerned with deposit dated 29.11.2016 as is also reflected in Ex. PW3/D6. In the absence of the counterfoil, voucher pertaining to this entry and when it has been discussed in this judgment that the entries of Ex. DW3/A are doubtful and the manner in which Ex. DW3/A was produced on record giving no opportunity to the prosecution witnesses to explain the same, does not help the case of the defence.

7.88 It also makes no difference that no enquiry was made from PW7 by any official of the Bank of Baroda or that his statement was not recorded. Also the fact that no certificate from the bank was taken regarding deposit of legal currency on 23.11.2016 is of no consequence. What is material is that a forged & fabricated bank voucher i.e. Ex. PW7/A was created/got created by the accused reflecting deposit of SBNs in the account of M/s Ginger Trading Company on 23.11.2016 in place of the

genuine bank voucher of whose customer counterfoil is Ex. PW2/K (colly), which forgery is writ large from the different serial number of the bank voucher and the customer counterfoil. At this stage, it will be worthwhile to highlight the following statement made by PW7, during his cross-examination, regarding the deposit made on 23.11.2016 and identification of initials of accused Shubham Yadav on Ex. PW7/A as well as Ex. PW2/K (colly):-

*"On 23.11.2016, there were three cashiers in the Bank of Baroda, Azadpur Branch for receiving the cash deposited by the customers. I had taken the signatures of the bank cashier on counterfoil of the pay-in-slip to whom I deposited the cash amount on 23.11.2016. The said cashier had signed on counterfoil at Q-1 on Ex.PW2/K colly. The signature of the said cashier are also at point Q-27 on Ex.PW7/A. The pay-in-slip Ex.PW7/A was shown to me by the CBI during the course of investigation."*

7.89 PW9 Sh. Vipin Anand owner of M/s Ginger Trading Company duly corroborated the prosecution story on all material particulars and deposed on the same lines as deposed by his employee PW7 Sh. Jagat Singh. He proved that the customer counterfoil i.e. Ex. PW2/K (colly) was seized by Inspector H.V. Attri vide Ex. PW9/A1.

7.90 During the course of arguments, Ld. Defence Counsel pointed certain discrepancies in the statement of PW7 & PW9. It was argued that on one hand PW7 claimed that Ex. PW2/K (colly) was taken into possession by the Bank Manager from him whereas on the other hand, PW9 claimed that it was he who produced the same at the CBI office and was seized vide Ex. PW9/A1, in his presence. Furthermore, during his cross-

examination, he stated that he had not handed over any document to the CBI, during the course of investigation. Similarly, though PW7 claimed that after 08.11.2016, they had accepted cash payments from their customers in the denomination of Rs. 1,000/- & Rs. 500/-, on the other hand, PW9 claimed that he did not accept cash payment in the said denominations from the customers after 08.11.2016. Also as against PW7's claims that SMS was received from the Income Tax Authority by PW9 with regard to deposit of currency notes in the denomination of Rs. 1,000/- & Rs. 500/- during demonetization period, however, PW9 denied having received any such SMS. It was argued that these discrepancies create further doubts upon the prosecution case. However, I find no merits in the said contentions.

7.91 As far as the said inconsistencies, discrepancies are concerned, in my considered opinion, they are bound to occur with such huge passage of time and a witness cannot be expected to remember each & every minute details of an incident or sequence of events which took place months/years ago. Human memories not only fade with time but two different individual have different grasping power, different memory and also different understanding or knowledge of events/incidents. Furthermore, these inconsistencies are trifling one's, which do not create any doubt upon the prosecution case. PW9 during his cross-examination stated that he does not remember whether he handed over Ex. PW2/K (colly) to the CBI or to the bank officials and he also stated that he had provided the same to the bank. Fact remains that Ex. PW2/K (colly) was seized vide Ex.

PW9/A1 which was also proved by IO/Inspector H.V. Attri (PW22). Such lapse of memory or confusion is natural, bound to occur and infact it shows that the witness was deposing truthfully and not as a tutored witness.

7.92 Similarly, receipt or non-receipt of Income Tax Notice or SMS is inconsequential, as has already been dealt with above. As far as the discrepancy between the statements of PW7 & PW9 with respect to income tax notice is concerned, it is to be seen that PW9 categorically denied having received any income tax notice and although PW7 claimed that one SMS was received from Income Tax Authority, but he specifically stated that no notice was received from Income Tax Department. Further he went on to state “*The Income Tax Authorities had no information that a sum of Rs.7,00,000/- in the denomination of Rs.1,000/- and Rs.500/- has been deposited in the bank account of M/s. Ginger Trading Company on 23.11.2016*”. It stands proved on record that no income tax notice was received by M/s Ginger Trading Co. and the irregularities qua its account/deposit came to light during the surprise check at the bank as was proved by PW2. After the said surprise check, PW9 had received a call from the bank and upon visit to the bank, where he met the Branch Manager the misdeeds of the accused came to fore as was duly proved by PW9 during his examination in chief.

7.93 Deposit of SBNs in the account of M/s Ginger Trading Company on dates other than 23.11.2016, is of no concern to this court. Accused Shubham Yadav is facing trial for

forging bank voucher i.e. Ex. PW7/A to show deposit of SBNs on 23.11.2016 in the account of M/s Ginger Trading Company, though what was deposited on the said date was legal tenders & not SBNs and not for any other deposits in the said account. May be SBNs were deposited after 08.11.2016, in the account of M/s Ginger Trading Company, but Ex. PW2/K (colly) leaves no doubt that no SBNs were deposited in it's account on 23.11.2016 and that Ex. PW7/A i.e. the bank voucher showing deposit of SBNs on the said date is a forged voucher, forged/got forged by accused Shubham Yadav. Last but not the least similarly as was stated by PW7, PW9 did state that he had deposited cash in the denomination of Rs. 1,000/- & Rs. 500/- twice during the period of demonetization. Therefore, these discrepancies, as pointed out by Ld. Defence Counsel, can be and infact ought to be easily ignored as they do not go to the root of the matter.

7.94            Though Ld. Defence Counsel also pointed out that admittedly no amount was deposited in the bank in the presence of PW9 on 23.11.2016, however, the said statement is in line with the prosecution story according to which the amount was deposited by PW7. As far as the statement made by PW9 that during the course of investigation he was not shown any bank pay-in-slip regarding deposit of cash in it's account on 23.11.2016 is concerned, merely because he was not shown the pay-in-slip has not affected the prosecution story in any manner. This is more so when during his examination in chief he had specifically stated that he had seen the forged bank voucher Ex. PW7/A when he visited the bank on 23.11.2016, alongwith the

customer counterfoil Ex. PW2/K (colly) and was told by the Branch Manager that the matter has been reported with the police.

7.95            Though Ld. Defence Counsel also laid much emphasis on the following statement made by PW7 “*CBI during the course of investigation has also taken my specimen handwriting and signature. I had visited the CBI office twice. First time I was called by the CBI at CBI office and was asked about the deposit of cash etc. Second time I was again called by the CBI and certain counterfoils and pay-in-slips of Bank of Baroda, Azadpur Branch were got filled from me by the CBI officers*” to argue that the counterfoil bearing no. 521960 i.e. Ex. PW2/K (colly) is a fabricated one, got created during the investigation for falsely implicating the accused, however, I find no merits in the said arguments. There is sufficient material on record which not only connects the accused with the forgery, manipulation of bank records and change of legal tender with SBNs but the argument itself is too far fetched. Neither the CBI nor the bank officials had any grudge against the accused to falsely implicate him or go to an extent to fabricate the documents/records to falsely implicate the accused. The very fact that initials of the accused appears on the said document, as was duly identified by the prosecution witnesses, itself rules out any fabrication. The testimony of the bank customers, their statement of account reflecting the deposits, etc. further clinches the issue in this regard. Also immediately after the above statement, made during cross-examination, PW7 stated “*After going through file*

*Ex.PW2/K colly, containing counterfoils and pay-in-slips, the witness stated that none of the counterfoils and pay-in-slips, which have been shown to him, were got filled by him in the CBI office during the course of investigation”.* Hence not only I find no merits that certain counterfoils or bank pay-in-slips were got filled from PW7, by CBI, but the very fact that no such counterfoil or pay-in-slip is/was part of Ex. PW2/K (colly) itself takes care of defence arguments. In fact I am of the considered opinion that the said statement was made by PW7 solely on account of confusion. The witness confused his specimen writing & signatures, which were obtained during the investigation and though the same were obtained on a piece of paper but it was in a similar fashion as detailed in the counterfoil which led to the confusion resulting in above statement made by PW7.

7.96 A few minor contradictions are bound to occur with the passage of time. It is also a matter of common knowledge that a witness is liable to get confused, or mixed up during cross-examination or when interrogated later on. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him. Perhaps it is a sort of a psychological defence mechanism activated on the spur of

the moment. Sometimes there could even be a deliberate attempt to offer embellishment and sometime in their over-anxiety they may give slightly exaggerated account. Reliance may be placed upon the observations made by the Hon'ble Apex Court in case titled as *Rana Pratap v. State of Haryana AIR 1983 SC 680, Hari Singh v. Sukhbir Singh (1988) 4 SCC 551, Leela Ram (Dead) through Duli Chand v. State of Haryana, (SC) 1999(4) R.C.R. (Criminal) 588, Bharwada Bhoginbhai Hirjibhai v. State of Gujarat AIR 1983 SC 753, Sohrab v. State of Madhya Pradesh AIR 1972 SC 2020 and State of U.P. v. Anil Singh AIR 1988 SC 1998.*

7.97 It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. It is the duty of the court to sift through the evidence and ascertain as to whether the evidence minus the contradictions, improvements, embellishments inspire confidence and is sufficient to convict the accused. Undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution case. It has been held in *Zamir Ahmed Vs. The State 1996 Cri.L.J. 2354* as under:-

*"It would be a hard nut to crack to find out a case which is bereft of embellishment, exaggeration, contradictions and inconsistencies. The said things are natural. Such contradictions and inconsistencies are bound to creep in with the passage of time. If the witnesses are not tutored they would come out with a natural and spontaneous version on their own. The two persons on being asked to reproduce a particular incident which they have witnessed with their own eyes would be unable to do so in like manner. Each one of them will narrate the same in his*

*own words according to his own perception and in proportion to his intelligence power of observation."*

7.98 At this stage it will be worthwhile to highlight the following observations of Hon'ble Apex Court in *Edakkandi Dineshan@ P.Dineshan vs State Of Kerala 2025 (3) SCC 273:-*

*"15. The law relating to material contradiction in witness testimony has been discussed by this Court in the judgment of Rammi vs State of MP. It was held that:*

*(25) "It is common practice in trial court to make out contradictions from the previous statements. Merely Because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No Doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. Only such of the inconsistent statement which is capable to be "contradicted" would affect the credit of the witness" The above mentioned settled position of law was again reiterated by this Court in the judgment of Birbal Nath vs State of Rajasthan wherein it was held as under:*

*"(19)No doubt statement given before police during investigation under section 161 are "previous statements" under section 145 of the Evidence Act and therefore can be used to cross examine a witness. But this only for a limited purpose, to "contradict" such a witness. Even if the defense is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting this witness. It is ere that we feel that the learned judges of the High Court have gone wrong.*

*(21) In the landmark case of Tehshildar Singh v State of UP this Court has held that to contradict a witness would mean to "discredit" a witness. Therefore, unless and until the former statement of this witness is capable of "discrediting" a witness, it would have little relevance. A mere variation in the two statements would not be enough to discredit a witness. This has been followed consistently by this Court in its later judgement, including Rammi (Supra)".*

.....

*18. Either a partial, untrue version of one of the witnesses or an exaggerated version of a witness may not be a sole reason to discard the entire prosecution case which is otherwise supported by clinching evidence such as truthful version of*

the witnesses, medical evidence, recovery of the weapons etc. At this stage, it may not be out of place to refer to the principle called as 'falsus in uno, falsus in omnibus'.

19. It is a settled position that 'falsus in uno, falsus in omnibus' (false in one thing, false in everything) that the above principle is foreign to our criminal law jurisprudence. This aspect has been considered by this Court in a plethora of judgements. In the case of Ram Vijay Singh vs State of UP, a Three Judge bench of this Hon'ble Court had held that:

“(20) We do not find any merit in the arguments raised by the learned counsel for the Appellant. A part statement of a witness can be believed even though some part of the statement may not be relied upon by the Court. The maxim falsus in uno, falsus in omnibus is not the rule applied by the courts in India. This Court recently in a judgement Ilangovan vs State of T.N. held that Indian Courts have always been reluctant to apply the principle as it is only a rule of caution. It was held as under:

“(11) The Counsel for the Appellant lastly argued that once the witnesses had been disbelieved with respect to the co accused, their testimonies with respect to the present accused must also be discarded. The Counsel is, in effect, relying on the legal maxim “falsus in uno, falsus in omnibus”, which Indian Courts have always been reluctant to apply. A three Judge bench of this Court, as far back as in 1957, in Nisar Ali v. State of UP, held on this point as follows

“(9) This maxim has not received general acceptance in different jurisdictions in India nor has this maxim come to occupy the status of a rule of law. It is merely a rule of Caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded.

(10) The Doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called “a mandatory rule of Evidence”

(21) Therefore, merely because a prosecution witness was not believed in respect of another accused, the testimony if the said witness cannot be disregarded qua the present Appellant. Still, further it is not necessary for the prosecution to examine all the witnesses who might have witnessed the occurrence. It is the quality of evidence which is relevant in criminal trial and not the quantity.” Hence, as can be seen from above, it has being a consistent stand of this Hon'ble Court that the principle 'falsus in uno, falsus in omnibus' is not a rule of evidence and if the court inspires confidence

*from the rest of the testimony of such a witness, it can very well rely on such a part of the testimony and base a conviction upon it.”*

7.99 It was also argued by Ld. Defence Counsel that according to PW9, no inquiry was made from him by any officer of the bank nor his statement was recorded which statement further throws doubt upon the prosecution case and it cannot be completely ruled out that Ex. PW2/K (colly) was fabricated subsequently and what was deposited in the account of M/s Ginger Trading Company on 23.11.2016 was indeed SBNs and not the legal tenders. However, I find no merits in the said arguments. PW2's statement leaves no doubt that during surprise check and scrutiny of accounts & deposits, other cases of similar irregularities made by accused Shubham Yadav including in the account of M/s Ginger Trading Company were found, which were brought to the notice of DGM Sh. Ravikant Thakral (PW3) vide Ex. PW2/F (colly) & Ex. PW2/G (colly). PW3 referred the matter to Sh. Sushil Kumar Srivastava (PW8) to carry out detailed investigation in the matter, who accordingly submitted his report Ex. PW3/H. Though report Ex. PW3/H does not discuss in detail the transaction/deposit of amount in the account of M/s Ginger Trading Company on 23.11.2016, however, the report makes it evident that the said transaction was also referred to PW8 for investigation and he had conducted investigation accordingly. Same is writ large from Column H of the Checklist & Annexure A of report Ex. PW3/H. In Annexure A, it is specifically mentioned in the Remarks Column as *“Pay-in-slip replaced. (see remark at the bottom) Sr. no. of Pay-in-slip*

*mismatch. SBNs of Rs, 1 lac replace*”. Thus though PW8 did not make any inquiry from PW7 or PW9, however, his detailed report leaves no doubt that the bank voucher was forged. In fact in his report, he also dealt with the aspect of miscalculation/difference in the amount as per the denomination mentioned in the forged bank voucher.

7.100 Moreover, PW8 clarified why he did not inquire from PW7 & PW9 when he deposed as under:

*“On being entrusted with the enquiry to me, I visited my Azadpur Branch and met Chief Manager of the branch. During enquiry, I verified the related documents/papers/registers/vouchers etc and the required documents enclosed with the report. During enquiry, I could not meet Shubham Yadav as he was under suspension from his service. As it was my supplementary investigation in continuation of earlier investigation carried out in the matter of Shubham Yadav and it was to be completed within 2-3 days, I have investigated the facts on the basis of available documents/papers/registers/vouchers etc as aforesaid. The total number of vouchers under scrutiny were five belonging to two customers, out of which I met one customer namely Mr. Kohli of M/s Kaka Kohli & Sons who informed me that he has only deposited amount in the denomination of Rs. 100 or less, other than specified bank notes in four transactions.*

*On being shown bank voucher No. 381380 dated 23.11.2016 of Rs. 7 lacs pertaining to M/s Ginger Trading Company already Ex. PW7/A and customer counterfoil bearing serial No. 521960 already Ex. PW2/K-colly, the witness states that the serial number and denomination of the deposited currency notes on the customer counterfoils were different from the serial number and denomination of the deposited currency notes on the bank voucher. Even the handwriting on the aforesaid customer counterfoil is different from the handwriting in aforesaid bank voucher.’*

7.101 During the course of arguments, much emphasis was laid by Ld. Defence Counsel on the statements made by PW2,

during his cross-examination, wherein he stated that; he cannot say after going through Ex. PW2/K (colly) as to whether the pay-in-slips part of Ex. PW2/K (colly) were issued from his branch or not; that no record is being maintained in the bank regarding issuance of a particular blank pay in slip to a particular branch and that he cannot tell after going through the blank pay in slips whether the said blank pay in slips have been issued to our branch or not or whether the same have been issued by his branch or not. It was further argued that PW2 also admitted that after going through Ex. PW2/K (colly), he cannot say which counterfoil is related to which bank voucher and therefore it cannot be completely ruled out that the counterfoils and bank vouchers in question did not belong to the Azadpur branch of Bank of Baroda and that they were subsequently prepared/doctored to falsely implicate the accused. However, I find no merits in the said arguments.

7.102 I find no reason as to why the IO or for that matter the bank officials or the bank customers/account holders would create false evidence or fabricate the records/documents to falsely implicate the accused. They had no enmity/grudge against the accused and no motive whatsoever to falsely implicate him. Except for the hollow arguments defence could not prove or assign any motive to the CBI officials/IO or the bank officials or the bank customers which might have weighed with them to falsely implicate the accused. Though it was argued that the bank customers had infact deposited SBNs & not legal tenders, but subsequently on receiving income tax notices for depositing

SBNs, they in connivance with the bank officials manipulated the pay-in-slips to show deposit of legal tenders, however, the said argument is not only inconsistent with the defence's stand, as all throughout the trial, on account of absence of said notice on record, the defence attempted to create doubts upon the prosecution story as regards receipt of income tax notice by the account holders but even otherwise the testimony of bank customers/account holders leaves no doubt that they had indeed deposited legal tender and not SBNs. No question arises of them being benefited in any manner as there was no manipulation of the pay-in-slips by the bank customers/account holders and whatever manipulation/forgery was done, the same was done/got done in the bank vouchers in question by the accused. I find no reason to reject the testimony of account holders/their employees and no merits in reliance upon Krishnagowda (supra). Relationship by itself is not sufficient to discredit the testimony of a witness. In State of UP v. Samman Dass (SC) 1972 A.I.R. (SC) 677, the Hon'ble Apex Court observed that relationship is not a ground to discredit the testimony of a prosecution witness. A witness who is present at the time and place is natural cannot be said to be interested. There is no legal bar in basing conviction on the sole testimony of a related witness so long as the testimony of such witness is credible and does not suffer from any material contradictions (Duli Chand v. State (Delhi) (DB) 1998 Cri.LJ 988, Om Prakash v. State, (Delhi) (DB) 1991 (1) R.C.R. (Criminal) 98 and Balwan Singh v. State, (Delhi) (DB) 1990 (1) R.C.R. (Criminal) 593). The testimony of the account holders/their employees cannot be rejected just because they had

some interest in the trial. In fact it is to be noted that none of the account holder/employee is the complainant in the present matter and it was PW3's complaint which formed the basis of the present FIR. Account holders's interest was only to seek clarifications with respect to the amounts deposited by them in the bank/their accounts and they were the least concerned or interested whether the bank gave any complaint to the CBI/got the FIR registered or not. It is quite well known as to how reluctant the general public is in joining investigation, assisting the police/investigating agency and in appearance before court in a matter which does not directly affect them. Mostly the public persons shy away from court cases which do not concern them and don't want to be part of the same as they generally perceive it as a harassment, wastage of time and financial resources. Also there is no reason or basis to presume that the interest of an interested/related witness is to secure a conviction and therefore depose falsely. An interested witness can and in fact usually has an interest in getting justice and speaks the truth accordingly. As far as contradictions are concerned it has already been dealt with that minor contradictions are bound to occur with passage of time and only tutored/untruthful witnesses make parrot like deposition, free of contradictions.

7.103 It also absolutely sans logic that bank customers would use pay-in-slips of other branch of the same bank for depositing cash in their account. There is just no doubt that the bank vouchers and the counterfoils in question i.e. part of Ex. PW2/K (colly) & Ex. PW2/L (colly) belonged to the bank in

question i.e. Azadpur Branch of Bank of Baroda. Even if for arguments sake if it is accepted, though there is no hint of the same much least any proof, that the pay-in-slips belonged to different branch of Bank of Baroda, it does not effect the prosecution case in any manner whatsoever and the same is of no consequence. What is material is that the counterfoils which formed part of the pay-in-slips were retained by the customers after depositing the cash in the Azadpur Branch which fact not only stands proved from the bank stamp & the initials of accused Shubham Yadav as squarely proved by PW2, other prosecution witnesses and the CFSL result, however, their corresponding bank vouchers were destroyed and in their place forged bank vouchers, which too bear the bank stamp & initials of accused Shubham Yadav, were created to reflect deposit of SBNs by the customers though what was deposited by them in their account was legal tender and not SBNs.

7.104 Ld. Defence Counsel also pointed out the statement of PW2 wherein, he admitted that during the period of demonetization, sometimes there used to be a difference in the amount of cash deposited in the accounts and the actual cash with the branch and whenever there was any such difference, the same used to be counted & re-counted again and if still there was any deficiency, then the same was made up or fulfilled by the cashier concerned through his own resources. The said statement of PW2 is absolutely irrelevant for the purpose of present trial. The accused is not facing trial for any embezzlement or misappropriation of funds or shortage of the funds of the bank or

the customers. Instead the accused is facing trial for forging bank vouchers to fraudulently reflect deposit of SBNs whereas, the customer had deposited legal tenders as well as for replacing the legal tenders with SBNs.

7.105 It was also argued by Ld. Defence Counsel that as far as the alleged admissions of guilt by accused Shubham Yadav are concerned i.e. Ex. PW2/A & B, the said statements/admissions were not only got written from him under duress by PW2, as he was in a dominating position, but also there is interpolation on Ex. PW2/B as the words “*tatha voucher ko maine badla hai*” were got subsequently written. It was further argued that though allegedly owner of M/s Dhaneshwar Trading and Gopi Chand & Company were present at the time when Ex.PW2/A & B were written by accused Shubham Yadav, however, their signatures were not obtained on them which further proves that the said admissions were got written by PW2 after exerting pressure upon the accused. However, I find no merits in the same.

7.106 The image of Ex. PW2/A & Ex. PW2/B have already been reproduced above and it has also been discussed above that the testimony of PW12, PW13 & PW21 leaves no doubt that the same were written by the accused voluntarily and there was no pressure whatsoever upon him. During his examination in chief, PW2 had categorically stated that “*It was revealed that Mr. Shubham Yadav exchanged the bank vouchers alongwith the details of denominations of the deposited currency*”

*notes for the said deposits. He has admitted his guilt. In this regard, Mr. Shubham Yadav gave written admission to the customers namely M/s Dhaneshwar Trading and M/s Gopichand & Co. in front of me and testified the same.”* During his cross-examination while denying that he had got Ex. PW2/B written under duress, he went on to state “*Shubham Yadav has voluntarily given the statement Ex. PW2/A & Ex. PW2/B.*” Considering the material on record i.e. the bank vouchers coupled with the testimony of the prosecution witnesses, including independent witnesses/bank customers, PW19 Sh. Nand Kishore and the CFSL result i.e. Ex. PW16/A1 which leaves no doubt that forged vouchers were indeed created/got created by accused Shubham Yadav to show deposit of SBNs by the above account holders, no question arises of any duress or coercion whatsoever upon the accused. It was only because he had indeed committed the forgery that he wrote Ex. PW2/A & Ex. PW2/B and for no other reason. Also had there been any duress upon accused Shubham Yadav, then if not then, then anytime subsequently he would/could have complained to higher bank authorities or the police or to the RBI etc. and having not done so is itself sufficient proof that the admission of guilt vide Ex. PW2/A & Ex. PW2/B was voluntary and the same was not obtained under any pressure, threat etc. Accordingly, I find no merits in the defence reliance upon *Ramu Appa Mahapatar (supra)* more so when the facts of the said case are/were completely distinct. In the said case, it emerged from the testimony of witnesses in whose presence the confession was made that the accused was in a confused state of mind, was not in

fit state of mind and there were other factors which further created doubt upon the prosecution case. As against the same, in the present matter there is nothing on record whatsoever to suggest that the accused was in a confused state of mind and as discussed above the testimony of the prosecution witnesses unambiguously proves the voluntariness of the said confessions. Further the confession of guilt finds due corroboration from the other material on record as has been discussed in detail in this judgment. Confessions are not oral but written confessions of accused Shubham Yadav which when considered in light of the other material on record, sufficiently establishes his guilt. In fact in the above judgment it was also observed as under:-

*“17.2. If the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction. The requirement of corroboration is a matter of prudence and not an invariable rule of law.*

*18. In Sansar Chand Vs. State of Rajasthan, this Court accepted the admissibility of extra-judicial confession and held that there is no absolute rule that an extra-judicial confession can never be the basis of a conviction although ordinarily an extra-judicial confession should be corroborated by some other material.”*

7.107 It was also one of the argument of Ld. Defence Counsel that though PW2 claimed that he had conducted inquiry against the accused, however, admittedly, he had not recorded statement of any officials of the bank nor of the customers who had allegedly lodged the complaints with him. In my considered opinion, once the customer counterfoils reflected deposit of legal tenders and they did not match with the bank vouchers for the deposits as not only the serial numbers on the two are/were

different, though the same should have been same if they were part of same pay-in-slips but furthermore when even the denomination on them is/was different, nothing more was required. The cash being accepted by the accused, being the Cashier, the difference between the customer counterfoil and the bank voucher as above itself was sufficient proof of fraud & forgery and there was no requirement of recording statement of bank officials or the customers. Most importantly, PW2 did not end the matter with his office and rather he informed the Deputy General Manager (DGM) vide his letters, as discussed above, regarding the above discrepancies detected by him, upon visit by the bank customers/account holders. Once he informed the matter to Deputy General Manager the same not only showed his bonafide but it also proves that Ex. PW2/A & Ex. PW2/B were not obtained under duress/threat or else he would have been conscious of the fact upon the matter coming to the knowledge of DGM, it would have revealed that he had obtained Ex. PW2/A & Ex. PW2/B under duress/threat and thereby inviting trouble. He so informed the DGM only because the said confessions/admissions were voluntarily given by the accused. It is also to be noted that no protest or complaint was lodged by the accused even with the DGM, therefore, his claim that the admissions/confessions were obtained under threat or duress is absolutely hollow and baseless.

7.108        The issue regarding the income tax notice and the bank certificate has already been dealt with nonetheless PW2 did state during his cross-examination that *“I have seen the income*

*tax notice brought to me by some of the customers. I have not taken any copy of such notice.” Furthermore he stated “However, from the bank record it can be verified whether such certificate was issued or not”. No efforts were made to seek directions to PW2 to produce the said certificate on record and had any such directions been sought but PW2 failed to produce the said certificate then the things might have been different. However, having not done so, it cannot be ruled out that the said certificate was indeed issued to the bank customers/account holders.*

7.109 It was also argued by Ld. Defence Counsel that though accused Shubham Yadav had allegedly confessed his guilt vide Ex. PW2/A & Ex. PW2/B on 09.02.2017, however, PW2 did not inform the Deputy General Manager about the said confessions in his letters Ex. PW2/C or Ex. PW2/D, vide which PW2 had sought the DGM’s/PW3’s indulgence to look into the matter. It was also argued that even in complaint Ex. PW3/F or Ex. PW2/G there is no reference of such confessions. According to Ld. Defence Counsel this further establishes that the alleged confessions were obtained under threat/duress and that accused signed the same merely to save his job. However, I find no merits in the said arguments. The confession being given on 09.02.2017 no question arises of the same being mentioned in Ex. PW2/C which is dated 08.02.2017 and though in Ex. PW2/D dated 13.02.2017 nothing about the confession was mentioned, however, vide letter Ex. PW2/E dated 16.02.2017 PW2 informed PW3 about the involvement of accused Shubham Yadav. Hence within one week the DGM was duly informed about the

accused's involvement. Moreover, PW2 had annexed the copy of counterfoil, voucher and the customer's request for issuance of certificate which itself rules out any fabrication or forceful obtaining of Ex. PW2/A & Ex. PW2/B. The counterfoils and the vouchers were itself sufficient proof of the accused's involvement. Though the confessions were not mentioned in Ex. PW3/F, however, the accused's role was briefly stated in the same and for the purpose of FIR same was sufficient as it is well settled law that the FIR need not be an encyclopedia. There was no necessity to mention about the confessions in Ex. PW2/F, nonetheless, it was duly mentioned that all the vouchers are/were received by the accused. Also it is to be noted that the "Customer request for certificate" as enclosed along with said letters at Sl. No. 3 was the same certificate which the customers had been seeking regarding their deposits which further corroborates the prosecution story that it was on receipt of income tax notice that the customers approached the bank seeking certificates qua the deposits to satisfy the income tax authorities. In addition to Ex. PW2/C & Ex. PW2/D, Ex. PW2/F & Ex. PW2/G while detailing the discrepancies in the counterfoils and the bank vouchers PW2 also categorically informed the DGM/PW3 that all the vouchers in question were received by the accused in respect of account holders mentioned therein.

7.110 PW3 Sh. Ravikant Thakral duly corroborated the testimony of PW2 and proved how, upon receipt of report from PW2, he got the matter investigated/inquired from Ms. Surbhi Singh (PW4) and Sh. Sushil Kumar Srivastava (PW8) who vide

their reports Ex. PW3/B, Ex. PW3/E and Ex. PW3/H found unauthorized replacement of legal tender deposited by the customers with SBNs by accused Shubham Yadav. He further proved that upon receipt of the reports he made a complaint Ex. PW3/F which led to registration of present FIR. He also proved that vide Ex. PW3/I he sent further information to the CBI, based upon PW8's report Ex. PW3/H.

7.111 It makes no difference that he did not go through the income tax notice or check the account statement of the customers, before assigning the matter to PW4 & PW8 or before giving his complaint to the CBI for the simple reason that PW2's letter Ex. PW2/C & Ex. PW2/D contained the necessary details required by him to assign the matter for inquiry to PW4 & PW8 and they were accompanied with the copy of counterfoils and the bank vouchers in question. Similarly, before he gave his complaint to the CBI, the reports of PW4 were before him, which reports further established the misdeeds of accused Shubham Yadav. It also makes no difference that he could not state whether he had gone through circular Ex. PW3/D1 more so when he was not the one who had issued the said circular. Also that circular has been dealt with in the later part of this judgment.

7.112 It is to be noted that PW3 was not posted in the same branch of Bank of Baroda but was posted as Deputy General Manager at the Regional Office of the said bank and his role at best is confined only to the extent of initiating inquiries/investigations qua the lapses highlighted by PW2 as

well as giving complaint to the CBI on the basis of PW2's information and PW4's report. Therefore, his being not aware of the OHDTM menu is of no consequence more so when being the DGM it was not his duty/job to enter or verify/post details in the Finacle system using the said menu. Similarly his being not aware about submitting of daily data of the SBNs deposited with the RBI is also immaterial for the purpose of present trial.

7.113 Just because complaint Ex. PW3/F does not find mention of the entire record including the inquiry conducted by PW4 & PW8 being enclosed therein is also immaterial. Not only PW3 specifically stated that the above entire record was submitted by him, to the investigating agency, along with his complaint and the same could not be inadvertently mentioned in Ex. PW3/F but the fact remains that the said record was duly handed over to the IO and is/was duly proved on record.

### **Bank's internal inquiries**

7.114 PW4 Ms. Surbhi Singh who had conducted the inquiry and given her reports Ex. PW3/B & Ex. PW3/E lend further credence to the prosecution case when she deposed that during her inquiry she found accused Shubham Yadav accountable for replacement of legal tender deposited by the customers, in their accounts with SBNs. As far as her reports are concerned, it was argued by Ld. Defence Counsel that the inquiry conducted by her was absolutely sham & motivated. It was argued that admittedly she did not see the income tax notices

allegedly received by the customers/account holders nor she recorded their statements or that of any staff of the branch. Further she failed to answer whether she had gone through the statement of account of customers at the time when she allegedly conducted the inquiry.

7.115 As far as these arguments are concerned, suffice would be to say that the detailed inquiry reports Ex. PW3/B & Ex. PW3/E leaves no doubt that PW4 had indeed conducted a thorough inquiry and her conclusion/reports are based upon sufficient/concrete material. PW4 in her reports while highlighting the lapses, irregularities on the part of accused Shubham Yadav concluded that he had a malafide intention in doing so. During the inquiry PW4 had gone through the forged bank vouchers as well as the genuine customer counterfoils and noted in her reports the difference in the denomination of the amount in the two/above. She also concluded that the accused had also changed the bank's copy of the pay-in-slip i.e. bank voucher as well as the denomination of currency notes deposited by the customers. Furthermore though she did not record the statement of account holders/customers, however, she did have oral discussion with PW21 Sh. Vinesh Kumar of M/s Gopi Chand & Co. and PW5 Sh. Ram Sewak Yadav as is duly mentioned in her reports. Moreover, she already had the written confessions/admissions i.e. Ex. PW2/A & Ex.PW2/B before her and there was no need for her to go through the statement of account additionally as the forgery, replacement of legal tenders with SBNs was writ large from the forged bank vouchers viz-a-

viz the genuine counterfoils.

7.116 I find no reason why PW4 would conduct a sham inquiry or furnish a false report. She was not posted in the same branch but was posted at another branch and therefore she had no reason to unnecessarily side with the bank or give a motivated/false report against the accused at the behest of the Azadpur Branch. Accused's claim of her or for that matter number of witnesses including bank officials and independent witnesses deposing falsely against him is not only too far fetched but also absolutely baseless. There is more than enough corroboration to the testimony of PW4 in the form of testimony of bank customers and other officials. The material before PW4 being documentary she was not required to go through the income tax notice or the statement of accounts. Merely because she did not record the statement of PW17 or PW23 or for that matter the bank customers also does not render her inquiry reports as sham or fabricated. The counterfoils and the bank vouchers were themselves sufficient, coupled with the discussion she had with the bank customers to unearth the fraud committed by the accused. Her inability to state after going through the statement of accounts Ex. PW3/D5 or Ex. PW3/D8 as to whether SBNs or legal tenders were deposited is also immaterial as the genuine counterfoils & the forged bank vouchers which she had gone through at the time of inquiry were sufficient to prove as to what was actually deposited by the bank customers and what was shown to have been deposited by the accused. Nonetheless she did state that "*The statement of account of the customer would*

*not reflect the classification of SBN and legal tender of the amount deposited although it would reflect the total amount deposited which may contain SBN and legal tender”.* This statement finds due support from the statements of other prosecution witnesses and it has been discussed in this judgment that no such classification/details of the currency notes is ever reflected in the statement of account. It is also to be noted that the offence was complete the moment the vouchers were forged/got forged by the accused and accordingly legal tenders deposited by the customers were replaced with SBNs. Subsequent entries & posting in the Finacle system, reflecting the transactions in the statement of account with which the accused had no concern were routine bank procedures. Even if the entries & posting or the statement of accounts were not proved still the moment the forgery is/was proved the prosecution’s case stood substantially established. These entries & postings, as has been discussed in this judgment, have only further boosted the prosecution case.

7.117            Though no doubt that vide Ex. PW3/A, PW4 was directed to keep the relevant record/vouchers in sealed cover and also to take necessary steps for taking back up of CCTV footage at the bank but she failed to do either, however, same has not affected the prosecution story in any manner. What was required is the safe custody of the bank vouchers and it stands proved on record that there was no forgery or manipulation in these vouchers otherwise than what was done/got done by the accused. The defence could not prove that these bank vouchers were subsequently forged during the inquiry or the investigation. What

was also required is the seizure and the production of these vouchers during the trial and the same was properly done. As far as the CCTV footage is concerned, just because the same was not preserved and accordingly not proved on record is also of no consequence. The visit of the bank customers/account holders, their employees to the branch and the deposit of amounts stands duly proved. The customer's counterfoils for these deposits also stands duly proved and the statement of account further proves the said deposits. Nonetheless nothing stopped the accused from seeking directions for preservation or production of the CCTV footage, if he indeed wanted to negate the prosecution story as such.

7.118 As far as the defence arguments that there is no direct evidence i.e. CCTV footage, independent eye witnesses to the act of substitution of legal tender with SBNs nor is there any recovery of exchanged legal tender from the accused are concerned, suffice would be to say that in cases of the present nature there is hardly any direct evidence or eye witnesses account. The legal tender could not have been exchanged by the accused in the bank in the presence of everyone or else his misdeeds would have come to known there & then itself. He would have done the same in a clandestine manner at a time of his convenience and when he felt it safe. It stands proved that he retained the cash and only send the bank vouchers to the back office for entry which provided him due opportunity to exchange the deposited legal tender with SBNs. The entire purpose of forging the voucher was to change the legal tenders with SBNs

and retain the legal tender deposited by the account holders for himself or for anyone known to him, while the SBNs got deposited in the accounts of customers. Recovery of the exchanged legal tender is/was not only not essential but could not have been effected as whose SBNs the accused deposited or to whom he handed over the legal tender deposited by the customers was in the exclusive knowledge of the accused. It was for the accused to disclose these details and having not disclosed the same, he cannot blame the prosecution for its failure to explain the same.

7.119 Just because PW4, during her cross-examination, stated she cannot say whether Ex. PW2/A & Ex. PW2/B were given voluntarily by the accused or forcefully extracted from him is also of no consequence as admittedly the said confessions/statements were not recorded in her presence. The genuineness of Ex. PW2/A & Ex. PW2/B stands duly proved on record especially from the testimony of PW2, the bank customers, as discussed above, in whose presence they were given. There is no doubt as to the genuineness or the voluntariness of these statements.

7.120 One of the inquiry against accused Shubham Yadav, as was marked to him by PW3 vide Ex. PW3/G, was conducted by PW8 Sh. Sushil Kumar Srivastava who proved his report Ex. PW3/H in this regard. He proved that during his inquiry he had found replacement of currency notes/legal tenders deposited by the customers as well as replacing of the bank vouchers and

material alteration/additions in the same. While identifying the forged bank vouchers in question as well as genuine counterfoils he proved that not only the serial numbers on them (except for Ex. PW6/F and Ex. PW6/B) is different, they are in different handwriting but even the denomination of deposited currency notes is different. He categorically proved that in his inquiry he concluded that accused Shubham Yadav had deliberately changed the bank's copy of the pay-in-slips i.e. the bank vouchers and also changed the denomination of currency notes deposited by the customers and that he found the above lapses/irregularities on the part of the accused and also that he had malafide intention in doing so.

7.121 PW8 also identified the relevant entries in the scroll register Ex. PW8/A (colly) for the deposits in question and it makes no difference that he failed to identify the writings in the said register to be of accused or that he stated that he has seen the said register for the first time in the court for the reason that not only the entries in the said register have been duly identified by other prosecution witnesses but it has also been discussed that it was Ex. PW8/A only which was maintained/used by the accused for making entries in respect of the cash accepted by him and there was no other register. The said register might have been used by other cashiers also but the fact that is relevant for the present trial is that it was also used by the accused and the entries in respect of the deposits in question are in his handwriting.

7.122 Merely because PW8's report is not accompanied

with the statement of the account holders/customers or the bank officials is of no consequence as he already had sufficient material before him in the form of customer counterfoils, bank vouchers etc. which he duly verified during the inquiry, as was categorically proved by him and also emerges from his report Ex. PW3/H. It is a detailed report covering all the aspects i.e. difference in the slip number appearing on the customer counterfoil and the bank voucher as well as the denomination of currency deposited apart from the difference in the handwriting between the two. Furthermore he also had discussion with one of the account holder i.e. Sandeep Kohli of M/s Kaka Kohli & Sons, whose office/shop he had visited and had also gone through the statement of accounts of the customers/account holders.

7.123 Ld. Defence Counsel laid much emphasis on the statement made by PW8, during his cross-examination, wherein he stated “*It is correct that I do not know as to who had filled the pay-in-slips regarding which I was making inquiries*” and it was argued that the said statement itself creates doubt upon his inquiry as once he was not knowing as to who had filled the pay-in-slips then how could he come to the conclusion that the customer counterfoils and the bank vouchers were different. As far as the said argument is concerned, it is to be seen that the pay-in-slips has two parts i.e. the customer counterfoil and the bank's voucher/bank's part of the pay-in-slips. The customer counterfoil is handed over to the customer after deposit of cash while the bank voucher is retained with the bank. In the case at hand the forgery was done in the bank vouchers. When PW8 stated he

does not know as to who had filled the pay-in-slips regarding which he was making inquiries, he was talking about the bank voucher and not the customer counterfoil as by that time it was not revealed as to who had forged the bank vouchers. Just like PW8, even PW4, the other Inquiry Officer was not aware as to who had filled the forged bank vouchers as the said fact was subsequently revealed during the investigation, which revealed that some of these were got filled by the accused from PW19 Sh. Nand Kishore. As far as the customer counterfoil is concerned, his report and the other material on record leaves no doubt that the same were in the handwriting of the customers/account holders or their employees.

7.124 Failure on the part of PW8 to explain what OHDTM menu means is of no significance as the said witness had never worked on OHDTM menu. It is not the prosecution case that he was the entering or the posting/verification officer of the transactions in question. His role is merely confined to the bank's internal inquiry conducted against the accused. Though he stated that after going through the statement of account Ex. PW3/D3 he cannot tell whether the amount deposited was SBNs or legal tender or both, however, he did state that he had asked for the voucher with regard to the said entry so as to ascertain the composition of the currency notes deposited. Annexure A of his report Ex. PW3/H leaves no doubt that he had gone through the customer's counterfoils and the bank vouchers and once he went through these documents, the same would have revealed how the composition/ denomination of the currency notes were changed

in the vouchers and there was no additional requirement to go through the statement of accounts. Similarly, there was no necessity for him to go through the income tax notice or as to which menu was used in the bank/branch for deposit of SBNs. Moreover, it is to be noted that just like PW4, PW8 was not posted in the same branch of Bank of Baroda i.e. Azadpur Branch but was posted at Parliament Street Branch of Bank of Baroda. Therefore not only he was not from the same branch but also had no reason to furnish a false report. There is nothing on record to suggest that he had any grudge against the accused or any motive or interest as such to give a false report.

7.125 It is the prosecution's case that forged bank vouchers Ex. PW6/E, Ex. PW6/H & Ex. PW12/B were filled by PW19 Sh. Nand Kishore, who was employed as sweeper/cleaner in the bank vide Ex. PW20/B (colly), on the directions of accused Shubham Yadav. To prove the said fact, prosecution examined PW19, who while deposing in terms of the prosecution story, identified his writings on the said vouchers at point Q-43, Q-50 & Q-35 respectively. He further proved that at the time he had filled the said vouchers, accused Shubham Yadav had provided him overwritten bank vouchers; asked him to fill up fresh vouchers and that after he handed over both the vouchers i.e. overwritten & and the one's filled by him, accused put his signatures & stamp on the vouchers filled by him. He identified accused Shubham Yadav's initials on the said vouchers at point Q-1, Q-48 & Q-33 respectively.

7.126 During the course of investigation, PW19's statement was got recorded under section 164 Cr.P.C i.e. Ex. PW19/A (colly) and which statement is/was on similar lines as the deposition of PW19. The image of the said statement is reproduced hereunder:-



Let the statement be recorded.

Statement of witness Nand Kishore S/o. Shri Sukhlal, R/o. House No. 272, Ajeet Nagar, Gandhi Nagar, East Delhi

On SA

श्री. Bank of Baroda, Azadpur  
के स्वीपर हूँ। मुझसे सुकल पावव  
के वाउचर करने को कहा था। उन्होंने  
कहा कि तीन वाउचर जालम हो जाये हों  
और मैं यह वाउचर मांगूँ, तब उनके  
कक्ष पर वाउचर मांग दिए। उन्होंने  
स्टैम्प मांगे और सिग्नेचर करके रख  
दिए। मुझे और कुछ नहीं कहा।

हो श्री  
नंद किशोर A

23/03/18

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7.127 It was one of the argument of Ld. Defence Counsel that though during his examination in chief, PW19 supported the prosecution's case, however, during his cross-examination, he made certain statements which not only create grave doubts upon the prosecution story but they also render PW19 an unreliable, untrustworthy witness. It was argued that as against his claim that voucher Ex. PW6/E, Ex. PW6/H & Ex. PW12/B were filled by him on the directions of accused Shubham Yadav, PW19 during his cross-examination claimed that he had filled the said vouchers on the instructions of Sh. O.N. Singh (PW2) and he had also so stated to the CBI. Furthermore, he stated that he had told Sh. O.N. Singh that he will tell the truth to the CBI that he had asked him to fill the said vouchers, at late night but he refused upon which, Sh. O.N. Singh told him that he has to only copy details of the vouchers and accordingly on the instructions of Sh. O.N. Singh he filled the said vouchers. Also according to PW19, Sh. O.N. Singh used to get vouchers filled from him prior to demonetization. It was argued that the said statements not only throw grave doubts upon the prosecution story that the forged vouchers were got filled/created by accused Shubham Yadav through PW19 but also established that the accused has been falsely implicated by PW2, PW20 & other bank officials.

7.128 As far as the said arguments are concerned, in my considered opinion, the statement made by PW19, during his cross-examination and as highlighted by Ld. Defence Counsel, to that extent are/were incorrect, false & motivated. At the outset, it is to be seen that PW19 who had been working in the bank in

question, as a sweeper/cleaner was removed somewhere after Diwali and therefore, he did have a grudge against the bank officials, especially PW2, so as to make false statement. PW19's statement in this regard read as "*Thereafter, Sh. O.N. Singh removed me from the service of the bank*". Secondly, I find no reason to disbelieve the statement made by PW19 during his examination in chief, which statements finds due corroboration from his statement Ex. PW19/A (colly) as was recorded before the then Ld. Metropolitan Magistrate. Thirdly, when being cross-examined by the Ld. Defence Counsel, PW19 stated "*I do not know as to why I had stated in my examination in chief that I had filled the vouchers on the instructions of Shubham Yadav*" and in my considered opinion, the said statement was made by PW19 because what he stated in his examination in chief was the truth and he could not come up with any spontaneous excuse to justify his claim that the said statement was infact false and not truthful. Or else I fail to understand why he did not take the name of Sh. O.N. Singh even once during his examination in chief. If he was under any pressure, as claimed by him, during the investigation either by the IO or the bank officials, then atleast when he came to depose before the court, there was no pressure upon him and in case he had filled the vouchers at the instance of Sh. O.N. Singh and not accused Shubham Yadav he could have straightway stated so during his examination in chief. It was only after almost three months of his examination in chief (25.11.2019) that when he appeared again in the court on 17.01.2020, he contradicted his earlier statement which I have absolutely no hesitation was on account of the fact that he had been won over by the accused.

7.129 Also though during his cross-examination by Id. Defence Counsel, PW19 stated that Ex. PW6/E, Ex. PW6/H & Ex. PW12/B were filled by him on the instructions of Sh. O.N. Singh, which was otherwise never stated by him during his examination in chief, nonetheless, during his cross-examination by Ld. PP for the CBI, he went on to state that Ex. PW6/E & Ex. PW12/B were filled by him on the instructions of accused Shubham Yadav and Ex. PW6/H on the joint instructions of Sh. O.N. Singh & accused Shubham Yadav and thereafter again he stated that all the three vouchers were filled on their joint instructions. Hence, PW19 kept on changing his stand during the cross-examination, however, he reiterated that he had filled the vouchers on the instructions of accused Shubham Yadav and his claim regarding the joint instructions is nothing but falsehood. The falsity of the statement made by him during his cross-examination also emerges from the following statement made by PW19 i.e. *“Even prior to the period of demonetization, Sh. O.N. Singh used to get certain vouchers filled from me regarding deposit of cash”*. PW19 was merely working as sweeper/cleaner and it is absolutely unpalatable that the Branch Manager would get bank vouchers filled from him. Also I completely failed to understand what benefit could PW2/Branch Manager derive by getting the vouchers filled from PW19, prior to demonetization period.

7.130 Even if PW19’s claim that Sh. Ankit Pandey (PW20) had allegedly accompanied him on every occasion, when he

visited the CBI office is believed to be true, though there is no material to support the same & he had not stated so during his examination in chief, still the same is of no consequence as no pressure was ever exerted on PW19 by PW20. No doubt during his cross-examination by Ld. PP for the CBI, he claimed that Sh. Ankit Pandey had pressurized him to take only accused Shubham Yadav's name, however, I fail to understand why Sh. Ankit Pandey would pressurize PW19 to take the name of accused Shubham Yadav only when Sh. Ankit Pandey had no connection with the case, was not an affected party and not interested in whatever PW19 stated before the CBI as the said statement would have not any effected him in any manner. As far as PW19's claim that his statement was typed by Sh. Ankit Pandey on the instructions of the CBI is concerned, same has no merits, basis whatsoever. Why would the CBI get the statement typed from Sh. Ankit Pandey and not themselves sans logic and seems absolutely improbable. Same applies to his claim that his statement was not narrated or read over to him in Hindi language. There is just no doubt that PW19 was making false statements to that effect, as in the intervening period i.e. between his examination in chief & cross-examination, he had been won over by the accused.

7.131           The fact that PW19 made certain false statements during his cross-examination by Ld. Defence Counsel becomes more evident from his statement Ex. PW19/A, as has been reproduced above which is para materia, on similar lines as his examination in chief. The proceedings before the Ld.

Metropolitan Magistrate and the statement was duly admitted by PW19. Ex. PW19/A, judicial proceedings, clearly reflect that at the time when the statement was made by PW19, he was under no pressure, threat or coercion and it was only upon recording the said satisfaction as appears on page no. 1 of the proceedings, that the Ld. Metropolitan Magistrate proceeded to record his statement. Further the said statement was duly read over to PW19 and he signed the same as an acknowledgment thereof. This fact was duly admitted by PW19 during his cross-examination by Ld. PP for the CBI. His subsequent retraction, as discussed above, is/was solely on account of being won over by the accused.

7.132 During the course of arguments Ld. Defence Counsel while highlighting the statement of PW19, made during cross-examination & wherein he stated that during demonetization period apart from the accused, the Branch Manager (PW2) alongwith several other bank employees including PW17, PW20 & PW23 etc. were accepting cash from the customers, argued that when cash was admittedly accepted by other bank officials, no liability can be fastened upon accused Shubham Yadav as it cannot be completely ruled out that the above officials having accepted the cash, forged the vouchers in question. More so, when some of them were entering, posting & verifying the details of the deposit on the Finacle System in the respective accounts of the customers. As far as the said argument is concerned, there is more than enough evidence on record which proves that the vouchers in question were forged, got forged by accused Shubham Yadav. The testimony of the bank

customers, employees and other material on record clinches the issue in this regard. Even if the statement made by PW19 regarding acceptance of cash by the other bank employees is believed to be true, though there is no material in support of the same still it has no bearing on the present case for the simple reason that there is no allegation that any of these bank officials, except for the accused and one Sonu who is also facing trial in a connected case bearing no. 104/2019, had forged any bank vouchers or changed the legal tenders deposited by the customers in their account with SBNs. Acceptance of cash was not illegal. What was illegal was forging the bank vouchers and replacement of legal tenders with SBNs.

#### **CFSL result and corroboration**

7.133 During the course of investigation, specimen signatures/handwriting of Sh. Jagat Singh/PW7 (S-1 to S-20), Sh. Vinesh Kumar/PW21 (S-21 to S-40), Sh. Pawan Kumar Sharma/PW12 (S-41 to S-58), Sh. Ram Sewak Yadav/PW5 (S-59 to S-78) and Sh. Sandeep Kumar/PW6 (S-99 to S-170) i.e. the account holders/their employees were obtained vide Ex. PW14/A1, Ex. PW14/A2 (colly), Ex. PW12/D (colly), Ex. PW14/A3 (colly) and Ex. PW14/A4 (colly) as proved by PW14 Sh. Tarun Pal, the independent witness in whose presence the said specimen signatures were obtained. Similarly, the specimen signatures and handwriting of accused Shubham Yadav were also obtained i.e. S-203 to S-324 vide Ex. PW14/A5 (colly). As proved by PW14, these specimen writings were given

voluntarily. Similarly, PW15 Sh. Durga Prasad proved that specimen signatures/handwriting of Sh. Nand Kishore/PW19 (S-171 to S-202) as were voluntarily given by him, were obtained in his presence vide Ex. PW15/A1 (colly).

7.134 Merely because the specimen handwritings of PW5, PW7 etc. were not shown to them makes no difference as the fact that their specimen handwritings were duly taken was proved by PW14, the independent witness in whose presence the same were taken. Moreover, PW12, PW21 duly proved that their specimen handwritings were taken during the investigation and they identified the same. PW7, during his cross-examination, similarly stated. Furthermore all these witnesses duly identified their respective writings on the genuine counterfoils thereby corroborating the prosecution story.

7.135 These specimen signatures alongwith the customer counterfoils in question were sent to the CFSL and the CFSL result Ex. PW16/A1 as proved by PW16 Ms. Lavang Lata duly establishes that the customer counterfoils were indeed filled by the bank customers/account holders thereby corroborating the testimony of the account holders, as has already been discussed above in detail.

7.136 During the course of the arguments, ld. Defence Counsel argued that PW14 was a stock witness of the CBI as admittedly he was called by the CBI in around 8 to 9 different cases and, therefore, no reliance can be placed upon with his

testimony, however, I find no merits in the said arguments. Merely because PW14 had joined or assisted in the investigation of other matters, that by itself does not render his testimony unreliable. There is no bar to a person being witness in other/different cases and it was for the defence to prove that PW14 deposed falsely or that the specimen signatures were not obtained in his presence or that he had any motive to falsely depose against the accused.

7.137 Merely because PW14 stated that he usually writes date when he signs any document, however, no date is mentioned by him on Ex. PW14/A1 (colly) to Ex. PW14/A4 (colly) and Ex. PW12/D (colly) makes no difference as what PW14 had stated is that he usually writes the date and not that he always writes the date. As discussed above, corroboration by the other prosecution witnesses and the failure on the part of the defence to prove that PW14 was not present at the CBI office or that he was present somewhere else renders the missing dates on the above documents as absolutely insignificant. Also, why the date appears on Ex. PW14/A5 (colly) was duly explained by PW14 when he stated that as the wrong date was mentioned i.e. 10.11.2017 instead of 15.11.2017 i.e. when the specimen signatures/handwritings were actually obtained, he had mentioned the date on Ex. PW14/A5 (colly).

7.138 It was also one of the arguments of Ld. Defence Counsel that not only the accused was forced by the IO to give his signatures, handwriting (S-203 to S-324) but according to

PW14 he was also instructed to copy the contents from the bank deposit slips, counterfoils in a similar manner in his handwriting and, therefore, the said specimen/writing is/was not his natural writing. As far as this argument is concerned, PW14 categorically stated that the specimen signatures/handwriting were given voluntarily by the accused and during his cross-examination he stated that the accused was not forced to do so by the IO. Though the accused was writing on the instructions of the IO, however, there was no pressure upon him. The instructions were only to fill the contents of the counterfoils and the bank voucher on a piece of paper. As regards PW14's statement that IO instructed the accused to copy the contents of the counterfoils & bank slips in a similar manner in his writing is concerned, merely because the IO had so instructed does not render the specimen writing as unnatural. Number of specimen signatures/writings were obtained and not just one or two. It is not as if the IO had held the hands of the accused. Similar manner merely means that in the same manner as written in the counterfoils and bank vouchers but of course the writing would be of the accused only. Most importantly, as discussed above, number of prosecution witnesses have identified the initials and numerals on the counterfoils and the bank vouchers to be in the handwriting of the accused, in addition to the CFSL Result based upon the said specimen/writings. Also it is to be noted that the CFSL Result could not match the writing on the bank vouchers with the accused's specimen writing and, therefore, the arguments regarding the accused being asked to write in a similar manner loose their significance.

7.139 As per the CFSL Result Ex. PW16/A1 (colly), it is PW7's writing which appears at portion Q3 of customer counterfoil no. 521960 i.e. Ex. PW2/K (colly) as was also proved by PW7 who categorically stated that the said counterfoil was filled by him. Similarly, as per Ex. PW16/A1 (colly), the writing at portion Q6 of counterfoil no. 215437 i.e. Ex. PW21/A is in the handwriting of PW21, who had dully identified his said handwriting while stating that the said counterfoil was filled by him. Similarly the writing at portion Q9 of counterfoil no. 482747 i.e. Ex. PW12/A is in the handwriting of PW12; the writing at portion Q12, Q14 & Q14A of counterfoils no. 539603 i.e. Ex. PW5/A & 539700 i.e. Ex. PW2/L (colly) are in the handwriting of PW5; the writing at portion Q17, Q20, Q23, Q26 & Q44 of counterfoils no. 195644 i.e. Ex. PW6/A, 195641 i.e. Ex. PW6/B, 195634 i.e. Ex. PW6/C, 195628 i.e. Ex. PW6/D & bank voucher 195641 i.e. Ex. PW6/F are in the handwriting of PW6 who also categorically stated that the said counterfoils and the bank voucher were filled by him but he did not make the alteration in the bank voucher Ex. PW6/F and the handwriting of figure 100 and 1 lac written on the top of the voucher is not his. The writing at portion Q-43 & Q-50 of the bank vouchers no. 114592 i.e. Ex. PW6/E and 704238 i.e. Ex. PW6/H is in the handwriting of PW19 as was also identified by PW19 to be his.

7.140 Further according to the CFSL Result Ex. PW16/A1 (colly) and the testimony of PW16 on comparison of the initials and numerals mark Q1, Q2, Q4, Q5, Q7, Q8, Q10, Q11, Q15,

Q16, Q18, Q19, Q21, Q22, Q24, Q25, Q27, Q28, Q30, Q31, Q33, Q34, Q36, Q37, Q41, Q42, Q45 and Q46 with standard initials and numerals marked S203A to S253A, S255A to S279A, S281A to S285A, S294A to S319A, S203B to S253B, S268B to S279B, S281B to S285B, S294B to S319B, S320 to S324 as well as admitted writings A-1 to A-8 of accused Shubham Yadav, consistency was observed in the execution of initial with the nature of it's start, shape of it's upper body, lope at it's lower body alongwith direction of finish and execution of numerals 0, 2, 5 & 7. The initials of accused Shubham Yadav exists on the counterfoils because he had accepted the cash as was also proved by account holders. At the time of accepting the cash he affixed the bank stamp on the counterfoils, put his initials and also wrote the amount in numerals in his writing. This is the reason that the numerals were also found in his writing on these counterfoils.

7.141 As far as the the bank vouchers are concerned, the accused got prepared some of the forged bank vouchers through Sh. Nand Kishore (PW19) and thereafter, as proved by PW19, he put his initials on the same and accordingly his initials appears on these bank vouchers (except Ex. PW6/F). In addition to PW19's testimony and the CFSL result, accused Shubham Yadav's initials were identified by other prosecution witnesses including bank officials and bank customers/account holders.

7.142 Undoubtedly, the CFSL result, as the law is well settled is merely corroborative in nature & cannot be formed sole basis of conviction and it is not safe to act upon an expert's

opinion unless it stands corroborated by some reliable evidence, however, in the case at hand there is ample corroboration, additional supportive evidence which duly corroborates the opinion of the expert including bank officials and bank customers who had deposited the amount in the bank accounts and who identified his initials as that of the accused. Also it being the admitted position that the accused was working as a Cashier in the bank, was present in the bank on the day of these deposits further strongly points to his culpability. At this stage it will be worthwhile to highlight the observations made in *Murari Lal (supra)* as under:-

*"The above extracted passage, undoubtedly, contains some sweeping general observations. But we do not think that the observations were meant to be observations of general application or as laying down any legal principle. It was plainly intended to be a rule of caution and not a rule of law as is clear from the statement 'it has almost become a rule of law'. 'Almost', we presume, means 'not quite'. It was said by the Court there was a 'profusion of presidential authority' which insisted upon corroboration and reference was made to Ram Chandra v. State of U.P., Ishwari Prasad v. Mohammed Isa, Shashi Kumar v. Subodh Kumar and Fakhruddin v. State of M.P. (supra). We have already discussed these cases and observed that none of them supports the proposition that corroboration must invariably be sought before opinion evidence can be accepted. There appears to be some mistake in the last sentence of the above extracted passage because we are unable to find in Fakhruddin v. State of M. P. (supra) any statement such as the one attributed. In fact, in that case, the learned Judges acted upon the sole testimony of the expert after satisfying themselves about the correctness of the opinion by comparing the writings themselves. We do think that the observations in Magan Bihari Lal v. State of Punjab (supra) must be understood as referring to the facts of the particular case.*

*We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystalized into a rule of law, that opinion evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach, as we indicated earlier, should be one of caution. Reasons for the opinion must be carefully probed and*

examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. We have said so much because this is an argument frequently met with in subordinate courts and sentences torn out of context from the judgments of this Court are often flaunted.”

7.143           The Hon’ble Apex Court further observed as under:-

“.....We begin with observation that the expert is no accomplice. There is no justification for condemning his opinion-evidence to the same class of evidence as that of an accomplice and insist upon corroboration. True, it has occasionally been said on very high authority that it would be hazardous to base a conviction solely on the opinion of a handwriting expert. But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable witnesses-the quality of credibility or incredibility being one which an expert shares with all other witnesses-, but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of finger-prints has attained near perfection and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. But that is a far cry from doubting the opinion of a handwriting expert as an invariable rule and insisting upon substantial corroboration in every case, howsoever the opinion may be backed by the soundest of reasons. It is hardly fair to an expert to view his opinion with an initial suspicion and to treat him as an inferior sort of witness. His opinion has to be tested by the acceptability of the reasons given by him. An expert deposes and not decides. His duty is to furnish the judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the judge to form his own independent judgment by the application of these criteria to the facts proved in evidence’. (vide Lord President Cooper in Dacie v. Edinbeagh Magistrate : 1953 S. C. 34 quoted by Professor

*Cross in his Evidence)*.....

*Expert testimony is made relevant by s. 45 of the Evidence Act and where the Court has to form an opinion upon a point as to identity of handwriting, the opinion of a person 'specially skilled' 'in questions as to identity of handwriting' is expressly made a relevant fact. There is nothing in the Evidence Act, as for example like illustration (b) to s. 114 which entitles the Court to presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars which justifies the court in assuming that a handwriting expert's opinion is unworthy of credit unless corroborated. The Evidence Act itself (s. 3) tells us that 'a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists'. It is necessary to occasionally remind ourselves of this interpretation clause in the Evidence Act lest we set an artificial standard of proof not warranted by the provisions of the Act. Further, under s. 114 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to facts of the particular case. It is also to be noticed that s. 46 of the Evidence Act makes facts, not otherwise relevant, relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant. So, corroboration may not invariably be insisted upon before acting on the opinion of handwriting expert and there need be no initial suspicion. But, on the facts of a particular case, a court may require corroboration of a varying degree. There can be no hard and fast rule, but nothing will justify the rejection of the opinion of an expert supported by unchallenged reasons on the sole ground that it is not corroborated. The approach of a court while dealing with the opinion of a handwriting expert should be to proceed cautiously, probe the reasons for the opinion, consider all other relevant evidence and decide finally to accept or reject it.*

*Apart from principle, let us examine if precedents justify invariable insistence on corroboration. We have referred to Phipson on Evidence, Cross on Evidence, Roscoe on Criminal Evidence, Archibald on Criminal Pleadings, Evidence and Practice and Halsbury's Laws of England but we were unable to find a single sentence hinting at such a rule. We may now refer to some of the decisions of this Court. In Ram Chander v. U.P. State,(1) Jagannatha Das, J. observed : "It may be that normally it is not safe to treat expert evidence as to handwriting as sufficient basis for conviction" (emphasis ours) "May" and "normally" make our point about the absence of an inflexible rule. In Ishwari Prasad Misra v. Mohammed Isa,(2)*

*Gajendragadkar, J. observed : "Evidence given by experts can never conclusive, because after all it is opinion evidence", a statement which carries us nowhere on the question now under consideration. Nor, can the statement be disputed because it is not so provided by the Evidence Act and, on the contrary, s. 46 expressly makes opinion evidence challengeable by facts, otherwise irrelevant. And as Lord President Cooper observed in Davie v. Edinburgh Magistrate : "The parties have invoked the decision of a judicial tribunal and not an oracular pronouncement by an expert".*

*In Shashi Kumar v. Subodh Kumar,(3) Wanchoo, J., after noticing various features of the opinion of the expert said :*

*"We do not consider in the circumstances of this case that the evidence of the expert is conclusive and can falsify the evidence of the attesting witnesses and also the circumstances which go to show that this will must have been signed in 1943 as it purports to be. Besides it is necessary to observe that expert's evidence as to handwriting is opinion evidence and it can rarely, if ever take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence. In the present case the probabilities are against the expert's opinion and the direct testimony of the two attesting witnesses which we accept is wholly inconsistent with it".*

*So, there was acceptable direct testimony which was destructive of the expert's opinion; there are other features also which made the expert's opinion unreliable. The observation regarding corroboration must be read in that context and it is worthy of note that even so the expression used was 'it is usual' and not "it is necessary'.*

*In Fakhruddin v. State of Madhya Pradesh,(4) Hidayatullah, J. said :*

*"Both under s. 45 and s. 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become a handwriting expert but to verify the premises of the expert in the one case and to comparison depends on an analysis of the characteristics in appraise the value of the opinion in the other case. This the admitted or proved writing and the finding of the same characteristics in large measure in the disputed writing. In this way the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether*

*it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness." These observations lend no support to any requirement as to corroboration of expert testimony. On the other hand, the facts show that the Court ultimately did act upon the uncorroborated testimony of the expert though these Judges took the precaution of comparing the writings themselves.....*

7.144 It has been discussed above that bank vouchers Ex. PW6/E, Ex. PW6/H & Ex. PW12/B were got prepared by accused Shubham Yadav from Sh. Nand Kishore (PW19) and the CFSL gave a positive result qua Ex. PW6/E & Ex. PW6/H. Voucher Ex. PW6/F is in the handwriting of Sh. Sandeep (PW6) except the alterations thereupon and no opinion on Ex. PW12/B or the other bank vouchers could be given and the very fact that no opinion was/could be given by PW16 i.e. in whose handwriting they were prepared itself proves the genuineness of her report Ex. PW16/A1 (colly). Had the report been merely given at the behest of the CBI, then the Expert/PW16 would have given a positive report qua the remaining bank vouchers as well. Instead PW16 categorically mentioned in her report “*No opinion on rest of the items on the basis of material at hand*” which clearly proves that the Expert had not only meticulously examined the material before her but that the report was given without any pressure or at the behest of the CBI and accordingly I find no reason to doubt the report or PW16’s opinion that the initials on the bank vouchers and the numerals are in the writing of accused Shubham Yadav.

7.145 During the course of arguments, it was vehemently argued by Ld. Defence Counsel that PW16 did not take photographs of the questioned documents nor she used any microscope for comparison with the specimen signatures and handwriting, which according to him creates doubt upon the genuineness of the report, however, I find no merits in the said arguments. As explained by PW16 that once the original documents are available then it is not required to take photographs of the questioned signatures. Infact she stated that there is no requirement of taking photographs whether the comparison is to be made from the photocopy or the original document. As far as non-use of microscope is concerned, PW16 stated that she had used Video Spectral Comparator (VSC-IV) and magnifying glasses of the magnification 6X, 10X, 20X etc. for comparison of the writings and signatures. While categorically stating that the handwriting, sent to her for comparison, was given by free hand, she went on to state that though handwriting as well as signature can resemble only in pictorial appearance, but they differ in minute and inconspicuous writing characteristics.

7.146 As discussed above, in her report, PW16 had categorically stated that there was consistency in the execution of the initials with the nature of it's start, shape of it's upper body, loop at it's lower body alongwith direction of finish. Merely because, it was stated by PW14 that the accused had filled the contents of the counterfoils and deposit slips on a piece of paper, it cannot be held that the said writing/specimen given by the

accused was a guided writing. As explained by PW16, guided writing is written with the help of some persons. To write something on someone's instructions and to take somebody's help in writing are two totally different things and merely because somebody writes on someone's instructions, the same does not become a guided writing.

7.147 As far as PW16's qualification is concerned, no doubt PW16 had not taken any formal training in handwriting examination, however, she did state that she had taken in-house training while working in the Document Division in CFSL. Furthermore, as deposed by her, she joined the CFSL in 1993; had an experience of 26 years in the field of document examination; had examined thousands of documents in number of cases and reported approximately 130 cases consisting of thousands of documents. This in my opinion was sufficient experience. Lastly, at the cost of repetition, PW16's deposition & her report Ex. PW16/A1 (colly) stands duly corroborated by other prosecution witnesses, including independent witnesses & bank witnesses, lending due weightage to it.

7.148 No doubt PW10 failed to identify the initials or the numerals on the customer counterfoils and bank vouchers in question as that of accused Shubham Yadav, however, as discussed above, there is more than enough evidence on record which duly establishes that the initials are of accused Shubham Yadav and even the numerals on them is in his handwriting at the relevant portions. Nonetheless PW10 admitted statement Ex.

PW10/A1 to be his statement as was recorded by the CBI, under section 161 Cr.P.C and further admitted that at the time of recording of the said statement he had stated that the initials & the numerals on the customer counterfoils as well as the bank vouchers are of accused Shubham Yadav. Also during his cross-examination by Ld. PP for the CBI it was stated by him that it was on account of lapse of time that he is unable to identify the numerals/initials of accused Shubham Yadav. With such huge passage of time i.e. almost 3 years it is quite natural/understandable that a witness may not be able to recognize someone's handwriting/initials. Things would have been entirely different had he stated that the statement Ex. PW10/A was not his statement or that whatever was written in it was not stated by him to the IO. Failure on the part of PW10 to identify the handwriting of accused Shubham Yadav in the scroll register Ex. PW8/A (colly) is also of no consequence as the material on record leaves no doubt that the relevant entries, for the deposits in question, in the scroll register are of accused Shubham Yadav only. At the same time it is not as if PW10 stated that the writings in Ex. PW8/A (colly) are not of accused Shubham Yadav and rather he stated that he can neither confirm nor deny that the writings on Ex. PW8/A (colly) are of accused Shubham Yadav. Moreover, he admitted that in his statement Ex. PW10/A1 he had stated that the said writings are of accused Shubham Yadav which clearly indicates that the cash deposits of the transactions in question were received by him.

7.149 Undoubtedly, during his cross-examination by Ld. Defence Counsel, he again retracted from his statement made during the examination in chief & cross-examination by Ld. PP for the CBI and stated that he cannot identify the accused's writing as he has never seen him writing and signing, however, as discussed above, even in the absence of his testimony there is enough material linking the accused to the writings/initials in question. Nonetheless, PW10 had supported the prosecution story on certain crucial aspects and the law is now fairly well settled as regards the weightage to be attached to the testimony of a witness who has been declared hostile. Evidence of such a witness need not be totally rejected or treated as effaced or washed off the record altogether. It can be accepted to the extent his version is found to be dependable and is consistent with the case of the prosecution or defence on a careful scrutiny thereof. Reliance in this regard may be placed upon the law laid down in *Balu Sonba Shinde v. State of Maharashtra 2003 SCC (Cri.) 112, Shamsheer Singh @ Rameshwar v. State of Haryana, (P&H) 2006(2) R.C.R. (Criminal) 867, Nisar Khan @ Guddu v. State of Uttaranchal (SC) 2006(1) Apex Criminal 340, Manoj Kumar v. State of Punjab (P&H) (D.B.) 2005(2) R.C.R.(Criminal) 813 and Swaran Singh v. State of Punjab (SC) 2000(2) R.C.R.(Criminal) 762.*

7.150 In *T. Shankar Prasad vs State Of Andhra Pradesh AIR 2004 SUPREME COURT 1242* it has been held as under:-

*“The fact that PW-1 did not stick to his statement made during investigation does not totally obliterate his evidence. Even in criminal prosecution when a witness is cross-examined and contradicted with the leave of Court by the party calling him, his evidence cannot as a matter of law be treated as washed off*

*record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process the credit of the witness has not been completely shaken he may after reading and considering the evidence of the said witness, accept in the light of other evidence on record that part of his testimony which he found to be creditworthy and act upon it. As noted above, PW-1 did not totally resile from his earlier statement. There was only a half-hearted attempt to partially shield A-*

*.....In State of U.P. v. Dr. G.K.Ghosh (AIR 1984 SC 1453) it was observed that in case of an offence of demanding and accepting illegal gratification, depending on the circumstances of the case, the Court may feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the official witnesses even if the trap witnesses turn hostile or are found not to be independent. When besides such evidence, there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there should be no difficulty in upholding the conviction.'*

7.151 In Attar Singh vs State of Maharashtra

AIRONLINE 2012 SC 466 it was held as under:-

*'13. .... It could not be ignored that when a witness is declared hostile and when his testimony is not shaken on material points in the cross-examination, there is no ground to reject his testimony in toto as it is well-settled by a catena of decisions that the Court is not precluded from taking into account the statement of a hostile witness altogether and it is not necessary to discard the same in toto and can be relied upon partly. If some portion of the statement of the hostile witness inspires confidence, it can be relied upon. He cannot be thrown out as wholly unreliable. This was the view expressed by this court in the case of Syed Akbar vs. State of Karnataka reported in AIR 1979 SC 1848 whereby the learned Judges of the Supreme Court reversed the judgment of the Karnataka High Court which had discarded the evidence of a hostile witness in its entirety. Similarly, other High Courts in the matter of Gulshan Kumar vs. State (1993) Crl.L.J. 1525 as also Kunwar vs. State of U.P. (1993) Crl.L.J. 3421 as also Haneefa vs. State (1993) Crl.L.J. 2125 have held that it is not necessary to discard the evidence of the hostile witness in toto and can be relied upon partly. So also, in the matter of State of U.P. vs. Chet Ram reported in AIR 1989 SC 1543 = (1989) Crl.L.J. 1785; it was*

*held that if some portion of the statement of the hostile witness inspires confidence it can be relied upon and the witness cannot be termed as wholly unreliable. It was further categorically held in the case of Shatrughan vs. State of M.P. (1993) Cr.L.J. 3120 that hostile witness is not necessarily a false witness. Granting of a permission by the Court to cross-examine his own witness does not amount to adjudication by the Court as to the veracity of a witness. It only means a declaration that the witness is adverse or unfriendly to the party calling him and not that the witness is untruthful. This was the view expressed by this Court in the matter of Sat Paul vs. Delhi Administration AIR 1976 SC 294. Thus, merely because a witness becomes hostile it would not result in throwing out the prosecution case, but the Court must see the relative effect of his testimony. If the evidence of a hostile witness is corroborated by other evidence, there is no legal bar to convict the accused. Thus testimony of a hostile witness is acceptable to the extent it is corroborated by that of a reliable witness. It is, therefore, open to the Court to consider the evidence and there is no objection to a part of that evidence being made use of in support of the prosecution or in support of the accused.”*

7.152 In Neeraj Dutta vs State (Govt. of N.C.T. of Delhi)

2022 LiveLaw (SC) 1029 it has been held as under:-

*“52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.”*

*67. Therefore, this Court cautioned that even if a witness is treated as “hostile” and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the*

*judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared "hostile" does not result in an automatic rejection of his evidence. Even, the evidence of a "hostile witness" if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a "hostile witness" testimony if corroborated by other reliable evidence."*

### **Entry & posting on the basis of forged vouchers**

7.153 It stands proved on record that after deposit of cash with the Cashier, the Cashier handed over the customer's counterfoil part of pay-in-slip to the customer, after putting the stamp & his initials on the same, while retaining the bank vouchers part of pay-in-slip which also bore his initials & stamp. The said bank voucher was then forwarded to the back office for entry & posting, while cash was retained by the Cashier. It also stands proved on record that during the period of demonetization, at the time of deposit of cash by the customer, the transaction number/ID was not being generated by the Cashier, who accepted the cash but by the back office. It is the prosecution case that the forged bank vouchers in question were sent/forwarded to the back office by accused Shubham Yadav and it was on the basis of these forged vouchers that entry & posting was done in the Finacle system of the bank. PW10 Sh. Joginder Pal explained the said procedure when he deposed as under:-

*"When a customer visits our branch for deposit the cash in his account, he used to fill a pay in slip and submit the same to the cash counter alongwith the cash to be deposited. The customer gives the cash to the cashier alongwith pay-in-slip which has two parts i.e. left part being the customer counterfoil and right part being the bank voucher. Thereafter, the cashier upon receipt of the cash, counts it*

*and tallies with the details mentioned by the customer in pay-in-slip including the details of denomination of currency notes. Further, the cashier puts his stamp and his initials on the customer counterfoil of the pay-in-slip alongwith bank voucher part of the pay-in-slip and then hands over the customer counterfoil to the customer and keeps the bank voucher part of pay-in-slip with him. Thereafter, the bank voucher part of pay-in-slip is forwarded by the cashier to the back office for entry and posting in the Finacle system, however, the cash used to be retained with the cashier only. In the back office, 3 people are required for entry and posting of bank vouchers in the finacle system. After entry and posting of the bank voucher in the finacle system, the balance is reflected in the customer's account in the finacle system. Then, upon receipt of the bank voucher from the cashier, the entering officer enters the details of the transactions mentioned on the bank voucher in the finacle system.”*

7.154 Similarly was deposed by other prosecution witnesses including PW2, PW20 etc. PW17 Ms. Nisha Gupta also similarly deposed as under:-

*“Further, the cashier puts his stamp and his initials on the customer counterfoil of the pay-in-slip alongwith bank voucher part of the pay-in-slip and then hands over the customer counterfoil to the customer and keeps the bank voucher part of pay-in-slip with him. Thereafter, the bank voucher part of pay-in-slip is forwarded by the cashier to the back office for entry and posting in the Finacle system, however, the cash used to be retained with the cashier only. In the back office, 3 people are required for entry and posting of bank vouchers in the finacle system. After entry and posting of the bank voucher in the finacle system, the balance is reflected in the customer's account in the finacle system. Then, upon receipt of the bank voucher from the cashier, the entering officer enters the details of the transactions mentioned on the bank voucher in the finacle system. For a cash deposit transaction, the details includes the name of the account holder, account number, mobile number of depositor, date, number of notes of a particular denomination deposited by the customer and the total amount deposited by the custody. During the period of demonetization, the same was done through a menu (I do not remember the name of the menu at present) in the finacle system. Upon entry of the transaction detail, a transaction number is generated in the system,*

*which is written on the face of the bank voucher side of the pay-in-slip. The bank voucher is then forwarded to the verifying officer, who is posting officer of the voucher. On the receipt of the bank voucher, the Assistant Manager enters the transaction number in the finacle system through the menu TM. The details mentioned on the bank voucher are then verified by the officer with the details entered in the system and after verification, the officer posts the transaction in the system and put his initials/cross on the face of the bank voucher. After this, the bank voucher is kept in the voucher bucket and later shifted to record room of the bank date-wise.”*

7.155 It will be worthwhile to mention at this stage, as was consistently deposed by prosecution witnesses, only the bank vouchers were sent to the back office and the cash was retained by the Cashier. This retaining of the cash by the Cashier i.e. accused Shubham Yadav provided him the opportunity to change the denomination of the cash i.e. replace the legal tender with the SBNs.

7.156 Coming back to the deposition of PW10, PW10 admitted that in respect of bank voucher Ex. PW5/B, the entry was made in the Finacle system by Ankit Pandey (PW20) & posted by him through his ID i.e. JP058166, similarly in respect of bank voucher Ex. PW7/A he proved that the entry was made by Ms. Pooja Verma (PW23) & posted by him and he duly identified the other entries & postings on the Finacle system by the other officers of the bank in respect of the vouchers in question. His testimony coupled with the testimony of other prosecution witnesses, which has been discussed herein below, leaves no doubt that it was on the basis of forged bank vouchers that the entry was made in the Finacle system regarding the

amount deposited by the customers which ultimately got reflected in their statement of account.

7.157 No doubt during his cross-examination he stated “*At the time when I used to verify the amount with the pay-in-slip, I never used to check/verify the denomination of the notes which was deposited by the customers. I do not remember whether the OHDTM menu which was being used during the demonetization period for making entries of the cash deposited with the bank also used to capture the high denomination notes (SBN) or not.*”, however, as discussed above the cash was retained by the Cashier and thus there was no occasion for PW10 or the other officers making entries & postings in the Finacle system to verify the denomination of the currency notes by the customers.

7.158 As regards PW10’s statement regarding the OHDTM menu it is to be seen that PW10 was merely the posting officer and not the entry officer in the Finacle system. During his examination in chief, as was also stated by him in his statement Ex. PW10/A1, PW10 deposed as under:-

*“During the period of demonetization, the same was done through OHDTM menu in the finacle system. Upon entry of the transaction detail, a transaction number is generated in the system, which is written on the face of the bank voucher side of the pay-in-slip. The bank voucher is then forwarded to the verifying officer, who is posting officer of the voucher. On the receipt of the bank voucher, the verifying officer enters the transaction number in the finacle system through the menu TM or HCASHDEP. The details mentioned on the bank voucher are then verified by the officer with the details entered in the system and after verification, the officer posts the transaction in the system and put his initials on the face of the bank voucher. After*

*this, the bank voucher is kept in the voucher bucket and later shifted to record room of the bank date-wise.”*

7.159 The entry, as stated by PW10, was done through OHDTM menu in the Finacle system and upon entry a transaction number is generated which is mentioned on the bank voucher and the bank voucher is then forwarded to the Verifying Officer who is also the posting officer of the voucher. Thereafter, the Verifying Officer enters the transaction number in the Finacle system through menu TM or HCASHDEP. Further during his examination in chief as recorded on 23.05.2025 he had stated “*I had verified the said transaction on the TM (Transaction Maintenance) after verifying the same from the voucher dated 23.11.2016 i.e. Ex. PW7/A*”. Hence PW10 had worked on a different menu on the Finacle system and not the OHDTM menu as was also stated by him during his cross-examination when he stated that he had never worked on the OHDTM menu during the period of demonetization nor he had seen the said menu and accordingly he cannot say as to what were the details required to be filled in the said menu. He had also stated that at the time of posting he was not checking the details of denomination of currency notes as mentioned in the voucher but was only checking the total amount. Similarly it was stated by PW2 when he stated “*During the demonetization period, the same was done through OHDTM Menu in Finacle. Upon entry of the transaction detail, a transaction number is generated in the system. This transaction number is written on the face of the bank voucher. The bank voucher is then forwarded to the verifying officer, who is posting officer of the voucher. On the receipt of the bank*

*voucher, the verifying officer enters the transaction number in the Finacle system through the menu TM or HCASHDEP'. Hence, there were two menus in the Finacle System one for the entering officer and the other for the verifying/posting officer.*

7.160 PW17 Ms. Nisha Gupta while identifying the initials as well as the numerals/Rs. on the customer counterfoil and the bank vouchers being in the writing of Shubham Yadav also identified the relevant entries for the above deposits in the scroll register to be in his handwriting. She further proved that Ex. PW17/A1 (colly) are the screenshots of the transactions done during the period of demonetization and also proved the various entries & postings done by Sh. Ankit Pandey (PW20) and Ms. Pooja Verma (PW23) as well as the postings done by her in the Finacle system using the OHDTM menu on the basis of the forged vouchers in question. These screenshots were seized during the investigation vide production-cum-seizure memo dated 05.03.2018 i.e. Ex. PW17/A2 (colly). Ex. PW17/A1 (colly) proves that different IDs were allotted to bank officials for entering and posting transaction details in the Finacle system i.e. PV105322 to Pooja Verma (PW23), NM107492 to Nisha Meena @ Nisha Gupta (PW17), AP088828 to Ankit Pandey (PW20) and JP058166 to Joginder Pal (PW10). Her testimony further corroborates the prosecution case that it was on the basis of forged vouchers sent to the back office that the entries & postings in the Finacle system was done.

7.161 During the course of arguments Ld. Defence Counsel while pointing towards screenshots Ex. PW17/A1 (colly) argued that these screenshots are manipulated documents and the entries as reflected in them are not in consonance with the alleged forged bank vouchers. It was argued that during her cross-examination, PW17 stated that in the OHDTM menu they used to record the number of SBNs of Rs. 500/- and Rs. 1000/- as deposited by the customers while the legal tender deposited by them was entered in the TM menu separately. Furthermore, initially if the customer deposited mixed amount of legal tender & SBNs, then both were segregated and the legal tender notes were entered in TM menu while the SBNs were entered in OHDTM menu, however, subsequently certain changes were brought in by the RBI and only OHDTM menu was used which took care of both SBNs and legal tender. It was argued that in none of the screenshots Ex. PW17/A1 (colly) the number of SBNs i.e. of Rs. 500/- and Rs. 1000/- deposited by the customers have been mentioned and he further argued that why the same has not been mentioned could not be explained by the prosecution witnesses including PW17 who stated that she cannot tell after going through Ex. PW17/A1 (colly) as to whether the amount deposited in the accounts were through SBNs or legal tender. It was also argued that though allegedly SBNs were shown to have been deposited in the account of Dhaneshwar Trading on 28.11.2016 vide Ex. PW12/B, however, in the screen-shot Ex. PW17/A1 (colly) against the transaction particulars it is mentioned “BY CASH” & not “OHDEP” and PW17 admitted that as OHDEP is not mentioned she can say that

the amount has been deposited by way of legal tender, which is contrary to the prosecution case. Similarly is the case in respect of deposits in the accounts of M/s Kaka Kohli in respect of transaction dated 18.11.2016 & 28.11.2016 as allegedly SBNs were shown to have been deposited vide Ex. PW6/H & Ex. PW6/F, however, Ex. PW17/A1 reflects the transaction particulars “BY CASH”. It was argued that PW17 during her cross-examination admitted that as “OHDEP” is not written and “BY CASH” is written, she cannot say that the amount has been deposited by legal tender for the said transactions and in fact she admitted that the significance of “BY CASH” is that amount was deposited by way of legal tender. It was argued that these discrepancies not only create doubt upon the prosecution case but also prove that the entries in the Finacle system were not made on the basis of the alleged forged bank vouchers.

7.162 As far as PW17’s statement that after going through Ex. PW17/A1, in respect of the 5 entries posted by her using OHDTM menu, on the basis of the corresponding vouchers she cannot say whether the amount which have been deposited in the account were through SBNs or legal tender is concerned, it is to be seen that as per Ex. PW17/A1, PW17 being the Verifying Officer had posted the details of transactions on the Finacle system in respect of transactions dated 28.11.2016 for a sum of Rs. 5,50,000/- in the account of Dhaneshwar Trading (on the basis of voucher Ex. PW12/B), dated 29.11.2016 for a sum of Rs. 2,00,000/- in the account of Ram Sewak Yadav (on the basis of voucher Ex. PW5/D), dated 28.11.2026 for a sum of Rs.

6,50,000/- in the account of Kaka Kohli & sons (on the basis of voucher Ex. PW6/F), dated 29.11.2026 for a sum of Rs. 3,50,000/- in the account of Kaka Kohli & sons (on the basis of voucher Ex. PW6/E) and dated 18.11.2016 for a sum of Rs. 1,50,000/- in the account of Kaka Kohli & sons (on the basis of voucher Ex. PW6/H). In 3 of the said transactions, the word “BY CASH” appears against the transaction particulars, whereas in the remaining 2 the word “OHDDEP” is mentioned. Hence as per annexure Ex. PW17/A1 atleast for 2 transactions (Rs. 2,00,000/- in the account of Rem Sewak Yadav and Rs. 1,50,000/- in the account of Kaka Kohli & sons) what was deposited was SBNs and not legal tender and it has been discussed above that the customers had deposited legal tenders and not SBNs and therefore the entries made at the back office on the basis of forged bank vouchers did reflect, in the statement of account of the customers, that SBNs were deposited.

7.163 As far as remaining 3 transactions are concerned, their corresponding bank vouchers leaves no doubt that what was shown to have been deposited, by the customers, through the said forged vouchers is/was SBNs and not legal tender and though as per the genuine counterfoil only the legal tender was deposited. As stated by PW17 she had posted those details on the Finacle system after verifying the same from the corresponding bank vouchers. It is also to be seen that for the above transactions PW17 was the Posting Officer/the Verifying Officer and not the entering Officer or the officer who entered/created the said details in the Finacle system. As explained by PW17, PW20 &

PW23, once the details were entered into the Finacle system, transaction ID was generated which was written on the bank voucher and thereafter it was sent to the Verification Officer for posting. For the above postings by PW17, the entering Officer who created the entry, generated the transaction ID were Ms. Pooja Verma (PW23) and Sh. Ankit Pandey (PW20). This explains why in the screen-shots Ex. PW17/A1, the number or the denominations of the SBNs does not appear. At this stage it will be worthwhile to point out the statement made by PW10 during his cross-examination when he stated “*The details of the currency notes deposited i.e. the fund details were visible only at the time of entry and at the time of posting, the details were not visible*”. This also explains why Ex. PW17/A1 (colly) and Ex. PW24/A (colly) do not reflect the denomination of the currency notes so deposited or why after going through the same it cannot be told, was not possible for the prosecution witnesses to state as to whether the amount deposited was the legal tender or SBNs. In fact PW4 Ms. Surbhi Singh had also stated “*Vol. At a later stage it is not possible to say it that how much amount is deposited in legal tender or SBNs by looking at the transactions*”, which statement was made by her with respect to whether the officers who had posted & verified the entries in the Finacle system using OHDTM menu as to whether they can specify as to how many SBNs were deposited by a particular customer.

7.164            Though Ld. Defence Counsel laid much emphasis on Ex. PW3/D1 which is the circular of Bank of Baroda dated 14.11.2016 and the annexure of the screen-shot of the OHDTM

menu, which screen-shot contains the column “No. of 500 Rs.”, “No. of 1000 Rs.”, “Other Amount in Rs.” which column do not appear in screen-shot Ex. PW17/A1 (colly), however, it is to be seen that the screen-shots part of Ex. PW3/D1 are not the screen-shots of the complete OHDTM menu. The said menu, entering details in the said menu was a step wise process and the screens kept on changing on each step. Same becomes evident from the fact that below every screen-shot, part of Ex. PW3/D1, there are instructions to enter different keys of the keyboard i.e. “Enter account number and press F4”, “Check details and enter Y to confirm by pressing F4”. It is a matter of common knowledge that every time one enters any command on the keyboard the computer screen/page automatically refreshes and a new page/screen appears. Thus Ex. PW3/D1 is/was probably the first step which was to be done by the Officer entering/creating the details and generating the transaction ID and Ex. PW17/A1 are the screenshots of the screen capturing the details post entry i.e. at the time of verifying/posting and this is why it contains the details including the code of creating/entering officer, the date & time as well as the code, date & time of the posting officer. At this stage, it will be apposite to go through the statement made by PW17 during her cross-examination which clears the ambiguity about the difference in the screenshots as pointed out by Ld. Defence Counsel. The relevant portion read as under:-

*“Ans: There was a menu in which the enterer used to mention the denomination in the Finacle System whether it is Rs. 1000/- or Rs. 100/- or Rs. 50/- or Rs. 500/- etc. currency notes.....*

*I do not remember as to how columns were there in the Finacle System Screen of which the screenshots as above were taken. It is correct that it was my duty to verify the*

*denomination of the currency notes at the time of posting in the Finacle System. It was not my duty to enter the details of the denomination of the currency notes at the time of posting in the Finacle System. It was the duty of the person who entered the details in the Finacle System to enter the details of the denomination of the currency notes and in this case, it was Ms. Pooja Verma. It is not necessary that when the screenshot of the Finacle System is obtained then the details of the denomination of the currency notes as entered would be visible in the screenshot because it will not appear at the time when the screenshot is taken because the system does not show it.”*


7.165 Similarly was stated by PW10 as discussed above and PW20 Sh. Ankit Pandey also explained the same when he stated, during his cross-examination, as under:-

*“(Vol. While entering the details in the transaction, the said column might be there i.e. the denomination as well as number of currency notes is entered/reflected, however, what Ex. PW17/A1 (colly) & Ex. PW24/A (colly) are the final transaction details/screen after the verification of the details which would not contain the denomination or the number of the currency notes).....While entering the details of the transaction, the details as regards the number of currency notes and their denomination would be there but after verification, the said details would not be there as far as I recall.....The duty of the persons entering the details of the transaction was to punch the details of the voucher in the system i.e. the amount, the denomination etc. after that a number would be generated i.e. the transaction ID, the said number would then be put on the voucher and it will be given to the person verifying/posting the details of the transaction.”*

7.166 The above statements duly explains as to why after going through Ex. PW17/A1 (colly) & Ex. PW24/A (colly) the denomination of the currency notes cannot be told nor it can be clearly ascertained whether the amount deposited was SBNs or legal tender. It stands proved that during the period of demonetization the OHDTM menu was used and the said menu

was used in the Finacle system. This new menu was introduced for capturing cash deposits transactions of high denomination (OHD) notes for online submission of data to RBI. The said menu was introduced considering the difficulty faced by the banks/branches as well as to avoid duplication of work, nonetheless, it being a new menu there were difficulties in its use, operation. Same also appears from Ex. PW3/D1 whose image is reproduced hereunder:-

*Circular for entry of Cash* D-10/2

 **बैंक ऑफ बड़ोदा**  
**Bank of Baroda**

HO:BR:108:165 Date: 14.11.2016

OPERATIONS & SERVICES DEPARTMENT  
HEAD OFFICE, BARODA  
Tel: 0265-2307815 Email: [operations.ho@bankofbaroda.com](mailto:operations.ho@bankofbaroda.com)

CIRCULAR TO ALL BRANCHES / OFFICES IN INDIA S/c file: Gen-1

Dear Sir / Madam,

**Re: Introduction of New Menu "OHDTM" for capturing cash deposit transactions of high denominations (OHD) notes for online submission of data to RBI.**

Looking to the difficulties faced by the branches and in order to avoid duplication of work, our Data Centre has developed new menu "OHDTM" to capture transactions pertaining to deposit of cash in accounts, and detection of fake /counterfeit notes of Rs.500/- and Rs.1000/- denominations.

**A. For capturing Cash Transactions in accounts :**

1. Through OHDTM menu cash transactions will be created as well as details of OHD Notes tendered for deposit will also be recorded.
2. For transactions created using OHDTM there is no need to invoke EXCG menu to capture the OHD Notes details as the same is already captured in OHDTM menu.
3. Through certain menus, transactions are created without invoking TM menu for example - HOPNACCT, HLASPAY, DDMI etc. For such transactions users should not invoke OHDTM since it will result in create one more transaction resulting in duplicate credits. For such transactions, the OHD details can be recorded using the Account Deposit option of EXCG menu. For recording such entries the users will have to enter the account number and select the tran ID from the drop down list of transactions for the account. In the same manner if an user has created cash transaction using existing TM or HCASHDEP menu instead of OHDTM, they have to use the EXCG menu to capture the OHD notes details.
4. Transactions entered through menu OHDTM will remain in "E" status which are required to be verified.


**B. For Exchange Transactions:**

Individual Entries pertaining to exchange are required to be entered through EXCG menu as advised earlier.

Branches are advised to enter data for the period from 10.11.2016 to 12.11.2016 through EXCG menu so that system can check /validate for exchange transactions.

All Zonal Offices are requested to confirm to Currency Chest Department, Head Office, Baroda Phone No. 0265-2307855 that all their branches have entered the data in the menu since 10.11.2016 and on daily basis thereafter.

*Ex. PW 3 / D1*  
*Special Subject*  
*25/11/19*

 **बैंक ऑफ बड़ोदा**  
**Bank of Baroda**

For any queries regarding menu, please contact Data Centre on phone no. 022-66983055 and email id- [cbis.domsupport@bankofbaroda.com](mailto:cbis.domsupport@bankofbaroda.com)

We attach herewith Job Card received from Data Centre. Branches are advised to go through the jobcard carefully and do the needful for meticulous compliance of the above.

Yours faithfully,  
Sd/-  
(K.R.Kanojia)  
General Manager  
(Operations & Services)

7.167 PW20 during his cross-examination regarding the said menu stated as under:-

*“The menu in the finacle system which was being used during the demonetization period by the bank was OHDTM. In the said menu we used to record the number of SBN of 500 and 1000 deposited by the customer in his account. The legal tender which was deposited by the customer used to be entered in TM menu separately. If the customer deposited mixed amount of legal tender along with SBN then both were segregated and legal tender notes were entered in TM menu whereas SBN were entered in OHDTM, which was the initial position but subsequently certain changes were brought in by the RBI and only OHDTM menu was used which took care of both the SBN and legal tender. As far as I remember the meaning of OHD was Old High Denomination.*

*The new OHDTM Menu came into operation after 14.11.2016.*

7.168 The introduction of this new menu, the enormous workload on the bank officials during demonetization, the confusion which was being created as was also observed in Ex. PW3/D1 not only explains the inconsistency in the statement of account Ex. PW3/D4, Ex. PW3/D5, Ex. PW3/D6, Ex. PW3/D7 etc. but also explains the minor inconsistencies appearing in the statement of bank officials regarding the terms OHD, OHDDEP etc. It is also to be noted that as per screen-shots Ex. PW17/A1 (colly), except for the screen shots at page no. 1, 7 & 8, SBNs were deposited in the accounts of the customers/account holders. These entries in the system as discussed above were made on the basis of forged vouchers sent to the back office by the accused. Hence, except for three screen shots, the remaining screen shots reflect deposit of SBNs in terms of the prosecution story.

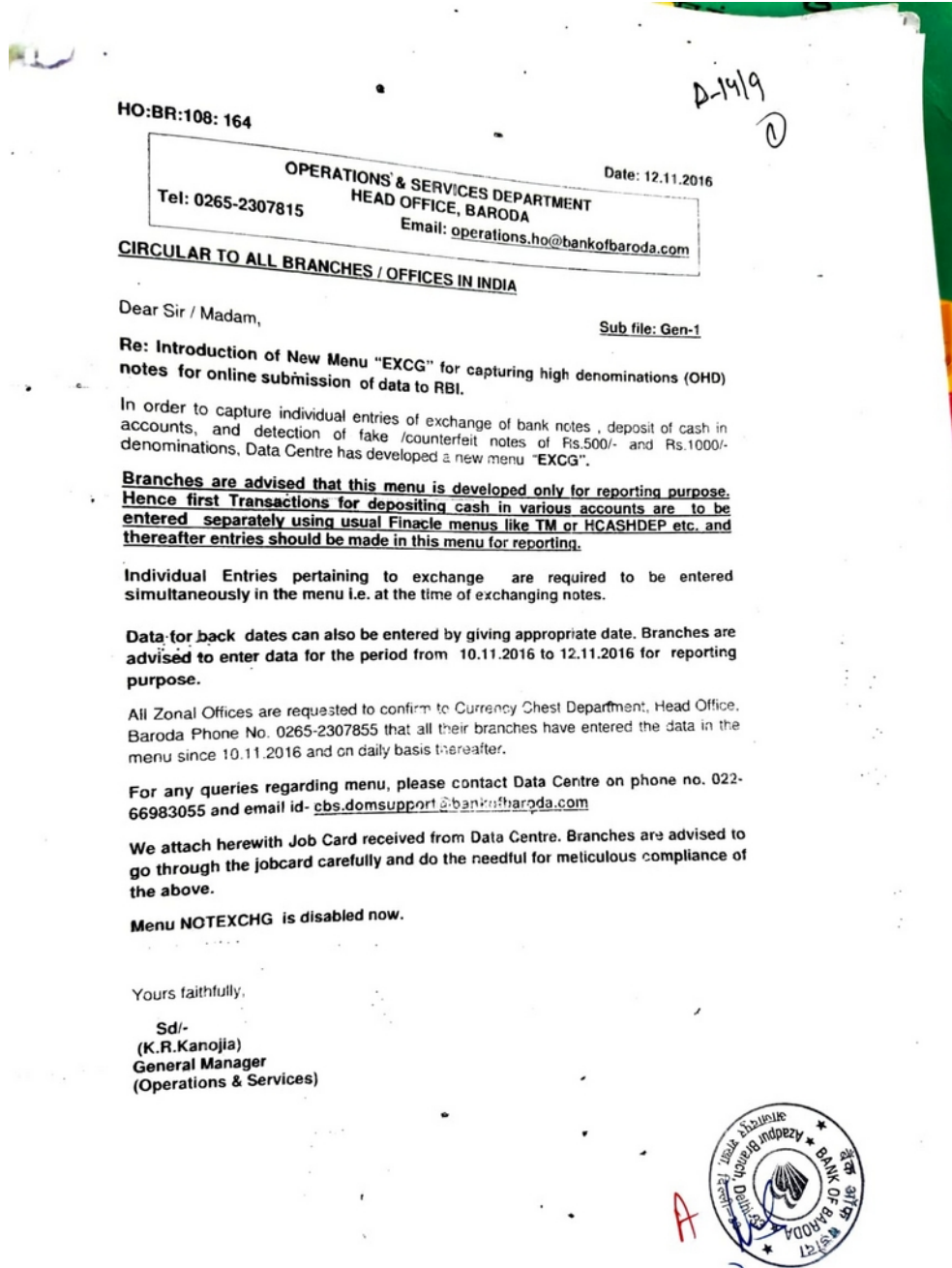
7.169 Also for these screen shots at page no. 1, 7 & 8, the entering officer was the same i.e. Ms. Pooja Verma and the date of transaction is 28.11.2016 & 29.11.2016. Error being committed by her while making the entry cannot be completely ruled out. However, no doubt remains that the entry in the system was made on the basis of the forged bank vouchers only. As far as screen-shot on page no. 1 of Ex. PW17/A1 (colly) is concerned, the corresponding bank voucher is Ex. PW12/B. The number 6309 as is mentioned in the pieces column of the said voucher, which number also appears in the reference number (Ref. No.) of the screen shot Ex. PW17/A1 (colly). Similarly, for screen-shot at page no. 7, the corresponding voucher is Ex. PW6/F. On the said voucher, a number appears i.e. 7200 which number also finds mention in the screen shot in the “Ref. No. 1”. Furthermore, the corresponding voucher for screen shot at page no. 8 is Ex. PW6/E. Again, in the pieces column of the said voucher at the bottom number “884” is mentioned which is again mentioned in the screen-shot in the “Ref. No. 1”. This further leaves no doubt that the entry was made in the Finacle System on the basis of these forged vouchers only.

7.170 As far as the word “EXCG” appearing on these vouchers is concerned, not only no clarification was sought regarding the said word, during the cross-examination of any of the prosecution witnesses, but again the said word which appears under the transaction ID number is of no consequence whatsoever as it is not the prosecution case that mentioning of the said word also amounted to forgery of the bank vouchers. The

prosecution is not concerned with the said word whatsoever. Also there is no doubt that the bank vouchers in question pertained to deposits only and not exchange. As explained by PW2 “ *When a customer visits the branch for exchanging the notes, he has to carry a copy of valid ID proof document alongwith original ID proof. There was a separate counter opened for exchange of SBN notes. In this counter the customer is required to fill a form meant for exchange of notes and submits the same alongwith the copy of the ID proof and SBN notes he wishes to exchange. The form contains the details of the customers and the SBN notes to be exchanged. After obtaining the same, the officer verifies the details of the customer contained in the form from the original ID and then exchanges the notes*”, hence for exchange of notes/SBNs a form had to be filled at the bank. These bank vouchers could not be used for exchange of SBNs but only for the deposits in the account.

7.171 As already discussed above, the demonetization period was a new challenge not only to the public at large but also to the bank employees. Numbers of circulars were being issued by the banks and new menus were created everyday to streamline the functioning of the bank. Creation of new menus, their use would have surely been confusing for the bank employees and it would not have been easy for them to be well acquainted with their use immediately and therefore there were bound to be errors/mistakes. But these were not malafide. Before Ex. PW3/D1, as has been reproduced above, another circular was issued by Bank of Baroda i.e. circular dated 12.11.2016 which is

on record as Ex. PW17/A2 (colly) {also Ex. PW3/A (colly)} for capturing the SBNs/OHDs. The image of said circular is reproduced hereunder:-



7.172 The purpose of Ex. PW3/D1 and Ex. PW3/A (colly) was only for reporting purposes, for submission of data to RBI and as discussed above error being committed cannot be completely ruled out as well as these entries & postings, updating data were subsequent events and the offence by the accused was complete the moment he forged the vouchers and replaced the legal tender with SBNs. Accused cannot derive benefit of any error in these data or statement of account as it would amount to seeking benefit of his own wrongdoings, moreso when the vouchers he forged/got forged formed the basis of these entries.

7.173 Though Ld. Defence Counsel pointed out that PW20 during his cross-examination stated that he does not know the significance of the word OHDEP or OHD, however, it is to be seen that during his earlier cross-examination he had stated that the meaning of OHD is old high denomination. Further he stated that *“If the SBN is deposited then in the remarks column, it will be written as “OHDDEP”. If SBN alongwith legal tender is deposited, then also it will reflect in the remarks column as “OHDDEP”.....Data pertaining to deposit of SBN in the particular account was used to be entered in the OHDTM Menu.”* Though no doubt he also stated that *“I will not be able to say from the screenshots from page No. 1 to 9 of Ex. PW17/A1-colly as to how much SBNs were deposited in the particular account wherein it is mentioned in the remarks column OHDDEP”,* however, it has already been discussed above, as was explained by PW20, that why it would not be possible to tell as to how

much SBNs were deposited, merely by looking at the screenshots.

7.174 Ld. Defence Counsel also pointed out that during his cross-examination dated 17.01.2020, PW20 stated that he cannot identify the handwriting of accused Shubham Yadav, however, in my considered opinion either there is typographical error in the said statement “*I cannot identify the handwriting of Shubham Yadav*” or merely on account inadvertence PW20 had so stated. Reason being that during his examination in chief, he had duly identified the initials, handwriting of accused Shubham Yadav not only on the counterfoils and bank vouchers but even in the scroll register. Also on that day i.e. 17.01.2020, he categorically denied the suggestion that he had wrongly identified the initials and writing of Shubham Yadav during his examination in chief. On that day he also reiterated that the scroll register Ex. PW8/A (colly) was used by Shubham Yadav and also stated that the said register contains the details of the SBNs as well as legal tenders received by the Cashiers during the period of demonetization. He also stated that the said register was used for maintaining the record of cash transaction, which statements further proves that accused Shubham Yadav was using the said register only and no other register. Furthermore, it has also been discussed that the accused could not prove that if not Ex. PW8/A (colly) which other register was used by him for maintaining record regarding cash deposited with him.

7.175 It is to be noted that in screen-shots Ex. PW17/A1 the transaction ID was missing. The transaction ID i.e. transaction number was generated at the time of entry of the transaction detail in the Finacle system as was duly proved by the prosecution witnesses. Why the transaction ID was missing on Ex. PW17/A1 was on account of the fact that when the screenshots were obtained, due to scrolling of page the transaction ID/column got shifted on the screen. Therefore to prove that the screen-shots Ex. PW17/A1 were the screen-shots of the Finacle system reflecting transaction details, based upon forged vouchers in question, prosecution placed on record additional screen-shots i.e. Ex. PW24/A (colly). The only difference between the two screen-shots is that in Ex. PW17/A1 the transaction ID does not appear though the same appears on Ex. PW24/A (colly) and a bare glance at the screen-shots proves that it was solely on account of scrolling of the screen and for no other reason that the transaction ID could not be captured in the screenshots Ex. PW17/A1. The position of the bar/scroll bar in the two screenshots is at different places sufficiently proving that it was on account of moving the scroll bar, shifting the screen up & down that the transaction ID could not captured in Ex. PW17/A1 but the same was duly captured in Ex. PW24/A (colly). Rest both these screen-shots/documents bear the same date, punch time, amount, account number and the unique code of the entering and posting/verifying officer as was duly proved by PW17, PW20, PW23 etc. These details appearing in the screen-shots especially the date and punch time itself rules out any fabrication or manipulation in the same.

7.176 No doubt in Ex. PW17/A1 (colly) the code of person verifying the transaction is visible, however, same is not visible in Ex. PW24/A (colly) but again the same is on account of scrolling of screen. To capture the transaction ID/number the scroll bar being moved up, the page having been shifted the column regarding the verifying officer got shifted and could not be captured in screen-shots Ex. PW24/A (colly). The relevant deposition of PW20 in this regard is reproduced here under:-

*“At this stage, witness is shown already Ex. PW17/A1 (colly.) and attention of the witness is drawn towards page no. 2 (which is running page 3 of Ex. PW17/A1 (colly.) and Ex. PW24/A (colly.) and specific attention of the witness is drawn towards page no. 3 of Ex. PW24/A (colly.). After going through the same, the witness states that the transaction ID related to the amount for Rs. 2 lakhs as is given in both the documents shown for account ID 21420200000326, as is shown in Ex. PW24/A (colly.) (page 3 at point D) is 001574609. The aforesaid two documents are one and the same, and relates to one particular transaction details of Rs. 2 lakhs. I say that both the documents are same on the basis of account number, the amount, the punch time of being entered by Ms. Pooja Verma having ID PV105322, the punch time of being posted by me having unique ID AP088828, and the transaction particulars which is unique for every transaction.*

*The reason why transaction ID mentioned at point D is missing in Ex. PW17/A1 (colly.) though it is reflected in Ex. PW24/A (colly) is on account of the fact that the page might have been scrolled down at the time when the screenshot was taken. The different position of the scroll bar is visible from portion X of both the documents i.e. Ex. PW17/A1 (colly) (which is running page 3) & Ex. PW24/A (colly) (which is page no. 3) and further for the same reason only, the word “verified by AP088828” is appearing in Ex. PW17/A1 (colly.) (page no. 3) but missing in Ex. PW24/A (colly) (page no. 3), however, I had verified the particular transaction by myself”.*

7.177 Prosecution also proved Ex. PW24/A (colly) to connect the forged bank vouchers with the transaction details as entered in the Finacle system. As discussed above, the entry, posting/verification in the accounts of customers was done in the Finacle system on the basis of these forged vouchers. As consistently proved by PW17, PW20, PW23, PW24 etc. the transaction ID/number was generated at the time of entry of transaction details in the Finacle system and this number was mentioned on the forged vouchers in question. The transaction IDs/numbers are duly mentioned on each of the forged bank vouchers in question squarely proving that it was on the basis of these forged vouchers that the transaction details were entered in the Finacle system in the back office of Bank of Baroda, Azadpur Branch where these vouchers were sent/forwarded by accused Shubham Yadav for entering and posting these details.

7.178 It was also argued by Ld. Defence Counsel that it is strange that PW17 identified accused Shubham Yadav's writing, in scroll register Ex. PW8/A (colly) though he had worked for a much lesser period in the bank but she claimed that she cannot identify the handwriting of other Cashier Sh. Madan with whom she had worked for about 1 & ½ years or of Mrs. Sodhi, who was also a Cashier despite having worked with her for 2/ 2 ½ years, in the said bank. This despite the fact that she claimed that the said register was maintained by both Shubham Yadav and Madan apart from Sonu. Also though during her examination in chief she identified Shubham Yadav's entry in the said register, however, during her cross-examination she stated that she had not seen the

said register in the bank and further stated that merely because Shubham was working as Cashier in the bank, she assumed that Ex. PW8/A (colly) was being used by him. Also during her cross-examination she stated that she cannot today i.e. when the cross-examination was recorded, identify the handwriting of accused Shubham Yadav. It was argued by Ld. Defence Counsel that PW17 falsely identified the writings & initials of Shubham Yadav on the counterfoils and bank vouchers in question as well as the scroll register, solely at the behest of CBI.

7.179 As far as these arguments are concerned, I find no merits in the same. It is not only PW17 who had identified the initials of accused Shubham Yadav on the counterfoils and bank vouchers but the same have been/were duly identified by number of witnesses including bank officials who had worked with accused Shubham Yadav and the bank customers/independent witnesses who had deposited the money with him, in his capacity as Cashier which has already been discussed above in detail. The CFSL result, as has also been discussed above, further connects accused Shubham Yadav with the forged bank vouchers in question. Hence there is more than sufficient evidence connecting the accused with the customers counterfoils and the forged bank vouchers.

7.180 As far as scroll register Ex. PW8/A is concerned, the relevant entries at Sl. No. 48, 47, 164, 9, 94, 193, 194, 71 in respect of deposits in question being in the writing of accused Shubham Yadav were not only identified by PW17 but also by

PW20. It makes no difference that during her cross-examination PW17 stated that she now cannot identify the handwriting of accused Shubham as after such huge passage of time, she was not expected to remember the handwriting of her former colleague. Furthermore she had stated that she was in a position to identify his writing while she was working with him and that is why she had identified his writing during the course of investigation. Her failure to identify Mrs. Sodhi's handwriting is of no consequence as none of Mrs. Sodhi's writings/entries are in question. It has also to be kept in mind that her identifying accused's handwriting and not Mrs. Sodhi's was on account of the fact that she had participated in the investigation of the present matter and was shown the handwriting of the accused. Having participated in the investigation and shown the accused's writing, for the purpose of identification, in addition to the fact that she had worked with him was enough for her to identify his writing.

7.181 At this stage it will be worthwhile to point out that it is not in dispute that the accused was working as Cashier in the bank. PW18 Ms. Kusum Dimri proved the appointment letter and posting order of accused Shubham Yadav as Ex.PW18/A1 (colly) whereby he was appointed & posted as Single Window Operator 'A' (SWO-A) and his duty was to receive and pay cash. It stands duly proved on record that on the day when the amounts were deposited by the customers in the bank, for which deposits the accused forged the bank vouchers to reflect deposit of SBNs, the accused was working as Cashier in the bank. Ex. PW20/A which is the copy of the attendance register/Register of Employment

and Remuneration proves his presence in the bank and that he performed the duty as the bank's cashier on the days of deposits. Most importantly, the testimony of PW5, PW6, PW7, PW11 etc. squarely proves that on the days of deposits, the amount was deposited with accused Shubham Yadav only and no one else. Having accepted the amount, the accused made the relevant entries in the scroll register Ex. PW8/A. These entries as proved by PW20 were made by the Cashier, at the time of accepting the cash, to facilitate the balancing of cash later on. PW20 duly identified all the relevant entries in the scroll register Ex. PW8/A i.e. entry no. 48, 47, 164, 9, 94, 193, 194, 71 to be in the handwriting of accused Shubham Yadav.

7.182 Most importantly, if not Ex. PW8/A then which scroll register was maintained/used by accused Shubham Yadav could not be explained by him. Being the Cashier, accepting the cash he obviously would have been maintaining a register to keep a record of the cash deposited with him and if it was not Ex. PW8/A and there was any other register then it was for the accused to prove the same. He could have done the same in a number of ways, one being by seeking production of said register. If there was any such register apart from Ex. PW8/A then the same should have definitely been there in the bank and the accused would have sought its production to belie the prosecution case. Having not done so and considering the evidence in its entirety I have absolutely no doubt that Ex. PW8/A was maintained by the accused and he had made the relevant entries in respect of the deposits in question. It makes no

difference that the said register might have been used by the other Cashiers as what the court has to see is that on the day of deposit, he had accepted the cash as was duly proved by the bank customers and therefore the relevant entries in the register were and could have been made by him only and no other cashier.

7.183 Merely because PW23 Ms. Pooja Verma failed to identify the initials, writing of accused Shubham Yadav on the forged bank vouchers in question as well as on the scroll register Ex. PW8/A (colly) is immaterial as it is the quality and not the quantity of evidence that matters. A fact can be proved by the testimony of a sole witness, if his/her testimony inspires confidence and there is no requirement of any further corroboration. When the evidence is evaluated as a whole, no doubt remains that the entries in question were made by the accused only. Nonetheless PW23 failed to identify the writing in the scroll register as that of accused Shubham Yadav solely on account of passage of time which is natural and understandable, given the immense time gap when the entries were made and the deposition of the witness was recorded, which was around 6 years. Also she did state during her examination in chief that she had identified the handwriting & signatures of accused Shubham Yadav, at the time when inquiry in the bank was conducted by the CBI, as she had seen him signing & writing during the official course of duties.

7.184 Corroborating the testimony of PW17, PW20 Sh. Ankit Pandey proved that the transaction details as appearing in

Ex. PW17/A1 (colly) and Ex. PW24/A (colly) i.e. screen-shots of the Finacle system in respect of account of Gopi Chand and Co. on the basis of voucher Ex. PW21/B were entered by PW23 Ms. Pooja Verma and verified by him. Similarly, he had entered/created the transaction details for Sh. Ram Sewak Yadav which was verified by PW10, on the basis of voucher Ex. PW5/B. He had also verified the transaction details entered by PW23 in the account of Kaka Kohli & sons, on the basis of voucher Ex. PW6/B and also entered transaction details in the account of Kaka Kohli & sons, which was verified by PW17 on the basis of voucher Ex. PW6/H. Though during his cross-examination he stated that he cannot tell after going through Ex. PW17/A1 (colly) whether the amounts which were deposited in the accounts were through SBNs or legal tender, however, it is clearly mentioned in the screen-shot Ex. PW17/A1 (colly) against the transaction particular as “OHDDEP” which as stated by the witness means Old High Denomination. Furthermore he stated that in case of deposit of legal tender “By Cash” will be written in the remarks column and in case of deposit of SBNs, it will be written as “OHDDEP”. Also in case of mix deposit of legal tender and SBNs, the remark column would reflect as “OHDDEP”.

7.185            The transaction ID/numbers are duly mentioned on the vouchers at point X and they were generated at the time of entry of the vouchers in the Finacle system. The screenshots Ex. PW24/A (colly) leaves no doubt that the entries in the Finacle system were made on the basis of forged vouchers in question

and that is why the transaction ID, generated at time of entry is mentioned on the vouchers. Why transaction ID does not appear in Ex. PW17/A1 (colly) but appears in Ex. PW24/A (colly) has already been discussed above at length.

7.186 In addition to PW17 & PW20, PW23 Ms. Pooja Verma while proving that she had entered the transactions in the Finacle system, on the basis of cash vouchers Ex. PW7/A, Ex. PW21/B, Ex. PW12/B, Ex. PW6/E, Ex. PW6/F & Ex. PW6/G i.e. the forged cash vouchers/bank vouchers as were sent to back office by accused Shubham Yadav, identified the transaction IDs/numbers appearing at point X on the said vouchers to be in her handwriting. As proved by her these transaction IDs/numbers appearing at point X were generated at the time when she entered the details in the Finacle system. She further proved that the screen-shots Ex. PW17/A1 (colly) & Ex. PW24/A (colly) are of the transactions entered by her in the Finacle System on the basis of forged vouchers and also explained why the transaction ID is not reflected in screen-shots Ex. PW17/A1 (colly) but is reflected in Ex. PW24/A (colly) when she stated “Probably on account of scrolling of the screen, at the time when the screen shots were taken, due to scrolling of the page, the transaction ID is reflected in one document and not the other as the transaction ID must have got shifted”. Similarly was stated by other prosecution witnesses.

7.187 It makes no difference that PW23 stated that she does not know the full form of “OHD” as it stands sufficiently

proved on record that “OHD” stands for “Old High Denomination”. No doubt PW23 admitted that the cash deposit limit of accused Shubham Yadav was Rs. 10,000/-, however, the said solitary statement made during the cross-examination is not supported by any cogent material on record. Not only no other prosecution witness stated so but also there is no document of the bank which limits acceptance of cash by Cashier/accused Shubham Yadav to only Rs. 10,000/-. There is no such limit in his appointment and posting order i.e. Ex. PW18/A1 (colly) nor the defence could prove any document on record to that effect. Also I fail to understand why would the bank put a limit on its cashier’s power to accept cash from the customers. Furthermore, in the scroll register Ex. PW8/A (colly), the amount which has been accepted by the Cashier, deposited by the customers are mostly in access of Rs. 10,000/- which itself proves that there was no such limit on any cashier including accused Shubham Yadav. It has also been discussed above that accused Shubham yadav failed to prove that if not Ex. PW8/A (colly) then which scroll register he was using.

7.188 Why the description of the denomination of the SBNs is not reflected in screen shot Ex. PW17/A1 (colly) or Ex. PW24/A (colly) has already been dealt with above in detail. Nonetheless, PW23 did state that she used to enter the denomination of the currency notes, as mentioned in the vouchers, in the Finacle System and though she admitted that the denomination is not visible in Ex. PW24/A (colly) but as explained by PW20 & as discussed above Ex. PW17/A1 (colly)

& Ex. PW24/A (colly) are the final transaction details/screen-shots after the verification of the details which would not/did not contain the denomination/currency notes. It would be incorrect to say, as was otherwise argued by defence, that the screen-shots are incomplete because transaction ID is not visible in Ex. PW17/A1 (colly) while in Ex. PW24/A (colly), the column regarding verification is not visible as though both the screen-shots are of the same page but solely on account of scrolling down of the screen, as is evident from the different position of the scroll bar, the screen shot did not capture the entire screen/the portion of the screen which got shifted on account of scrolling. The particulars appearing in both the said screen-shots i.e. the date, time etc. leaves no doubt that both the screen shots are of the same screen of the Finacle System.

7.189 As regards the funds column being vacant in screen shots Ex. PW24/A (colly), PW23 explained that all the columns were not required to be filled; the funds column was not required to be filled mandatorily and only the mandatory columns were filled or else the process would not move forward. At this stage it will be worthwhile to highlight that as stated by PW23 she was not given any training as regards what entries have to be made in the Finacle System regarding the deposit of cash during demonetization which explains the errors/discrepancies in them. It would not have been easy to get accustomed to different menus at such short notice and with such huge rush in the bank, there were bound to be certain errors. Also failure on the part of PW23 to tell as to which column was entered by her and which columns

were automatically generated, after more than 9 years of the incident is inconsequential. A witness cannot be expected to remember those minute details after such a long gap, more so when the system in question was used only during demonetization and not thereafter.

7.190 The primary purpose of proving the bank statements and the screen-shots of the transactions was to prove the deposits of the amount by the customers in their accounts. These documents corroborate the testimony of bank customers and the counterfoils on record. Their might be discrepancy in the statement of account or in the screen-shots as regards the deposit of legal tender or SBNs i.e. BY CASH or OHDDEP but that discrepancy by itself and which discrepancy stands duly explained cannot have the effect of negating the unlawful acts of the accused. Once it stands proved that the customer counterfoils are genuine but the corresponding bank vouchers are forged not only for not being in the handwriting of the customers, bearing different serial numbers as against the counterfoils as well as different denomination, number of currency notes deposited and most importantly both bear the initials of the accused then the prosecution in my considered opinion completely succeeded in discharging its burden. The testimony of the prosecution witnesses including bank officials, bank customers, the testimony of PW19 in particular, sufficiently establishes that the bank vouchers were forged/got forged by the accused.

7.191 The entire chain is complete i.e. (1) initials & numerals of the accused on the original counterfoils, (2) initials & numerals of the accused on the forged vouchers (3) entry in the scroll register and (4) these vouchers being the basis of entry in the Finacle system. There is plethora of evidence against the accused and though it is well settled law that proof beyond reasonable doubt should be adduced in all criminal cases, however, it is not necessary that the same should be perfect. In fact there cannot ever be a perfect proof in any criminal trial. Perfect proof can only exist in ideal situations which hardly exists. Investigation and collection of evidence is a cumbersome process and there are bound to be minor loopholes and lacunas even in the best of the investigation. But if the minor loopholes, contradictions, lacunas do not shake the basic foundation and there is sufficient material/substantive evidence, those loopholes and contradictions can be and rather should be easily ignored or else it will defeat the ends of justice. At this stage, it will be worthwhile to highlight the following observations made in **Inder Singh & Anr vs The State (Delhi Admn.) 1978 AIR 1091:-**

“Credibility of testimony, oral and circumstantial, depends considerably on a judicial evaluation of the totality, not isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect. If a case is proved too perfectly, it is argued that it is artificial; if a case has some flaws, inevitable because human beings are prone to err, it is argued that it is, too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many, guilty men must be callously allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish and guilty man cannot away with it because truth suffers some infirmity when projected through human processes. Judicial quest for perfect proof often accounts for police presentation of fool-proof concoction. Why fake up ? Because the court asks for manufacture to make truth look true ? No, we

must be realistic.

*“We are satisfied that the broad features of the case, the general trend of the testimony and the convincing array of facts which are indisputable, converge to the only conclusion that may be reasonably drawn, namely, that the accused are guilty. Theoretical possibilities may not shake up, fancied weaknesses may not defeat, when verdicts are rested on sure foundations. Stray chances of innocence haunting the corridors of the court cannot topple concurrent findings of guilt.*

*We feel unhappy that, while infirmity in some aspect or other of this prosecution case should not invalidate the culpability which is otherwise, veraciously made out, tragic occurrences like this one.....”*

7.192 It has been held in **Shivaji Sahebrao Bobade & Anr vs State Of Maharashtra 1973 AIR 2622** as under:-

*“Even at this stage we may remind ourselves of a necessary social perspective in criminal cases which suffers from insufficient forensic appreciation. The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and ‘the community,’ demand especial emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs thro’ the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person lightheartedly as a learned author(1) has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicated ‘persons’ and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may*

*lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say', with Viscount Simon, that "a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent. .."-In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing enhance possibilities as good enough to set the delinquent free arid chopping the logic of preponderant probability to, punish marginal innocents."*

7.193 It has been held in **Gurubachan Singh (supra)** as under:-

*"There is a higher standard of proof in criminal cases than in civil cases, but there is no absolute standard in either of the cases. See the observations of Lord Denning in Bater v. Bater, [1950] 2 AER 458 at 459 but the doubt must be of a reasonable man. The standard adopted must be the standard adopted by a prudent man which, of course, may vary from case to case, circumstances to circumstances. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice, according to law.*

7.194 It has been held in **Iqbal Musa Patel (supra)** as under:-

*"It is true that the prosecution is required to establish its case beyond a reasonable doubt, but that does not mean that the degree of proof must be beyond a shadow of doubt. The principle as to what degree of proof is required is stated by Lord Denning in his inimitable style in Miller v. Minister of Pensions (1947) 2 ALL ER 272:*

*"That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt. The law would fail to protect the community if it permitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with*

sentence 'of course, it is possible but not in the least probable,' the case is proved beyond reasonable doubt...

It is true that under our existing jurisprudence in a criminal matter, we have to proceed with presumption of innocence, but at the same time, that presumption is to be judged on the basis of conceptions of a reasonable prudent man. Smelling doubts for the sake of giving benefit of doubt is not the law of the land."

14. Reference may also be made to the decision of this Court in *Sucha Singh & Anr. v. State of Punjab* (2003) 7 SCC 643 where this Court has reiterated the principle in the following words:

".....Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let a hundred guilty escape than punish an innocent. Letting the guilty escape is not doing justice according to law. (See *Gurbachan Singh v. Satpal Singh* AIR 1990 SC 209). Prosecution is not required to meet any and every hypothesis put forward by the accused. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish."

7.195 It has been held in *State of Punjab Vs. Karnail Singh (supra)* as under:-

*"A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties." (Per Viscount Simon in *Stirland v. Director of Public Prosecution* (1944 AC (PC) 315) quoted in *State of U.P. v. Anil Singh* (AIR 1988 SC 1998)."*

7.196 It was also one of the argument of Ld. Defence Counsel that PW23 admitted, during her cross-examination, that it is not mandatory that pay-in-slips should have serial number

and stated that sometimes it is there and sometimes it is not. Furthermore, Ex. PW6/G has no serial number and after looking at the pay-in-slips it cannot be ascertained whether it has been issued for a specific branch of the bank. As far as these arguments are concerned all the bank vouchers and counterfoils, except Ex. PW6/G, have serial numbers on the top. Though being part of a pay-in-slip, if it contains serial number, the bank voucher and the customer counterfoil would have the same serial number, however, in the case at hand, the numbers are different as the bank vouchers were changed and in their place forged bank vouchers were prepared/got prepared and sent to the back office for entry and posting. The presence of the bank stamp and the initials of accused Shubham Yadav on the customer counterfoils proves that they were used in Bank of Baroda, Azadpur Branch for depositing the cash. As already discussed above, it absolutely sans logic that a customer would go to some other bank or some other branch of the bank to get the pay-in-slip and then returned to his bank/branch to deposit the amount in his account. It is a matter of common knowledge that bank pay-in-slips are easily & freely available in all the banks and infact the bank customers at times take pay-in-slips in bunch/bulk with them so as to avoid wasting/spending time in filling them on the day they visit the bank for deposit of cash or for any other purpose. Same also emerges from the deposition of the bank customers which has been discussed above in detail. In fact the amounts deposited in the account of Kaka Kohli & sons were through counterfoils no. 195628 dated 18.11.2016 i.e. Ex. PW6/D, no. 195634 dated 24.11.2016 i.e. Ex. PW6/C, no.

195641 dated 28.11.2016 i.e. Ex. PW6/B and no. 195644 dated 29.11.2016 i.e. Ex. PW6/A. The serial numbers of the counterfoils proves that the pay-in-slips were taken in bulk/bunch and then used to deposit the amounts in the bank account. Hence, the arguments regarding absence of serial number etc. on Ex. PW6/G is inconsequential. Having forged the said voucher subsequently, after the customer counterfoil for the deposit was given to the customer, it was not expected of the accused to remember, at the time of committing forgery whether the customer counterfoil vide which the amount was deposited by the customer and for which deposit he created/forged a bank voucher did contain serial number or not.

7.197 The screenshots of the cash transaction details along with certificate u/s 65B of Indian Evidence Act i.e. Ex. PW24/A (colly) was provided to the CBI by PW24 Sh. Sushant Kumar Ashwani. As already discussed above the difference between screen-shots Ex. PW24/A (colly) & Ex. PW17/A (colly) is solely on account of the movement/shifting of the screen on account of scrolling of the screen/page up & down which is evident from exactly similar details appearing in both set of screen-shots with the difference being only on account of the screen/page being shifted which becomes further evident from the different position of scroll bar in the two screen-shots. There is no difference in the contents of the two screen-shots and the difference is only as regards what is visible in the screen-shots, which difference is only on account of scrolling up & down of the page/screen. This takes care of PW24's statement that the screen-shots are not

complete screen-shots of the screen. The scrolling of the screen/page duly explains the missing columns in the screen-shots Ex. PW24/A (colly).

7.198 During the course of arguments Ld. Defence Counsel vehemently argued that PW24 did not take out the printout of the screenshots Ex. PW24/A (colly) himself and rather according to him it might have been taken out by some staff whose name he failed to disclose. Furthermore he failed to tell the details of computer which was used to take out the printout. It was also argued that designation of the System Administrator is blank on the certificate u/s 65B of the Indian Evidence Act and according to PW24 there was no System Administrator in the bank at the branch level. It was argued that the statements made by PW24 does create doubt upon the genuineness of the screen-shots rendering them unreliable and untrustworthy. However, I find no merits in the said arguments.

7.199 Though during cross-examination PW24 initially stated that the printout/screenshots Ex. PW24/A (colly) might have been taken by the staff but at the same time he also stated that he signed the same after checking them. Nonetheless during his later cross-examination when the user ID appearing on the top of the screen-shots at point B was pointed to him he stated that the said ID belongs to him and as the said ID was used, it was he who had taken the printout. Failure on the part of PW24 to give details of the computer used to take printout is also inconsequential. There was a time gap of more than 2 years since

handing over of these documents to the CBI and his deposition. With such huge time lapse, it was not expected of PW24 to remember such minute details and also quite natural for him to have faltered while making the statement. Nonetheless the minor inconsistencies in his statement do not go to the root of the matter and there is just no doubt that the screen-shots Ex PW24/A (colly) are the genuine screenshots generated from daily transaction Finacle system.

7.200 As stated by PW24 the information provided vide Ex. PW24/A (colly) is not stored in any particular computer but is stored in the Finacle server and being stored on the server the printout could be taken from any computer and as the data lies on the server no question of any manipulation arises. Not only defence could not prove any manipulation or fabrication with Ex. PW24/A (colly) but even otherwise I find no reason why the bank officials would fabricate the record, which otherwise finds due corroboration from the other material on record including the testimony of the prosecution witnesses. As discussed above there is no material difference between these screen-shots and screen-shots Ex. PW17/A1 (colly) which further rules out any manipulation or fabrication in the said screen-shots. Most importantly, neither the bank officials nor the CBI officials had any grudge or enmity against the accused so as to falsely depose against him or fabricate/manipulate the records.

7.201 As far as the System Administrator is concerned, as explained by PW24, there being no System Administrator at the

branch level, the name of the System Administrator is/was left blank on the certificate u/s 65B of Indian Evidence Act. Nonetheless, PW24 whose signatures appear on the said certificate did state/offer to get it signed from System Administrator, who according to him sits at the Regional Office, if required.

7.202 It was also one of the argument of Ld. Defence Counsel that the IO Insp. H.V. Attri/PW22 did not conduct a fair investigation and rather he malafidely implicated the accused in this case in connivance with the bank officials & bank customers. It was argued that the IO, as is evident from his cross-examination was not even aware of the basic facts i.e. was not familiar with the term OHDTM, the procedure adopted by the bank for deposit of SBNs during the demonetization period nor he went through the bank record regarding the deposits and also did not investigate the discrepancy between the vouchers and the statement of accounts.

7.203 As far as these arguments are concerned, the above detailed discussion completely rules out false implication or any connivance or collusion between the IO and the bank officials, customers. The defence could not prove any motive on record which might have weighed with these individuals to falsely implicate the accused. As far as IO's statement about OHDTM menu is concerned, the IO during his cross-examination had stated "*I do not know about OHDTM Menu technically but it is on the FINACLE System of the bank for making entry and*

*posting of the deposits*”. Hence though the IO was not aware about the said menu’s technicalities but he did state that the said menu is on Finacle system. He also stated “*During investigation, bank officials had told me about OHDTM Menu*”.

7.204            Though PW22 had also stated that he had not gone through OHDTM Menu of the Finacle system, however, merely because he did not go through the same is of no consequence. The bank officials have in detail explained about the procedure of deposit of SBNs as well as the entry of the transaction in the Finacle system on the basis of bank voucher. Their consistent testimony, as discussed above, sufficiently establishes that the entry in the Finacle system was made on the basis of forged bank vouchers. His statement regarding the screen-shots i.e. he does not remember if he had taken the screen-shots of the OHDTM Menu or whether screen-shots Ex. PW17/A1 (colly) are of OHDTM Menu has also not dented the prosecution case in any manner as the above discussion sufficiently proves that the screen-shots are of the Finacle system containing OHDTM Menu for capturing deposit of SBNs during the demonetization period.

7.205            As far as PW22’s statements that he had not seen the record maintained by the bank on its computer system regarding the questioned deposits nor had he seen the corresponding entries in the computer system to verify the details of bank vouchers are concerned, suffice would be to say that the relevant bank record stands duly proved on record. The seizure memos of the original customer counterfoils, the forged bank vouchers as well as the

screen-shots of the Finacle system were duly proved during the trial establishes seizure of these documents during the investigation. Undoubtedly the IO should have conducted himself in a more responsible, professional manner as was expected of him, however, merely on account of the statements made by him during his cross-examination no doubt can be casted upon the prosecution case. It is well settled law that latches on the part of the Investigating Officer itself cannot be a ground for acquitting the accused or else if that is the basis, then every criminal case will depend upon the will & design of the Investigating Officer. The courts have to independently deal with the case and should arrive at a just conclusion beyond reasonable doubt based on the evidence on record {*Krishnegowda (supra)*}.

7.206 Some of the terms “OHD deposit”, “Cash deposit”, “HDDEP” as well as working of the Finacle system, OHDTM Menu should have been well known to PW22 being the Investigating Officer of the present case and his answers during cross-examination reflect his irresponsible, lackadaisical approach. The manner in which he deposed during the cross-examination is to say the least highly deplorable. He should have also made efforts to collect the income tax notice and the bank certificates issued to the customers/account holders. This was the bare minimum expected of PW22. Ineffective and indifferent investigation as a result of acts of omission or commission, deliberate or otherwise, by the Investigating Officers is absolutely unacceptable. However, the question to be considered is whether the lapses in the investigation are mere irregularity or

an illegality which would adversely affect the case of the prosecution. What is to be considered is whether such default and/or acts of omission and commission have adversely affected the case of the prosecution and whether such default and acts were deliberate, unintentional or resulted from unavoidable circumstances of a given case. (Dayal Singh vs. State of Uttranchal (2012) 8 SCC 263).

7.207 What the court is required to see is the prosecution evidence in its entirety and weigh whether defective or irresponsible investigation has rendered the said evidence shaky or unreliable. When the investigation is perfunctory it becomes the duty of the court to see if the evidence on record minus the lapses is sufficient to establish the guilt of the accused. Noticing the possibility of investigation being designedly defective it was held in Dhanaj Singh v. State of Punjab (2004) 3 SCC 654 as under:-

*“5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”*

7.208 Dealing with the cases of omission and commission it was held in Paras Yadav v. State of Bihar (1999) 2 SCC 126 as under:-

*“.....that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to*

*find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.”*

7.209 Reliance in this regard may also be placed on the law laid in *Zahira Habibullah Sheikh (5) v. State of Gujarat (2006) 3 SCC 374*, *Gajoo v. State of Uttarakhand (2012) 9 SCC 532*, *Zindar Ali SK vs State of West Bengal Ors. MANU/SC/0141/2009* & *Girwar Singh & Ors. Vs CBI MANU/DE/4551/2015*. In every case of defective investigation, an accused cannot be acquitted, if the reliable evidence produced, dehors the defective investigation, is sufficient to bring home the guilt of the accused beyond all reasonable doubts. In such matters, the accused cannot take advantage of defective investigation unless the defective investigation causes reasonable doubt about the prosecution case. The law is well settled that an accused should not be allowed to go scott free or the prosecution be disbelieved for defective investigation (*Balwant Singh v. State of Haryana, (SC) 1995 A.I.R. (SC) 84* and *Amar Singh Vs. Balwinder Singh 2003 AIR SCW 717*). Every faulty investigation or padding in evidence cannot by itself lead to total demolition of prosecution case if it can otherwise stand ignoring these fallacies. (*Lakshmi v. State of UP (SC) 2002 (4) R.C.R. (Criminal) 82*). Mere faulty investigation cannot be made basis of acquitting the accused when sufficient evidence is available to nail him (*Ram Parshad v. State of Haryana (P & H) (DB) 1992(3) R.C.R (Criminal) 231*), *Zahira Habibulla H. Sheikh v. State of Gujrat (SC) 2004 (4) S.C.C 158* and *State of UP v. Jagdeo (SC) 2003 A.I.R. (SC) 660*).

7.210 It was also argued by Ld. Defence Counsel that though the bank was required to maintain the data with regard to deposit of SBNs in terms of RBI's circular Ex. DW2/A (colly), however, neither the said data was maintained nor any such data was sent to the Reserve Bank of India and it was argued that the same was not done so as to avoid the bank's misdeeds regarding acceptance of SBNs in large quantities through fraudulent transactions coming to fore. As far as this argument is concerned, I find no merits in the same. There is no proof at all and these are mere hollow arguments that the bank customers/accused holders i.e. PW5, PW11 etc. were depositing SBNs in collusion with the bank officials. Merely because no such data was ever maintained or brought on record does not effect the prosecution story in any manner. This court is not concerned with the said data or how much SBNs were deposited with the Bank of Baroda during demonetization period but merely with the fact that for certain deposits, the bank vouchers were forged and the legal tenders were replaced with SBNs fraudulently. Whether the data was maintained or not and whether it was sent to the RBI or not is absolutely immaterial. Most importantly, accused cannot justify the criminal act committed by him or cry foul just because no data regarding SBNs was maintained at the bank or forwarded to RBI. Infact non-maintaining of such data provided the accused an opportunity to give effect to his ill-designs. Nonetheless PW3 had categorically stated as “*The entire data of the SBN deposited by customer during the demonetization period was transmitted to the currency chest by the branch and thereafter the currency chest used to send the said data to the RBI. The said data used to*

*be transmitted on daily basis.....No data of an individual customer used to be transmitted to the currency chest by the branch. Vol. Consolidated data of the SBN deposited on a particular day in the branch used to be transmitted without providing the name of the customer”. Also PW20 Sh. Ankit Pandey regarding the data had stated as “The data used to be sent to the Reserve Bank of India during the period of demonetization regarding deposit of SBNs by the bank collectively. The branch used to sent data to the centralized system of the bank and the same was thereafter transferred to the Reserve Bank of India”.*

7.211 Merely because a circular was issued by the Bank of Baroda i.e. Ex. PW22/D1 specifying a separate and distinct pay-in-slip to be used for deposit of high denomination currency/SBNs but the said circular was not followed by the Bank of Baroda is concerned, suffice would be to say that flouting of the said guidelines or non use of such pay-in-slips, if any, does not lessen the criminality of the accused in any manner. It was merely at best a procedural lapse and it makes no difference that separate or distinct pay-in-slips were not used for deposit of SBNs as the deposit through the counterfoil on record stands duly proved and the accused cannot explain the replacement of the genuine bank vouchers of these counterfoils with forged & fabricated bank vouchers. It is also to be noted that though the circular was issued by Bank of Baroda, however, there is nothing on record to show that any such separate and distinct pay-in-slips were indeed ever printed or used in the bank

during the demonetization period. If there was any such pay-in-slips it was for the accused to prove the same.

### **Sanction**

7.212 As far as the sanction is concerned, the sanction order is on record as Ex. PW1/A as proved by PW1 Sh. Rakesh Kumar Bhatia. The competence of the sanctioning authority/PW1 was not challenged during the trial but what is/was challenged is the grant of sanction. It was argued by Ld. Defence Counsel that the sanction was granted in a routine, mechanical manner and the sanctioning authority did not have the copy of the chargesheet and the other relevant documents which were necessary for perusal by the sanctioning authority for applying its mind, before grant of sanction. As far as this argument is concerned, I find no merits in the same.

7.213 Undoubtedly PW1 did not have the copy of the chargesheet at the time of grant of sanction, however, as categorically stated by him he did have the copy of the investigation report before he granted sanction Ex. PW1/A. Infact there was no occasion for copy of the chargesheet to be with PW1 at that time as the chargesheet is prepared only after the grant of sanction and not before it for the reason that if the sanctioning authority does not accord sanction, chargesheet for prosecution for offences under the PC Act cannot be filed.

7.214 Furthermore, though PW1 stated that he did not go through any other document provided by the CBI, at the time of preparation of the sanction order, except the investigation report, nonetheless he did state that he had gone through several documents provided by the bank. The documents of the bank and the investigation report were more than sufficient documents for PW1, who was posted as General Manager, Zonal Manager, Bank of Baroda, to apply his mind and grant or decline the sanction and there was no need of any other document. Mere failure on the part of PW1 to remember the details of the documents supplied to him at the time of grant of sanction is of no consequence as after a lapse of more than 8 months, a person/witness cannot be expected to remember such minute details.

7.215 Ex. PW1/A is a detailed order, running into 5 pages, which clearly shows due application of mind by the sanctioning authority/PW1 and I find no infirmity in the same. Furthermore, as stated by PW1, he had not received any draft sanction order from the CBI and, therefore, the defence arguments that PW1 had granted sanction on the instructions of the CBI officers is absolutely baseless and has no merit whatsoever. Also it is well settled law that grant of sanction is only an administrative function and the sanctioning authority is required to prima-facie reach the satisfaction that relevant facts constitute the offence. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order. An order of sanction should not be construed

in a pedantic manner and there should not be a hypertechnical approach to test its validity (*P.L. Tatwal Vs. State of MP 2014 AIR SC 2369*).

### Offences committed

7.216 As far as what offences the accused has committed, in view of the above discussion, prosecution has successfully brought home the guilt against the accused for offences under section 420, 468, 471, 201 & 409 IPC as well as for offence under section 13(1)(c) read with section 13(2) of the PC Act, 1988.

7.217 Having forged the bank vouchers, got prepared the forged vouchers, which aspect has been discussed in detail above, the accused indeed committed offence punishable u/s 468 IPC. As stands proved on record vouchers Ex. PW6/E, Ex. PW6/H and Ex. PW12/B were got prepared by him through PW19. To lend authenticity to these forged vouchers he affixed the bank stamp as well as put his initials & wrote the numerals in his writing. Though it could not be ascertained during the investigation as to from whom/how he got the remaining vouchers i.e. Ex. PW5/B, Ex. PW6/F, Ex. PW6/G, Ex. PW7/A and Ex. PW21/B prepared/forged nonetheless these vouchers were not the genuine vouchers as they were not part of the same pay-in-slip of which genuine counterfoils were. This has been discussed in detail above. On these vouchers as well except for Ex. PW6/F the accused affixed the bank stamp as well as put his

initials and wrote the numerals in his writing. As far as Ex. PW6/F is concerned, it has been discussed above that the interpolations are in his writing. These forged bank vouchers were created for the purpose of reflecting deposit of SBNs though only legal tenders were deposited by the customers/account holders. These vouchers were sent to the back office and used, acted upon in the back office by the other bank employees/staff for making entry & posting in the Finacle system. By creating these forged vouchers the accused gave an impression to the bank that the bank's customers/account holders had deposited SBNs though what was deposited was legal tender. By sending these forged vouchers to the back office the accused deceived the bank, its employees at the back office i.e. PW17, PW20 and PW23 to make entry in the Finacle system reflecting deposit of SBNs/OHDDEP. But for these forged vouchers no such entry would have been made by these bank employees. Hence by forging the vouchers he deceived the bank/these officials and induced them to make corresponding entries in the Finacle system. Though no pecuniary/financial loss was caused to the bank, however, the loss, harm or damage includes a reputational loss as well as is evident from section 415 of Indian Penal Code which defines cheating. There was indeed a reputational loss to the bank before the customers when during inquiry it was found out that the bank, relying upon its official/accused's forged vouchers, reflected deposits of SBNs in their accounts though they had deposited the legal tender. The bank's reputation thereby suffered a loss as these customers/account holders lost faith in the functioning of the

bank. The accused was bound to protect the bank's interest as well as that of account holders but he intentionally by his fraudulent acts caused wrongful loss to the bank.

7.218        Though Ld. Defence Counsel argued that section 420 IPC is not made out as there was no delivery of any property as such, however, I find no merits in his arguments. The legal tenders deposited by the account holders were replaced with the SBNs by the accused. These legal tenders were retained by the accused, handed over to other individuals known to him and their SBNs were fraudulently got deposited in the bank treasury/chest. This was the real intent, purpose of forgery and but for the forged vouchers the bank would not have accepted the SBNs. These SBNs were ultimately to be sent to RBI, exchanged with legal tender by/from the RBI. Hence on the strength of forged vouchers the Bank of Baroda was deceived to accept SBNs and deposit/deliver them to RBI. Therefore, accused Shubham Yadav indeed committed offences u/s 420 IPC as well as 468 IPC. Furthermore, by forgery of these vouchers and sending them to the back office of the bank for entry & posting thereby using the forged vouchers as genuine, knowing fully well that they are forged the accused committed offence punishable u/s 471 IPC.

7.219        As far as offence under section 201 IPC is concerned, the detailed discussed as above squarely establishes that the original vouchers were destroyed, made to disappear and in their place forged bank vouchers were created/got created. These vouchers were destroyed, removed from the bank so as to

avoid his misdeeds coming to fore. But for the customers, account holders approaching the bank it would have never revealed that the accused indeed committed forgery of the bank vouchers, bank part of the pay-in-slip. Therefore, the accused committed offence punishable u/s 201 IPC.

7.220 As far as offence u/s 409 IPC is concerned, it was argued by Ld. Defence Counsel, while relying upon *Delhi Racecourse Club (supra)*, argued that offence u/s 420 IPC and 409 IPC cannot co-exist simultaneously, however, it is to be seen that these offences can be committed against different individuals during the same transaction. As discussed above, the cheating was committed with the bank and against the bank's customers/account holders the accused committed offence of criminal breach of trust. While acting as a Cashier at Bank of Baroda, the accused was performing public duties and therefore he is/was a public servant. As per section 2 (b) of the PC Act, 1988 "public duty" means "*a duty in the discharge of which the State, the public or the community at large has an interest*". According to section 2 (c) of the said Act "*public servant*" means, - (i) *any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;.....(viii)any person who holds an office by virtue of which he is authorised or required to perform any public duty;*". In his capacity as a Cashier, he was entrusted with legal tenders by the bank's customers/account holders. They were so entrusted to be deposited in their accounts, however, the accused retained these

legal tenders for himself, his known tos and replaced them with SBNs. He forged the bank vouchers for the deposits to reflect, deposit of SBNs whereas the customers had deposited their legal tenders with him. He thereby committed criminal breach of trust against the said customers/account holders. Hence the accused is held guilty for offence punishable u/s 409 IPC as well.

7.221 Section 13 of the PC Act defines as well as provides punishment for criminal misconduct by a public servant. The detailed discussed as above squarely proves that the accused dishonestly, fraudulently misappropriated the legal tenders deposited with him by the bank customers/account holders and converted them by replacing them with SBNs for his own use, use by his known tos. He by forging the vouchers, by committing criminal breach of trust while abusing his position as Cashier/public servant retained, procured the legal tender for himself, his known tos. These legal tenders/currency were valuable thing and though there is no proof of any pecuniary advantage obtained/caused to him, however, the accused would not have undertaken the entire exercise without receiving any pecuniary advantage. Once he retained the legal tender, handed over them to his known tos, he/they would have indeed received pecuniary advantage. Therefore, the accused is held guilty for offence u/s 13 (1)(c) read with section 13 (2) of the PC Act.

## **Conclusion**

7.222 In view of above, accused Shubham Yadav stands convicted for offences punishable u/s 420, 468, 471, 409, 201 IPC as well as 13 (1) (c) r/w section 13 (2) of PC Act 1988.

7.223 Copy of the judgment be provided free of cost to the accused and let he be heard separately on the point of sentence.

## **Findings in CC No. 104/2019**

8. As discussed above both the charge sheets arise out of the same FIR and in fact the charge sheets are almost the same, overlapping except the concluding portion which has been discussed herein below.

8.1 It is the prosecution case that Sh. Ram Sewak Yadav was maintaining A/c No. 21420200006495 with Bank of Baroda, Azadpur Branch, New Delhi and vide bank pay-in-slip No. 539700 dated 29.11.2016, he deposited Rs. 2,00,000/- in denomination of 2000 x Rs. 100. Sh. Ram Sewak Yadav, himself filled the bank voucher as well as counterfoil of the said pay-in-

slip, in his handwriting. Accused Sonu received the aforesaid amount of Rs. 2,00,000/- as per the details mentioned in the counterfoil & bank voucher No. 539700 and after receipt of the aforesaid amount & tallying the denomination with the voucher & counterfoil, he returned the counterfoil to Sh. Ram Sewak Yadav after putting the cashier stamp and writing the numerals of the received amount with Rs. But subsequently, in place of voucher No. 539700, accused Sonu replaced the said bank voucher with forged voucher having serial No.114591 dated 29.11.2016, showing deposit of Rs.2,00,000/- in the above account of Sh. Ram Sewak Yadav, in denomination of 100 x Rs. 1000 & 1000 x Rs. 100 and made entry in his Scroll Register for the said deposits as per the denominations of the replaced voucher in his hand writing. He put the cashier stamp without his initial on the said forged bank voucher No.114591 dated 29.11.2016 and also wrote the numerals of the received amount with "Rs" on the bank receipt stamp and forwarded the same for entry, verification & posting to the back office. Ms. Pooja, Assistant Manger made entry of this transaction in the system of the bank through her ID and mentioned the transaction number on the voucher. Thereafter, Ms. Nisha Meena, Assistant Manager, verified the transaction and posted the same in system through her ID on the basis of bank voucher No. 114591 provided by accused Sonu.

8.2 It is the prosecution case that Sh. Ram Sewak Yadav identified his handwriting on the counterfoil of Pay-in-slip No.539700 dated 29.11.2016 but denied his handwriting on

forged voucher No 114591 dated 29.11.2016. Ms. Pooja Verma, Ms. Nisha Meena @ Nisha Gupta, Sh. Ankit Pandey, Sh. Joginder Pal and Sh. O.N Singh also identified the handwriting of accused Sonu for the numerals of the received amount with "Rs" on counterfoil of Pay-in-slip No.539700 and forged voucher No. 114591. The handwriting expert opinion on the Counterfoil of Pay-in-slip No.539700 and forged voucher No. 114591 was received from CFSL/CBI Delhi which affirmed the handwriting of Sh. Ramsewak Yadav for the particulars of Counterfoil of Pay-in-slip No.539700 and the handwriting of accused Sonu for the numerals of the received amounts with "Rs" over the bank stamp on the above counterfoil of Pay-in-slip and forged voucher.

8.3 It is it's case that the Expert Report No CFSL-2018/0-0019/974 dated 21.03.2018 confirms the handwriting of accused on the questioned documents.

8.4 It is it's case that from the facts & circumstances discussed above, investigation established that the cash deposit of Rs 2,00,000 dated 29.11.2016 in A/c No 21420200006495 of Ram Sewak Yadav, was received by accused Sonu as per the details of GC notes mentioned in bank pay-in-slip tendered by depositor to him and he acknowledged the same by putting cashier stamp and writing the numerals of the received amount Rs, on the counterfoils of bank pay-in-slip. Counterfoil was also having details of currency notes tendered to be deposited by the depositor in his account but accused Sonu dishonestly destroyed, altered the original bank voucher and in place thereof, he

fraudulently prepared forged bank voucher of the same amount but changed denomination of the currency notes therein. He fraudulently & dishonestly mentioned the denominations of SBNs in the forged voucher which were not deposited by the depositor. Thereafter he put bank stamp and wrote the numerals of the received amount with “RS” on the forged voucher and sent it for making entry and posting in the account of the respective customer. He thus committed offence of criminal misconduct as he, by abusing his official position, obtained pecuniary advantage to the tune of Rs 1,00,000/- for himself or for any other person, by depositing SBNs (which were declared ceased to be legal by Govt. of India) concealing the name of depositor of SBNs. He also committed offence of forgery and use of forged documents by preparing forged vouchers and using them for making entries in bank records. He also committed an offence of cheating as he deceived the bank through forged voucher to accept the SBNs of the unknown persons without disclosing their identities, caused damage to the reputation of the bank and dishonestly & in violation of instructions issued by RBI, Govt. of India and Bank of Baroda, delivered legal tender currency to unauthorized person/persons which was entrusted to him by the bank to deliver to the bank customers as per legal norms. He also committed the offence of causing disappearance of evidence of offence by destroying the original bank voucher and also committed the offence of criminal breach of trust by public servant/banker by way of misappropriating the entrusted legal tenders currency notes of the bank customers.

8.5 With these allegations, chargesheet was filed against accused Sonu for commission of offences punishable under section 201, 409, 420, 468 & 471 IPC and Section 7, 13(2) r/w 13 (1) (c) & 13 (1) (d) of the Prevention of Corruption Act 1988.

8.6 Original Sanction Order for prosecution of accused Sonu was issued by Sh. Rakesh Bhatia, General Manager, Bank of Baroda, New Delhi Zone, 16 Sansad Marg, New Delhi-110001, being the competent authority under section 19 of Prevention of Corruption Act, 1988.

### **Cognizance & Charge**

9. Vide order dated 16.04.2018, the cognizance of the offence was taken and accused Sonu was summoned by the Ld. Predecessor of this court. After compliance of Section 207 Cr.P.C, the arguments on charge were heard and vide order dated 03.11.2018, charge for the offences punishable under section 409/420/468/471/201 IPC and under section 13(2) read with section 13(1)(c)/13(2) read with Section 13(1)(d) of the PC Act, 1988 was framed against accused Sonu to which he pleaded not guilty and claimed trial.

### **Prosecution Evidence**

10. In order to prove its case, prosecution examined 15 witnesses in all. These are the same set of witnesses examined in Shubham's case, though the number is lesser. The list of the

examined witnesses is as under:-

- (a) PW1 Sh. Rakesh Kumar Bhatia,
- (b) PW2 Sh. O. N. Singh
- (c) PW3 Sh. Ravi Kant Thakral
- (d) PW4 Ms. Surbhi Singh
- (e) PW5 Sh. Ram Sewak Yadav
- (f) PW6 Sh. Joginder Pal
- (g) PW7 Sh. Tarun Pal
- (h) PW8 Sh. Durga Prasad
- (i) PW9 Ms. Lavang Lata
- (j) PW10 Ms. Nisha Gupta
- (k) PW11 Ms. Kusum Dimri
- (l) PW12 Sh Ankit Pandey
- (m) PW13 Inspector H.V. Attri
- (n) PW14 Ms. Pooja Verma
- (o) PW15 Sh. Sushant Kumar Ashwani

### **Statement of Accused**

11. After conclusion of prosecution evidence, statement of accused Sonu was recorded u/s 313 Cr.P.C. on 06.10.2022 wherein he denied the entire incriminating evidence put to him while claiming that he has been falsely implicated. Accused examined one witness in his defence.

11.1 It will also be worthwhile to mention that additional statement of the accused u/s 313 Cr.P.C. was recorded on 18.09.2025 as in terms of orders dated 27.01.2023 certain witnesses were recalled for further examination and one additional witness was also examined i.e. PW15. After the additional statement was recorded, the accused examined two more witnesses in his defence.

### **Defence Evidence**

12. **DW1 Sh. Raman Pal Singh**, Manager, Bank of Baroda, Azadpur Branch, Delhi proved the summoned record i.e. attendance register of the staff and the officers as Ex. DW1/A (colly) and Ex. DW1/B (colly).

12.1 **DW2 Sh. Shiv Singh Adhikari**, AGM, Reserve Bank of India, Sansad Marg, New Delhi-110001 proved circular dated 08.11.2016 as Ex. DW2/A (colly) and email dated 04.11.2025 as Ex. DW2/B (colly) and he deposed that the data regarding deposit of cash in Bank of Baroda, Azadpur Branch during the demonetization period is not available with the RBI as RBI does not maintain any such record.

12.2 **DW3 Sh. Brijesh Kumar Tripathi**, Chief Manager, Bank of Baroda, New Subzi Market, Azad Pur, Delhi-110033 produced circulars dated 10.11.2016, 12.11.2016 & 14.11.2016 and deposed that he has brought the consolidated statement as regard exchange and deposit as was being sent in compliance

with Annexure-VI(A) of the above mentioned circular i.e. Ex. DW3/A (colly).

### **Findings**

13. PW2 Sh. O.N. Singh's deposition has already been discussed above in detail. As far as accused Sonu is concerned, PW2 proved that Mr. Ram Sewak Yadav (PW5) maintaining account No. 21420200006495 at Azadpur Branch of Bank of Baroda approached him for the certification in respect of his cash deposit of Rs. 2,00,000/- dated 29.11.2016 and during enquiry he found that the particulars of denominations of currency notes mentioned in the bank vouchers kept in bank record for the above deposit were different from the particulars of denominations of currency notes mentioned in related customer counterfoils issued by the bank for the said deposit. He proved that it was revealed that entry of deposit of Rs. 2,00,000/- dated 29.11.2016 in account No. 21420200006495 was made by accused Sonu in his cash scroll register i.e. Ex. PW10/A2 (colly) and that this matter was again reported to the DGM vide Ex.PW2/D, who marked the matter to Ms. Surbhi Singh (PW4) for inquiry and during this inquiry, accused Sonu admitted his guilt in his written reply to the extent that he had made entry of deposit of Rs. 2,00,000/- dated 29.11.2016 in the account no. 21420200006495 belonging to Sh. Ram Sewak Yadav (PW5). He further proved that PW4, in her report i.e. Ex. PW11/A1 (colly), found unauthorized replacement of legal tender with SBNs.

13.1 PW2 identified the handwriting of accused Sonu on customer counterfoil Ex. PW2/L (colly) at point Q13 as well as on voucher bearing no. 114591 at point Q39 on Ex. PW2/L (colly). PW2 also identified the relevant entry in the scroll register Ex. PW10/A2 (colly) at page no. 52 Sl. No. 88 i.e. Ex. PW2/M (colly). The said documents were seized by the IO/PW13 vide Ex. PW2/J.

13.2 The arguments that though PW2 claimed that he had also conducted the inquiry but did not record the statement of the officials; regarding the bank's slip being issued from the branch or not; income tax notice; non issuance of bank certificates; difference in the statement of account; use of common pay-in-slips for deposit of SBNs and legal tender; which menu was used in the bank etc. have already been dealt above in detail. In fact as already discussed above, same witnesses were examined in the both the matters though the number is less in accused Sonu's case and the cross-examination is also the same. The arguments have already been dealt with and are accordingly not being discussed again to avoid repetitiveness and only additional evidence, arguments have been discussed and dealt with.

### **Counting machine**

13.3 It was argued by Ld. Defence counsel that PW2, during his cross-examination, stated that there was only one big currency counting machine in the branch, installed in the cabin of Head Cashier Sh. Madan Kumar and there were two small

machines (sorting machines) during the period of demonetization. Further PW2 stated that accused Sonu was only having a sorting machine at his counter which was not capable of counting wrapped bundle of currency notes and he could not tell that which machine was used by accused Sonu for counting the currency notes, as & when huge cash came to be deposited with him. Ld. Defence Counsel argued that in view of the statement of PW2, grave doubts arise that the amount in question was received/accepted by the accused and it cannot be completely ruled out that the amount was received by some other cashier and not accused Sonu. However, I find no merits in the said arguments.

13.4 The material on record leaves no doubt that accused Sonu was having the cash counting machine at his counter. The defence has not placed any material on record to prove that the machine which accused Sonu was having was not capable of counting cash of Rs. 2,00,000/- as was deposited with him by PW5. No doubt PW2 stated that the accused was only having a small/sorting machine which was not capable of counting wrapped bundle of currency notes but he did state that the said machine was not capable of counting the loose currency notes. PW5 did not even once state that he had deposited wrapped bundle of currency notes with the accused. He only stated about having deposited Rs. 2,00,000/- in the denomination of 100x2000 with accused Sonu. Considering the kind of business PW5 was having i.e. wholesale retail business of onion at Azadpur mandi, he must be receiving loose currency, not wrapped bundles from

the retailers and it was this loose currency which he was depositing in his account. The machine which accused Sonu was having was capable of counting loose currency notes. The wrapped bundles/currency notes are generally provided by the bank to the customers and not vice-versa.

13.5 Moreover, there was a big currency counting machine installed in the cabin of Head Cashier Sh. Madan and PW2 stated that whenever Mr. Madan was not there on the cash counter, his cabin was also used by other cashiers. Just because PW2 stated that he cannot say as to whom Sonu took the currency notes for counting does not mean that in respect of deposit of Sh. Ram Sewek Yadav as well, Sonu took the currency notes for counting elsewhere. The said statement is a generalized statement made by PW2. It has been discussed in this judgment that neither Sonu took the currency anywhere for counting nor he sent PW5 to any other cashier for the said purpose. At this stage it will be worthwhile to reproduce the image of the handwritten statement of accused Sonu/admission as was given by him to Ms. Surbhi Singh during the inquiry as is part of Ex. PW3/E:-

Name - SONU

[ANNEXURE - XIII]

EC NO: - 116817

Date of joining - 13/06/2017 (19)

Cadre - SWO-A

Present place of posting - Azadpur

Demonitization के दौरान बुकआउट में मैं Currency Exchange Counter पर बैठा था और उसके बाद बाहर ही 2000-30000 तक की Receipt लेता था। बाद में मैं आवातर Counter No. 2 और 3 पर बैठा हूँ तथा मैंने छोटी Receipt ही ली थी। कभी-कभी कोई customer बड़ा cash लेकर मेरे Counter पर आ जाता था तो मैं उसे अपने साथ के साथ के Counter पर भेज देता था। तथा जो Cash Count करके मुझे voucher के साथ दे देते थे। 29/11/2016 को शासक शादव A/c NO: - 21420200006495 का 20000 का cash मेरे Counter पर आया लेकिन बड़ा cash देने की वजह से उसे मैंने साथ के Counter पर भेज दिया तथा बाद में Cashier शुभम शादव द्वारा जो Cash Count करके मुझे voucher और cash दिया गया। जिसमें 100x1000, 1000x100 के Denominations ही थे। इसके साथ Counter foil नहीं थी और मेरे पूछने पर उसने कहा कि Counterfoil उसने Customer को दे दी है। तथा बाद में मैंने इसे अपने Scroll Register में चढ़ा लिया।

Certified true copy.



Sonu  
24/02/2017

(85)

13.6 The defence taken in Ex. PW3/E is that when Ram Sewak Yadav approached him for depositing Rs. 2,00,000/-, considering the fact that it was huge cash, he sent him to the counter of Shubham Yadav. No such suggestion was ever given to PW2 or to any prosecution witness and especially PW5 that he had sent Sh. Ram Sewak Yadav (PW5) to the counter of cashier of Shubham Yadav which itself proves that not only the said part of the confession was false/self-serving, to save himself but that the story regarding sending PW5 to the counter of Shubham Yadav was merely an afterthought. It will also be worthwhile to mention that in Ex. PW3/E accused Sonu nowhere wrote that his cash deposit limit was only Rs. 10,000/- i.e. he could accept cash only upto Rs. 10,000/- or for that reason he sent PW5 to the counter of cashier Shubham Yadav which further takes care of the isolated statement made by Ms. Pooja Verma (PW14) (also as PW23 in CC No. 105/19). This further proves that there was no limit as such for acceptance of cash by accused Sonu. Also no other prosecution witness stated so and in his appointment letter Ex. PW12/B (colly) there is no limit qua the acceptance of cash by the accused while working as Cashier/ SWO-A in the bank. His duties and functions as detailed in para 2 of his appointment letter provides no such limit.

13.7 As discussed above PW2 had also identified the entry Ex. PW2/M (colly) in the scroll register Ex. PW10/A2 (colly) to be in the handwriting of accused Sonu. As per the said

entry 100 notes/SBNs of Rs. 1000/- were shown/reflected to be deposited in the account of PW5 though it stands proved on record that PW5 had only deposited legal tenders in the denomination of Rs. 100/-. It also stands proved on record that the legal tender/deposit of/by PW5 was accepted by accused Sonu only and not Shubham Yadav. Though in Ex. PW3/E accused Sonu claimed that he had made the entry in the scroll register which read as “*Tatha baad mein mene isse apne scroll register mein chadha diya*”, however, during his examination u/s 313 Cr.P.C. when the testimony of PW2 qua the said entry was put to him vide question no. 34 he stated “*It is incorrect. Shri O.N. Singh has wrongly identified the handwritings*”. Hence accused Sonu took two different stand as per his convenience which further shows his criminal bent of mind as well as the falsity, hollowness of his defence. Also not only he did not explain how it is incorrect but while answering question no. 177 he stated “*It is incorrect. The scroll register was being maintained by the head cashier as well as other cashiers in the branch and the entry was being made by different cashiers. The said register has not been produced by the CBI deliberately and malafidely*’. The scroll register stands duly proved on record as Ex. PW10/A2 (colly) and the relevant entry stands duly proved and identified by PW2 & PW12 to be in the writing of accused Sonu. The accused did not even once state while answering the above questions that he did not make the entry Ex. PW2/M (colly). Also during the cross-examination of PW2 not even once it was suggested to him that the entry Ex. PW2/M (colly) is not in the handwriting of accused Sonu.

13.8 As far as reliance and arguments upon testimony of DW1 Sh. Raman Pal Singh is concerned, suffice would be to say that DW1 was not posted at the Azadpur Branch of Bank of Baroda during the relevant period. This itself renders his testimony irrelevant as having not been posted during the relevant period he could not have deposed as to how the bank/said branch functioned during the period of demonetization nor he could identify the relevant documents. As far as scroll registers produced by DW1 are concerned, I completely fail to understand the significance of these registers i.e. why they were got produced through DW1, for what purpose. Moreover, DW1 stated *“However, I cannot tell from the said registers as to which of the register was being used by Sh. Madan Kumar during the period 08.11.2016 till 30.11.2016, as I have recently joined the Azad Pur Branch of Bank of Baroda, therefore, personal I am not aware whether any employee by the name of Sh. Madan Kumar was working Azadpur Branch during the period 08.11.2016 to 30.11.2016.....I do not know whether cashiers working in Azad Pur Branch of Bank of Baroda during the period of demonetization were using any physical register for entering the cash receipts or not. Vol. I was not working in the branch during the said period”*. Also the scroll registers produced by DW1 were never retained on record for reasons best known to the defence and are not part of the record accordingly.

13.9 It stands duly proved on record that the deposit by PW5 was accepted by the accused and he made the relevant entry

in his writing in scroll register Ex. PW10/A2 (colly). Merely because some other register was being maintained by the Head Cashier is also immaterial. Though the cross-examination of DW1 was deferred on 31.10.2022 with directions to him to produce the scroll register of the Head Cashier but what was produced by him on the next date i.e. 15.11.2022 was the Cash Balance Register of the Head Cashier. Again, for the reasons best known to it, neither the register nor its copy was got exhibited, retained on record by the defence. Nonetheless DW1 failed to identify the writing in the said register as he was not posted in the said branch during the relevant period when the entries were made nor he was acquainted with the handwriting of bank officials/employees. However, DW1 did state that Shubham Yadav's (accused in CC no. 105/19) signatures appear in the said register in respect of entry dated 18.11.2016 and 19.11.2016. The relevant portion read as "*Answer: I cannot tell about who was the Head Cashier during said time but under entries of each date of said period the signature of the cashier as well as the Accountant/Manager are appearing in the Cash Balance Register and in respect of the entry of 18.11.2016 and 19./11.2016 the signature of Shubham Yadav are appearing as Cashier*". Also DW1 explained that the cash balance register is being maintained for showing & tallying the closing cash balance on any particular working day; it is filled daily by the Head Cashier; it is checked by the Accountant/Manager and he categorically stated that from the said register it cannot be ascertained as regards the denomination of the currency deposited on a particular day. His deposition in this regard read as "*The denomination of the*

*currency deposited in the a particular date is not mentioned in said register because it mentions about the closing balance available with the bank in different denomination of the currency available at the end of the day.....Head Cashier is the overall Incharge of Cash Department in a bank and he has to manage the cash department effectively. At the end of the day he has to fill the cash balance in the Cash Balance Register after tallying with the available cash balance reflecting in the cash balance head of the branch in his computer”.* It has already been discussed in Shubham’s case that there is no allegation of embezzlement or shortage of funds nor there are any such allegations against accused Sonu. Hence I completely fail to understand the significance of examination of DW1.

13.10 Coming back to the deposition of PW2 it will also be worthwhile to mention that during his cross-examination a suggestion was given to him which read as “*It is correct that the scroll register which was being maintained by Sonu during the course of demonetization contained the description of denomination of the currency which was being deposited by the customers”*”, which suggestion itself proves that the scroll register was indeed maintained by accused Sonu. The said register i.e. Ex. PW10/A2 (colly) does contain columns regarding description/ denomination of currency notes. As explained by PW2 normally the scroll register did/does not contain the said details but during the period of demonetization there was a column for noting down the denomination of the currency notes. Hence merely because PW2 stated that from the scroll register it

cannot be verified whether the customer had deposited the SBNs or valid currency is of no significance as the same was a generalized statement and not meant for demonetization period. As stated by PW2 “*In the scroll register, the cashier used to note down the serial number of the customer, account number and amount deposited by the said customer. However, there is column for noting down the denomination of the currency notes in the scroll register, but the cashiers in normal course do not mention the said details*”. As stands proved on record the entry made in the said register i.e. Ex. PW2/M (colly) was not as per counterfoil Ex. PW2/L (colly) but as per the replaced SBNs, which were replaced by the accused.

13.11 It has already been discussed in Shubham’s case that it makes no difference that the scroll register was used by other cashiers. What is relevant is that the entry in the scroll register Ex. PW10/A2 (colly) is in the handwriting of accused Sonu and just because some other entries might be in the handwriting of some other cashiers is absolutely insignificant. Nonetheless PW13 Insp. H.V. Attri did state that the said scroll register was exclusively used by accused Sonu and that other cashiers were maintaining their separate registers. Just like Shubham’s case, defence could not prove that if not Ex. PW10/A2 (colly) then which register was maintained by accused Sonu during the relevant period and specifically on 29.11.2016.

13.12 It makes no difference that PW2 stated that he cannot say whether the denomination of the currency and the

total amount mentioned in the vouchers part of Ex. PW2/K (colly) are correctly recorded or not. At the outset these vouchers pertains to Shubham's case and not Sonu's case. The original voucher part of original pay-in-slip Ex. PW2/K (colly) were destroyed and in their place forged bank vouchers were/got created, therefore, in the absence of original voucher PW2 could not state as to whether the denomination of the currency and the total amount mentioned in the vouchers part of Ex. PW2/K (colly) is/was correctly recorded or not. As far as the forged vouchers are concerned, the details as mentioned in them are different from the original counterfoil as has been discussed above in detail. As regards PW2's statement that he cannot say after going through the bank voucher part of Ex.PW2/K (colly) as to who has filled the name, account number and the amounts in word mentioned in the said voucher as he cannot identify the handwriting on the said vouchers is concerned, it has been discussed above in detail that some of these forged vouchers were prepared/got prepared through PW19 Nand Kishore but the initials and numerals on them are in the handwriting of Shubham. Prosecution cannot be blamed or disbelieved just because Shubham did not disclose as to from whom he got the remaining vouchers prepared/forged.

13.13 PW3 Sh. Ravikant Thakral duly corroborated the testimony of PW2 regarding the receipt of letter Ex. PW2/D (also Ex. PW3/D) and marking of inquiry to Ms. Surbhi Singh (PW4) as well as her report Ex. PW3/E. As already discussed at the inception of this judgment, same set of documents are there and

the testimony of witnesses is substantially the same. The testimony of PW3 has already been discussed above in detail and the defence arguments have also been dealt with accordingly. The only suggestion given to PW3 qua accused Sonu was “*It is incorrect to suggest that I along with the other officers of the bank have illegally framed Sonu in the present case*”. The defence miserably failed to explain as to why the bank would falsely implicate the accused or why the prosecution witnesses would falsely depose against him. They had absolutely no grudge, enmity or motive to do so.

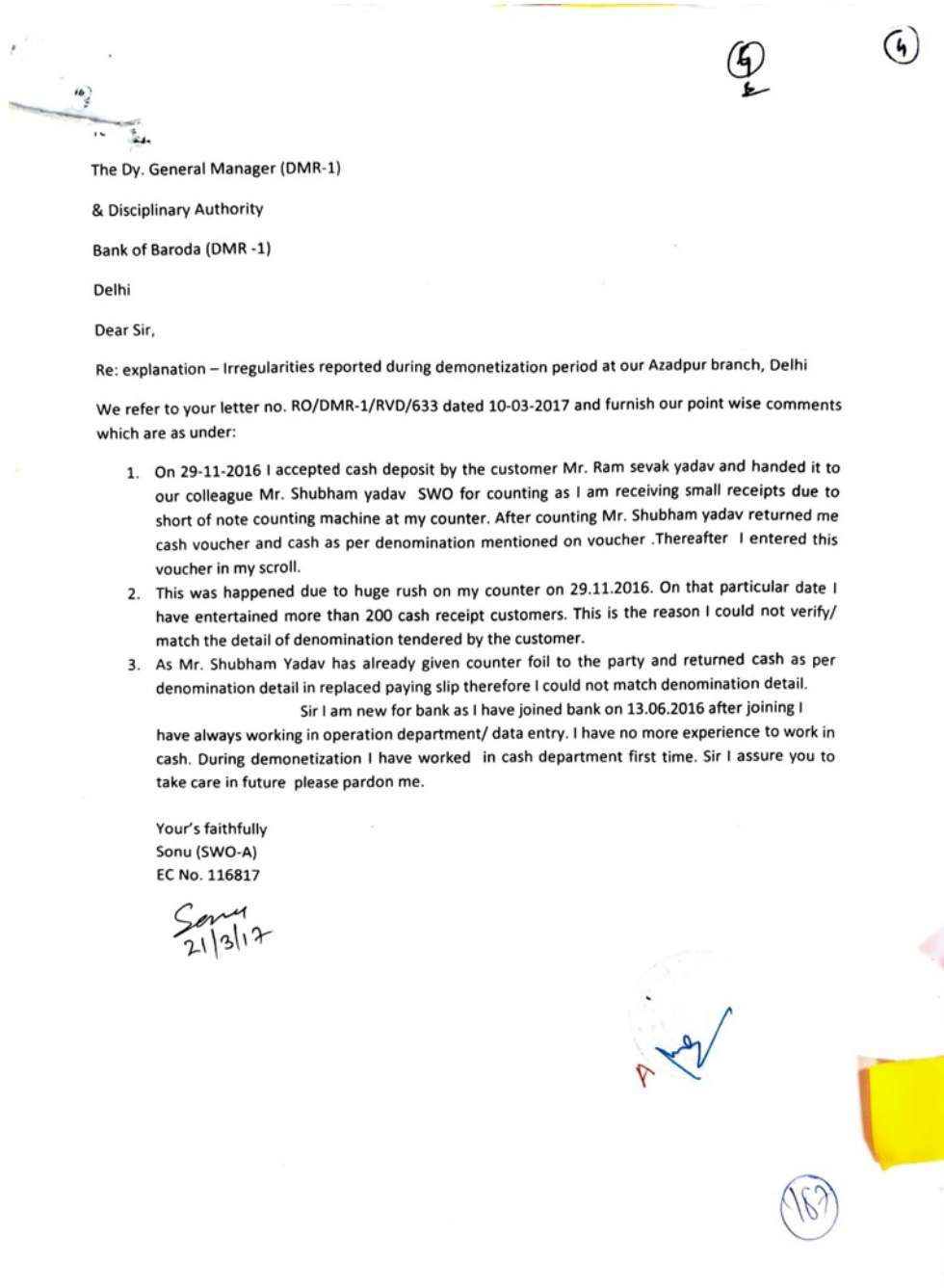
13.14 No doubt PW3 during his examination in chief stated that “*In his written reply during the investigation Sonu has stated that he had handed over the alleged deposits to Shubham Yadav for counting as there was no counting machine at his counter on that particular day i.e. 29.11.2016 and due to rush hours he could not match the denomination*”, however in the said reply Ex. PW3/E it is nowhere written by accused Sonu that he did not have counting machine at his counter. Moreover, PW2’s testimony has already been discussed above and according to it, accused Sonu did have a sorting machine. Also it stands duly established from the testimony of PW5 that he had deposited cash with accused Sonu only and he was not sent to cashier Shubham Yadav by him.

13.15 No doubt PW4 Ms. Surbhi Singh had also observed in her report Ex. PW3/E that accused Sonu informed in his written statement that he did not have note counting machine,

however, as already discussed above the same was a self-serving statement, made to avoid liability and put the blame on Shubham Yadav. The material on record leaves absolutely no doubt that it was he who had accepted the cash and changed the legal tender with SBNs.

13.16 It will also be worthwhile to highlight that in Ex. PW3/E he had claimed that he had sent PW5 to the counter of cashier Shubham Yadav which read as “*29.11.2016 ko Ram Sewak Yadav A/c no: - 21420200006495 ka 200000 ka cash mere counter per aaya lekin bada cash hone ki wajah se usse mene saath ke counter per bhej diya*”. However in his typed explanation given to the DGM i.e. Ex. PW12/E (colly) which was given on 21.03.2017 i.e. after almost one month of Ex. PW3/E he stated “*On 29.11.2016 I accepted cash deposit by the customer Mr. Ram sewak yadav and handed it to our colleague Mr. Shubham Yadav.....*”. Hence on one hand he claimed that he had sent Ram Sewak Yadav to Shubham Yadav but on the other hand he claimed to have accepted the cash from Ram Sewak Yadav and then handed over it to Shubham Yadav. Nonetheless just like in Ex. PW3/E, in Ex. PW12/E (colly) as well he accepted to have made entry in the scroll register for the deposit made by Sh. Ram Sewak Yadav. Most importantly, during the cross-examination of Sh. Ram Sewak Yadav it was not even once suggested to him that he was sent by accused Sonu to the counter of Shubham Yadav along with the cash as he was not having the counting machine. Also not only I have no doubt as regards the voluntariness of Ex. PW3/E but the fact that another

confession vide Ex. PW12/E was given after almost one month of Ex. PW3/E itself proves that accused Sonu had voluntarily stated so in both these documents. The image of Ex. PW12/E is reproduced hereunder:-



13.17 No doubt in letter dated 10.03.2017 i.e. part of Ex. PW12/E (colly) vide which explanation of accused Sonu was called, it was mentioned by the DGM/PW3 that after accepting the cash from PW5, accused Sonu handed it over to Shubham Yadav for counting and on receiving back the transaction was entered at his desk. Furthermore accused Sonu accepted cash without obtaining counterfoil of deposit slip from Shubham Yadav and did not verify/match the details of denomination tendered by the customer nor did he ensure that the cash returned from Shubham Yadav is in the same denomination as handed over by him to Shubham Yadav for counting. However, the above was mentioned by the DGM only on the basis of the written statement/admission Ex. PW3/E of accused Sonu and it has been discussed in this judgment that the portion of his statement where he claims to have handed the cash/sent PW5 to the counter of Shubham Yadav is false, made solely to save his skin and to put blame on Shubham Yadav.

#### **Inquiry by Ms. Surbhi Singh**

13.18 PW4 Ms. Surbhi Singh corroborated the prosecution story while proving letter of DGM dated 20.02.2017 i.e. Ex. PW3/D and her inquiry report dated 06.03.2017 as Ex. PW3/E. The arguments regarding the OHDTM menu; the data regarding deposit of SBNs being sent or not to the RBI; income tax notice not seen by her & no reference of it in her report; non recording of statement of staff or the bank customers; could not find out who had filled the voucher; etc. have already been dealt with

above in detail in Shubham's case and require no repetition.

13.19 No doubt in her report Ex. PW3/E Ms. Surbhi Singh observed "*It appears that the Cashier Mr. Shubham Yadav E.C. 112063 would have changed the details of cash deposited by the customer and also the Pay-in-slip before handing it back to Mr. Sonu. The handwriting on the Pay-in-slip (voucher) does not match with that of Mr. Sonu but it appears similar to the handwriting of Mr. Shubam Yadav*", however, there is no doubt that it was accused Sonu who had received the cash from PW5 Sh. Ram Sewak Yadav and it was he only who had changed the denomination of the currency/legal tender deposited by PW5 with SBNs as well as changed the bank voucher with a forged voucher i.e. Ex. PW5/D. The observations made by Ms. Surbhi Singh in her report were solely on account of being misled by accused Sonu. PW4's findings that the handwriting on the bank voucher Ex. PW5/D matches that with Shubham Yadav has no basis. She is not a handwriting expert and being working in a different bank she was not familiar with the handwriting of either Shubham Yadav or accused Sonu. The CFSL result on record i.e. Ex. PW9/A (colly) as well as testimony of prosecution witnesses leaves no doubt that letters/ alphabets "Rs" and the numerals "20000" on Ex. PW5/D as well as Ex. PW2/L (colly) are in the writing of accused Sonu.

13.20 It makes no difference that PW13 during his cross-examination stated that in her inquiry report PW4 did not raise any allegation of fraud, cheating or forgery against the accused

nor any of the bank official levy any such allegations against him. As discussed, it was during the investigation, upon receipt of CFSL result it was revealed that the original voucher had been changed by accused Sonu with forged voucher Ex. PW5/D and that is why it is his handwriting which appear at point Q39 on the said voucher. There is just no doubt that the said voucher was prepared/got prepared by him after acceptance of legal tender/deposit from PW5 Sh. Ram Sewak Yadav.

13.21 As far as the observations in PW4's report regarding the note counting machine, same have already been dealt with above and there is just no doubt that cash from PW5 was received by accused Sonu only and he had not given the same to Shubham Yadav for counting. Though PW4 stated, during her examination in chief, that it was revealed during the inquiry that accused Sonu was not having any cash counting machine at his counter, however, it has been discussed above that he was having a small/sorting machine at his counter and that there is no evidence whatsoever to suggest that he had handed over the cash to Shubham Yadav for counting. Furthermore, the entry in the scroll register Ex. PW10/A2 (colly) qua the deposit made by PW5 further proves that it was he who had accepted the cash from him.

13.22 No doubt PW6 Sh. Joginder Pal failed to identify the writing of accused Sonu on Ex. PW2/L (colly) as well as Ex. PW5/D or the scroll register, however, while dealing with similar arguments as raised by the defence in Shubham's case, it has

already been discussed above that same is immaterial. It is the quality that matters and not the quantity. Furthermore PW6 admitted that his statement Ex. PW6/A1 was recorded by the CBI/IO and he did state “*It is correct that at the time of recording of my statement U/s 161 Cr.P.C., I have told to the IO that the handwriting on the scroll register is of accused Sonu, which clearly indicate that cash deposit of the said transaction were received by accused Sonu who was posted as Azadpur branch of Bank of Baroda at the said time*”.

13.23 It was also argued by Ld. Defence Counsel that IO/PW13 Insp. H.V. Attri did not bother to find out whether PW6 was present in the bank on 29.11.2016 or not which when coupled with PW6’s statement that he was on leave on 29.11.2016 further proves that the entire investigation was designedly malafidely. As far as the said argument is concerned, it has already been discussed in Shubham’s case that benefit of the lapses on the part of the IO cannot be given to the accused. The IO should have undoubtedly verified whether PW6 was present in the bank on 29.11.2016 or not, this is more so when he recorded his statement u/s 161 Cr.P.C. during the course of investigation, however, just because PW6 stated that he was on leave on 29.11.2016 and therefore he cannot say whether any cash counting machine was available with accused Sonu or not is of no consequence as no doubt remains from the testimony of PW2, PW5 and other material on record that the cash on 29.11.2016 was handed over to accused Sonu only and not to Shubham Yadav. It was accused Sonu who had accepted the

deposit from PW5 on the said date and accordingly made entry in the scroll register Ex. PW10/A2 (colly), however the said entry is a forged one as it reflected deposit of SBNs though only legal tender was deposited by PW5. It is also to be noted that the statement of PW6 u/s 161 Cr.P.C. was recorded on 09.01.2018 i.e. after almost 13 months of the deposit and with such huge lapse of time a person might indeed misstate certain facts or sequence of events. In fact as discussed above accused Sonu admitted the relevant entry Ex. PW2/M to be in his writing only.

13.24 Accused Sonu, being working in the same bank, was/must have been well aware about the inquiry against Shubham Yadav and he used it as an opportunity to put blame of his misdeeds on Shubham Yadav. Though he tried to put the blame on Shubham Yadav for deposit of Rs. 2,00,000/- dated 29.11.2016, however, from his statement Ex. PW3/E few important facts stand duly proved on record. Firstly, that PW5 had approached him on 29.11.2016 for depositing cash of Rs. 2,00,000/- in his account. Secondly, that he had made the entry in the scroll register Ex. PW10/A2 (colly) on the basis of voucher Ex. PW5/D. It will also be worthwhile to mention that there are no initials on Ex. PW5/D and in case, it was Shubham Yadav who had forged the voucher Ex. PW5/D & handed over the same to him, then at the time of receipt of said voucher he would asked him as to why he had not affixed his initials on the same and further asked him to put the same. Having not done so itself proves that he made certain self-serving statements in Ex. Ex. PW3/E. The initials being missing on Ex. PW5/D, he would have

definitely asked Shubham Yadav to put the same. Absence of accused's initials on Ex. PW2/L (colly) and Ex. PW5/D is immaterial once the writings & numerals at point Q13 & Q39 are his.

13.25 PW5 Sh. Ram Sewak Yadav further corroborated the prosecution story while deposing on the same lines as deposed by PW2 and his testimony leaves no doubt that the cash of Rs. 2,00,000/-, in legal tender, was deposited by him with accused Sonu only and it was him who had handed over the customer counterfoil Ex. PW2/L to him. The relevant portion of his deposition in this regard is reproduced hereunder:-

*“On being shown file already Ex. PW2/L, I state that on 29.11.2016, I deposited an amount of Rs. 2 lacs with 2000 currency notes in the denomination of Rs. 100 to the then cashier of Bank of Baroda namely Sonu, present in the court today (correctly identified by the witness). After receiving the aforesaid amount, the then cashier Sonu cross checked the denomination of currency notes in the bank pay in slip book maintained by me and after tearing the bank voucher, returned the pay in slip book to me with customer counter foil for the said deposit under the receipt of bank stamp. The aforesaid customer counter foil for the said deposit, filled in my own handwriting, is already Ex. PW2/L-colly. The photocopy at Annexure II of document D4 already Ex. PW2/J) is now Ex. PW5/B”*

13.26 PW5's deposition further proves that bank voucher Ex. PW5/D is a forged bank voucher. The relevant portion of his deposition in this regard read as under:-

*“On being shown file already Ex. PW2/L-colly, I state that the bank voucher dated 29.11.2016 bearing serial No. 114591 of Rs. 2 Lacs in the denomination of Rs. 1000X100=1,00,000/- and Rs. 100X1000=1,00,000/- in my name, is not mine and also not in my handwriting. The aforesaid bank voucher is also filled in English language, whereas I always used to fill in Hindi. The aforesaid bank*

*voucher is now Ex. PW5/D. The photocopy at Annexure III of document D4 already Ex. PW2/J) is now Ex. PW5/D1. Another copy of bank voucher Ex. PW5/D is at D4/2 which is also Ex. PW5/D1. Another copy of customer counter foil dated 29.11.2016 annexed with bank voucher Ex. PW5/D is already Ex. PW2/L (D4/6).”*

13.27 Most of the arguments regarding income tax notice; statement of account; the word “naya note”; bank certificate etc. have already been dealt with above in Shubham’s case. It was also argued by Ld. Defence counsel that customer counterfoil bearing no. 539700 i.e. Ex. PW2/L (colly) is/was forged & fabricated by PW5 after the alleged receipt of notice from income tax authorities for deposit of SBNs in his account. It was argued that PW5 admitted that the denomination “100x2000” at point X2 on Ex. PW2/L (colly) is written in a different ink/pen as against the details mentioned at point Q14A/Q13. Furthermore, PW5 admitted that the writing at point X2 is in his handwriting and it was argued that PW5 so wrote so as to avoid liability under the Income Tax Act. However, I find no merits in the said arguments.

13.28 At the outset, as has already been discussed above, Ld. Defence Counsel during the entire trial attempted to create doubt, discredit the prosecution case as regards receipt of income tax notice by the customer/account holder in question. However, at the same time it was suggested to PW5, which suggestion was otherwise denied by him, that he had forged Ex. PW2/L (colly) after receipt of income tax notice. If the defence’s stand is that there was no income tax notice, then it should not have been suggested to PW5 that he forged Ex. PW2/L (colly) after receipt

of income tax notice. Hence the defence stand is itself inconsistent, self-contradictory.

13.29 As far as the arguments that the denomination “100x2000” was written by PW5 subsequently has no basis whatsoever. PW5 specifically stated that he had filled the deposit slip Ex. PW2/L (colly) in his hand, at his shop before going to the bank for depositing the money. Denomination “100x2000” being in different ink does not make Ex. PW2/L (colly) a forged document. There can be number of reasons why the denomination appears in different ink in Ex. PW2/L (colly) or for that matter Ex. PW5/A in CC No. 105/19. PW5, during his cross-examination in the present matter, was not even once called upon by the Ld. Defence Counsel to explain why the denominations are mentioned in different ink. Just getting the witness to admit that the denomination are in different ink does not serve any purpose. It is/was for the defence to extract more from the witness, seek explanations from him as to why the denominations are in different ink so as to prove that the witness was making false statement or that the same was mentioned subsequently in a fraudulent manner. In fact in Shubham’s case there was no cross-examination whatsoever regarding the denomination of “100x500” as mentioned on Ex. PW5/A.

13.30 It has already been discussed above that I am not inclined to believe the defence argument that merely to give benefit to the bank customer/account holders, the bank officials colluded with them and falsely implicated the accused. Though

the defence also argued that PW2 failed to maintain data of deposits of SBNs by the customers as directed by the RBI and in order to save himself and other officials of the bank he falsely implicated accused Sonu, however, this argument has no foundation whatsoever and there is no proof of the same. Even if the data was not maintained properly, though there is nothing on record to suggest that any action was initiated by RBI or Bank of Baroda against PW2 for not maintaining the data, still it is too far fetched an argument that the bank officials would allow the customers/account holders to forge the customer counterfoil merely to implicate the bank official. This sans logic altogether. The defence, which has no basis whatsoever, does not inspire confidence even remotely. Most importantly, what the defence could not explain are the forged bank vouchers Ex. PW5/D and Ex. PW5/B. The material on record i.e. consistent testimony of prosecution witnesses and the CFSL result leaves no doubt that these bank vouchers are indeed forged. Ex. PW5/B being in English as against the customer counterfoil Ex. PW5/A which is in Hindi (in Shubham's case), difference in serial numbers on Ex. PW5/A & Ex. PW5/B and Ex. PW2/L (colly) & Ex. PW5/D (in present case) further proves that the bank vouchers are forged and fabricated. Also the different denomination as mentioned in forged vouchers Ex. PW5/D and Ex. PW5/B as against the counterfoils Ex. PW2/L (colly) & Ex. PW5/A (colly), the very existence of the said vouchers on which writing at point Q39 as well as the numerals are in the handwriting of accused Sonu and Shubham at point Q10 & 11 respectively cannot be explained by either of the accused.

13.31 Just like Ex. PW5/B, Ex. PW5/D was used for entry & posting in the Finacle system which proves that these vouchers were forged in the bank for reflecting deposit of SBNs. If vide Ex. PW2/L (colly) and for that matter vide Ex. PW5/A SBNs were only deposited by PW5, then there was no occasion to create forged bank vouchers Ex. PW5/D and Ex. PW5/B respectively. These forged vouchers were created for the sole purpose of reflecting the deposit of SBNs. The objective was to handover the legal tender deposited by the customer to certain individuals or to retain themselves and if the customer/account holder deposited SBNs only, no purpose would have been served by forging the bank vouchers.

13.32 It is also to be noted that during the cross-examination of PW5 not even once it was suggested to him that when he approached accused Sonu for depositing cash of Rs. 2,00,000/-, accused Sonu sent him to the counter of Shubham Yadav as he was not having any counting machine or that PW5 accordingly deposited the cash with Shubham Yadav. Similarly it was not suggested to PW5 that he deposed falsely regarding deposit of cash with accused Sonu or that accused Sonu had not handed over the customer counterfoil to him or that it was Shubham Yadav who had handed over the cash and bank voucher to accused Sonu. This itself proves that in Ex. PW3/E accused Sonu made self-serving statements just to pin the liability upon Shubham Yadav or else the defence would have cross examined PW5 accordingly. Furthermore, PW10, during her cross-

examination by Ld. PP for the CBI, stated “*It is correct that on 29.11.2016, accused Sonu was working from cash counter No. 3 on which cash counting machine was available*”. Similarly was stated by PW12 Sh. Ankit Pandey during his examination in chief “*On 29.11.2016, Sonu was working from counter No. 3 where the cash counting machine was installed*”. Not even once did the defence challenge the above statements and it was not suggested to these witnesses that they were deposing falsely in this regard. Their testimony having remained uncontroverted, unchallenged I find no reason to disbelieve them, more so considering the other material on record.

#### **Corroboration by CFSL result**

13.33 PW5’s specimen signatures/handwriting S-79 to S-98 i.e. Ex. PW7/A1 (colly) were obtained as was duly proved by PW7 Sh. Tarun Pal and accused Sonu’s specimen signatures/handwriting i.e. S-325 to S-357 i.e. Ex. PW8/A1 (colly) were also obtained, as proved by PW8 Sh. Durga Prasad. The arguments qua these witnesses have already been dealt with above in detail. In addition to the specimen signature/writing, the scroll register Ex. PW10/A2 (colly) was also sent to CFSL as admitted writing A-9 of accused Sonu. It stands proved from CFSL result Ex. PW9/A1 (colly), as proved by PW9 Ms. Lavang Lata, that it is PW5’s handwriting which appears on Ex. PW2/L (colly) at points Q14 & Q14A i.e. on genuine counterfoil as was also proved by PW5 and that numerals & the letters at point Q13 on Ex. PW2/L (colly) as well as at point Q39 on Ex. PW5/D are

of accused Sonu, thereby lending due corroboration to the testimony of PW2 and the prosecution case as such. Furthermore, in the scroll register Ex. PW10/A2 (colly) the relevant entry is also attributed to accused Sonu. This report further establishes that only because the amount was received by accused Sonu that is why the letters & numerals at the above points are in his writing.

13.34 The arguments regarding the competence/expertise of PW9 have already been dealt with above in detail. Though Ld. Defence counsel pointed the statement made by PW9 during her cross-examination which read as “*I have appeared as a witness in two or more cases before the Court. I have appeared as an Expert CFSL witness in two/three matters, including the present one*”, to create doubts upon the competence/expertise of PW9, however, in my considered opinion what the witness was stating was about her appearance before “this court” and not the courts in general. There appears to be typographical error and it should be rather “before this court” and not “before the court”. This becomes more evident from her subsequent cross-examination wherein she stated “*As on today I cannot specify as to in how many court cases I have given expert opinion on handwriting. (vol. I have given expert opinion in about 130 cases)*”.

13.35 As far as the rough notes prepared by PW9, at the time of analysis and examination of the signatures/handwriting in question, merely because PW9 stated that she destroyed the same after preparation of final report and accordingly she was unable

to produce the same before the court is of no consequence. What is relevant is the final report and not the rough notes. Furthermore the witness stated that her observation sheet is still available in the file.

13.36 Ld. Defence Counsel also argued that accused Sonu, though not arrested, was under the control of CBI/IO and that PW9 admitted that there can be some changes in the handwriting on account of physical & mental condition of an individual, therefore, the specimen handwriting/signatures should not have been used for comparison, were not the requisite material for comparison. However, I find no merits in the said arguments. PW8's testimony leaves no doubt that the specimen signatures/handwriting were voluntarily given by the accused and though PW9 stated that there might be some changes in pictorial appearance of writing but she categorically stated that minute and inconspicuous writing character remain the same. Further in her report she has discussed this consistency in para VIII as under:-

*“Questioned writings marked Q-13 & Q-39 when compared with specimen writings marked S-325 to S-332, A-9 attributed to Sonu consistency has been observed in the execution of letters such as:- letter R with the nature of its start, execution of body in continuation of staff, eyelet at its middle, its connection with the following letter s ; letter s with eyelet at its upper body, shape of its lower body; execution of numerals 0,2 between them.”*

13.37 It was also argued by Ld. Defence Counsel that PW9 admitted that due to insufficient identifying handwriting characteristic features no opinion could be given on points Q40A to Q40C of Ex. PW5/D. Also the specimen writing S-260 to

S-267 & S-88 to S-98 of Shubham Yadav and Sh. Ram Sewak Yadav/PW5 were also not sufficient to give opinion on the above points. It was further argued that specimen handwriting S-333 to S-341, S-342 to S-349, S-350 to S-357 were also admittedly not sufficient to give opinion on points Q40A, Q40B & Q40C respectively. As far as the said arguments are concerned, merely because the prosecution failed to connect the said writings with accused Sonu makes no difference. In fact PW9's testimony to that extent proves that she had given an honest opinion, based upon her examination & analysis of the data sent to her and not merely on the asking/at the instance of CBI. Fact remains that Ex. PW5/D is a forged voucher & how it was got prepared was in the exclusive knowledge of the accused and the CBI cannot be blamed or disbelieved for failing to prove as to from whom/how accused Sonu got the said voucher prepared. For the purpose of present trial it is sufficient that Ex. PW5/D & Ex. PW2/L (colly) bears his handwriting at the relevant points i.e. letters & numerals at point Q39 & Q13 which when coupled with testimony of prosecution witnesses and the scroll register Ex. PW10/A2 (colly) duly establishes the prosecution case of forgery and change of legal tender with SBNs. For similar reasoning it makes no difference that PW9 could not give any opinion as to whether Q39 & Q40B i.e. the numerals were written by the same person or not on Ex. PW5/D. It cannot be completely ruled that just like Shubham Yadav, accused Sonu too got prepared the said voucher through someone else and thereafter used it, sent it to the back office for entry & posting to reflect deposit of SBNs by PW5.

### Entry & Posting in the Finacle system

13.38 PW10 Ms. Nisha Gupta's, PW12 Sh. Ankit Pandey's and PW14 Ms. Pooja Verma's testimonies as well as defence arguments are also substantially the same as have been discussed in detail in Shubham Yadav's case. Specific evidence qua accused Sonu and the defence arguments have been discussed herein below.

13.39 No doubt PW10, during her examination in chief failed to identify the numerals on customer counterfoil Ex. PW2/L (colly) and bank voucher Ex. PW5/D to be in the handwriting of accused Sonu, nonetheless, during her cross-examination by Ld. PP for the CBI, she stated that her statements Ex. PW10/A1 (colly) were recorded by the CBI and she admitted that the numerals on them are in the writing of accused Sonu. Furthermore, she also identified the relevant entry in scroll register Ex. PW10/A2 (colly) to be in accused's writing. As stated by PW10 she had worked with accused Sonu for around 1 and ½ years and therefore she was in a good position to identify his handwriting. It has already been discussed above that the witnesses's failure to identify the writing in the year 2019 but having identified the same at the time of incident is logical and natural. As far as PW10's statement that she had not seen scroll register Ex. PW10/A2 (colly) in the bank nor does she know as to who was maintaining the said register is concerned, same is

immaterial. Not only she admitted and identified the relevant entry to be in the handwriting of accused Sonu but these entries were also identified by other prosecution witnesses including PW2 & PW12. Furthermore, the CFSL result Ex. PW9/A1 (colly) connects the accused with the entry in question in the said register.

13.40 PW10 further proved that it was on the basis of voucher Ex. PW5/D that the entries were made in the Finacle system by PW14 Ms. Pooja Verma through her ID PV105322 and posted by her through her ID NM107492. She proved the screenshot of the transaction as Ex. PW10/A3 (colly){Ex. PW17/A1 (colly) in Shubham's case}. Though in this screenshot the transaction ID does not appear, however, the same appears in screenshot Ex. PW15/A (colly) and just like Shubham's case this witness duly explained that it was merely on account of scrolling of page that the transaction ID/column got shifted on the screen and accordingly could not be captured in screenshot Ex. PW10/A3 (colly). This aspect has already been dealt with above in detail in Shubham's case.

13.41 PW14 while corroborating PW10's testimony proved that she had entered the transaction in the Finacle system on the basis of voucher Ex. PW5/D and further proved that the transaction ID/number 00157909 as appearing at point X on the voucher, as was generated at the time of entry, was mentioned by her at point X on the said voucher. On the basis of this entry in the Finacle system the deposit of SBNs/OHD got reflected in the

statement of account of Ex. PW3/D2 of PW5. She also identified the screenshots Ex. PW10/A3 (colly) and Ex. PW15/A (colly) of the transaction in the account of PW5.

13.42 In screenshot Ex. PW10/A3 (colly) as well as Ex. PW15/A (colly) in the remarks column the word “OHD DEPOSIT” appears and it was stated by PW10 during her cross-examination by Ld. Defence Counsel as “It is correct that OHD means Old High Denomination. It is correct that as per the remarks OHD as mentioned on page no. 1 of Ex. PW15/A (colly), the SBNs i.e. specified bank notes have been deposited”. Hence this further proves that the entries in the Finacle system were made on the basis of forged voucher Ex. PW5/D vide which SBNs/OHD were shown to have been deposited by PW5, though PW5 had only deposited legal tender. In statement of account of PW5 i.e. Ex. PW11/A1 (colly) {also Ex. PW3/D2} as well, against the entry/deposit the word “OHDDEP” i.e. Old High Denomination Deposit is mentioned which further proves that the entry was made on the basis of this forged voucher only.

13.43 No doubt neither PW10 nor PW14 had not taken the above said screenshots but as stands proved from the testimony of PW2 Sh. O.N. Singh that he had handed over the said screenshots i.e. Ex. PW10/A3 (colly) to the IO/PW13 vide Ex. PW2/H. During his cross-examination not even a single question was put to PW2 that he had not handed over the screen-shots to the IO or that the said screen-shots were forged & fabricated. No question regarding certificate u/s 65B of Indian Evidence Act

was ever put to PW2 and no objection whatsoever was taken at the time when these screen-shots tendered in evidence. As far as screen-shots Ex. PW15/A (colly) are concerned, PW15 Sh. Sushtant Kumar Ashwani proved that he had handed over the same to CBI vide his letter dated 13.12.2022. The screen-shots are accompanied with certificate u/s 65B of Indian Evidence Act duly signed by, bearing the signatures of PW15. The arguments regarding authenticity of screen-shots, which are the same screen-shots as proved as Ex. PW17/A1 (colly) & Ex. PW24/A1 (colly) as well as the testimony of PW15 (examined as PW24) have already been dealt with in detail in Shubham's case. Most importantly, the screenshots serve only one purpose in the present matter i.e. to prove that entry in the Finacle system was made on the basis of forged voucher Ex. PW5/D, which fact stands duly proved from the testimony of PW10 and PW14. Even if these screen-shots are/were not there still the testimony of the prosecution witnesses especially PW2, PW5 and PW12 coupled with the CFSL result proves the prosecution case of replacement of original bank voucher with forged voucher Ex. PW5/D and replacement of legal tender with SBNs for which the forgery was committed.

13.44 PW12 lend further corroboration to the prosecution story when he identified the words & numerals at point Q13 on the counterfoil Ex. PW2/L (colly) as well as at point Q39 on voucher Ex. PW5/D to be in the handwriting of accused Sonu. He also identified accused Sonu's writing at entry no. 88 in scroll register Ex. PW10/A2 (colly) i.e. the entry made in respect of

the deposit by PW5 and wherein he fraudulently mentioned the deposit of SBNs i.e.100 SBNs of Rs. 1000/-. He also proved the attendance register of accused Sonu as Ex. PW12/A which further proves that accused Sonu was present in the bank and working as Cashier on 29.11.2016 i.e. the day when PW5 deposited the money/legal tender with him.

13.45 No doubt PW12 during his cross-examination stated “*I cannot identify the handwriting of Sonu*”, however, he had already duly identified his handwriting/entry in Ex. PW10/A2 (colly) as well as the words & numerals on Ex. PW2/L (colly) & PW5/D. Moreover, just before the said statement he had stated that he had worked with Sonu for more than 2 years and also went on to state after the above statement as “*It is incorrect to suggest that I wrongly identified the writings and initials of accused Sonu during my examination in chief. It is further incorrect to suggest that I have deposed falsely in my examination in chief at the behest of prosecution*”.

13.46 As regards register Ex. PW10/A2 (colly), PW12 had also stated “*I cannot say as to how many cashiers were using the register Ex. PW10/A2-colly (Vol. The same was being used by Sonu, Shubam and may be some other person, but I cannot identify the other person who has made the entries on some of the pages. The cashiers never used to supply details of the SBNs received by them during demonetization to the bank. No separate register/document was being maintained by the cashiers for regarding receipt of SBNs received by them during the period of*

*demonetization (Vol. The register Ex. PW10/A-2 (colly) contains the details of SBNs as well as legal tender received by the cashiers during the period of demonetization”.* Hence no doubt remains that register Ex. PW10/A2 (colly) was used by accused Sonu and it makes no difference that other cashiers were also using the said register as this court is only concerned with entry no. 88 in respect of PW5’s deposit. The evidence on record, as discussed above in detail, leaves no doubt that the said entry was made by accused Sonu only.

### **Sanction**

13.47 As far as sanction for prosecution of accused Sonu is concerned, PW1 Sh. Rakesh Kumar Bhatia proved that vide order dated 26.3.2018 i.e. Ex. PW1/A he accorded sanction for prosecution against him.

13.48 The arguments regarding non-availability of chargesheet with PW1, at the time of grant of sanction has already been dealt with above. The perusal of the sanction order which is running into four pages reveals due application of mind by the sanctioning authority and that he had the requisite material before him.

13.49 Merely because PW4 Ms. Surbhi Singh in her report Ex. PW3/E [also Ex. PW11/A1 (colly)] had concluded that accused Sonu had not unauthorizedly replaced legal tender and she had only concluded that he did not verify or match the details

of denomination of cash deposited by the customer as per the counterfoil with the bank voucher; or that she had concluded that bank's copy of the deposit slip i.e. bank voucher was deliberately changed by Shubham and he also changed the denomination of the currency notes deposited by the customers; or that her report was also acted upon by the higher officers makes no difference. PW4/Ms. Surbhi Singh's report is dated 06.3.2017 whereas, the fact that accused Sonu had replaced the bank voucher, filled by PW5 with another voucher mentioning SBN notes i.e. Ex. PW5/D was revealed during the detailed investigation carried out by the CBI/IO which also revealed replacement of legal tender with SBNs by him. This investigation report, as was proved by PW1 was available with him at the time of grant of sanction and so was the CFSL result. Accordingly, PW1 mentioned the above facts in sanction order Ex. PW1/A. The investigation revealed that though in his confession Ex. PW3/E, accused Sonu claimed that the voucher i.e. Ex. PW5/D & the cash in the denomination 100 x Rs. 1,000/- & 1000 x Rs. 100/- were given to him by Shubham Yadav, however, the said part of the confession was false and made merely to save his skin, as has been discussed above. It has already been discussed above that the words "Rs." & the numerals "2,00,000/-" are in his writing only. Further the testimony of PW5 duly proves that the cash was deposited by him with accused Sonu only and that neither the accused sent PW5 to the counter of cashier Shubham nor PW5 ever went there alongwith the cash and the customer counterfoil. All this has been discussed above in detail. Not only PW1 was not bound with the findings of PW4 but mentioning about the replacement

of the voucher in Ex. PW1/A further shows due, independent application of mind by PW1.

13.50 It makes no difference that PW1 did not mention in the sanction order that accused Sonu has replaced the legal tender with SBNs as the same was duly mentioned in the investigation report. Furthermore, on page no. 3 of Ex. PW1/A, it is duly recorded as “*And whereas, in the above mentioned way, either Sh. Sonu, SWO-A, E.C. No. 116817, has deposited his SBNs or of some other persons by concealing the name of depositor of SBNs. He has committed offence of criminal misconduct as he, by abusing his official position, has obtained pecuniary advantage to the tune of Rs. 1,00,000/- for himself or for any other person, by depositing SBNs (which were declared seized to be legal by Govt. of India) concealing the name of depositor of SBNs*”. It also makes no difference that neither it is mentioned in the sanction order nor the investigation revealed as to whom the SBNs belonged to. This fact was in the exclusive knowledge of the accused and the prosecution cannot be blamed or disbelieved for not explaining the same.

13.51 PW1 did not err in taking note of the decision, of the Disciplinary Authority, against accused Sonu or in concurring with the same. Just because there was no charge of replacement of legal tender, after the inquiry report of Ms. Surbhi Singh i.e. Ex. PW3/E is also of no consequence as the disciplinary proceedings, inquiry & investigation by CBI/police are independent, distinct proceedings altogether. It has been

discussed above that it was only during detailed investigation that it was revealed that the bank voucher as well as the legal tenders were replaced by the accused and vide Ex. PW3/E, the accused tried to mislead the bank as well as PW4 to save himself.

13.52 Also even in the absence of any reference to statement of witnesses recorded by PW4 Ms. Surbhi Singh or the said statement not being before PW1, there was sufficient material before PW1, as is detailed in sanction order Ex. PW1/A i.e. complaint, bank investigation report, bank voucher, customer counterfoil, scroll register, written admission/statement of accused, statement of witnesses, CFSL result etc., for him to apply his mind. Also the law regarding sanction has already been discussed above in detail and therefore I find no infirmity whatsoever in the sanction order.

13.53 It was also argued by Ld. Defence Counsel that accused Sonu was not named in the complaint Ex. PW3/G and there was no separate complaint against him, however, let that be the case merely because accused Sonu was not named in the complaint makes no difference. Same applies to his name not appearing in FIR Ex. PW13/A1. By that time Sonu's exact role had not been ascertained though his involvement was duly established in the inquiry by Ms. Surbhi/PW4 and it has been discussed above that in his statement Ex. PW3/E accused Sonu tried to mislead Ms. Subrhi & the bank. It was only during the investigation that the exact role of accused Sonu emerged.

13.54            Though it was also argued by Ld. Defence Counsel that in the absence of his name in the FIR, no separate charge sheet could be filed against accused Sonu, however, I find no merits in the said argument. There is no legal bar to filing of separate charge sheets in one FIR. As held in *Asit Kumar Adak (supra)* “*filing of multiple charge sheets on single FIR is not barred when circumstances prevail*”. In the case at hand though forgery was committed during the same period of demonetization and both the accused persons were employee of the same bank, however, there is nothing to suggest any conspiracy between them. Both of them individually, not known to each other committed their respective offences and therefore when the transactions were different, one charge sheet by the IO/prosecution would not have been the right course of action to proceed against them. At this stage, it will be worthwhile to highlight the observations made by the Hon’ble Allahabad High Court in *Faujdar Singh v. State of UP 2015 SCC Online All 4183* “*FIR is foundation of investigation. Without registration of FIR, investigation cannot proceed. But when an FIR is registered and investigation discloses the commission of several separate, independent and distinct offences arising out of separate transactions and not connected with each other though similar in nature, for which separate trial is needed in accordance with provisions of Cr.P.C, submission of separate charge-sheets for separate, independent and distinct offences on the basis of same FIR cannot be said to be against law. In such situation even if one charge-sheet is submitted by investigating agency, the Magistrate or trial court may order separate trial for separate,*

*independent and distinct offences arising out of separate transactions and not connected with each other, in accordance with provisions of Cr.P.C.”*

13.55 Remaining arguments regarding lapses in the investigation, non seizure of CCTV footage, Finacle system, OHDTM menu etc. have already been dealt with in detail in Shubham’s case and may be read as part & parcel of the findings in the present case. No purpose shall be served by repeating them.

### **Offences committed**

13.56 As far as what offences the accused has committed, in view of the above discussion, prosecution has successfully brought home the guilt against the accused for offences under section 420, 468, 471, 201 & 409 IPC as well as for offence under section 13(1)(c) read with section 13(2) of the PC Act, 1988.

13.57 Having forged the bank vouchers, got prepared the forged vouchers, which aspect has been discussed in detail above, the accused indeed committed offence punishable u/s 468 IPC. As stands proved on record voucher Ex. PW5/D is a forged voucher, got forged by him. To lend authenticity to this forged voucher he affixed the bank stamp as well as wrote the word Rs and numerals in his writing at point Q13. Though it could not be ascertained during the investigation as to from whom/how he got

the said voucher prepared/forged nonetheless this voucher was not a genuine voucher as it was not part of the same pay-in-slip of which genuine counterfoil Ex. PW2/L (colly) was part of. This has been discussed in detail above. This forged bank voucher was created for the purpose of reflecting deposit of SBNs though only legal tender were deposited by PW5. This voucher was sent to the back office and used, acted upon in the back office by the other bank employees/staff for making entry & posting in the Finacle system. By creating this forged voucher, the accused gave an impression to the bank that PW5 had deposited SBNs though what was deposited by him was legal tender. By sending this forged voucher to the back office the accused deceived the bank, its employees at the back office i.e. PW10 and PW14 to make entry in the Finacle system reflecting deposit of SBNs/OHDDEP. But for this forged voucher no such entry would have been made by these bank employees. Hence by forging the voucher he deceived the bank/these officials and induced them to make corresponding entries in the Finacle system. Though no pecuniary/financial loss was caused to the bank, however, the loss, harm or damage includes a reputational loss as well, as is evident from section 415 of Indian Penal Code which defines cheating. There was indeed a reputational loss to the bank before the customer/PW5 when during inquiry it was found out that the bank, relying upon its official/accused's forged voucher, reflected deposits of SBNs in his account though what he had deposited was the legal tender. The bank's reputation thereby suffered a loss, setback as PW5 obviously would have lost faith in the functioning of the bank. The accused was bound to protect the

bank's interest as well as that of account holder/PW5 but he intentionally by his fraudulent acts caused wrongful loss to the bank.

13.58        Though Ld. Defence Counsel argued that section 420 IPC is not made out as there was no delivery of any property as such, however, I find no merits in his arguments. The legal tender deposited by PW5 was replaced with the SBNs by the accused. These legal tenders were retained by the accused, handed over to someone/others known to him and his/their SBNs were fraudulently got deposited in the bank treasury/chest. This was the real intent, purpose of forgery and but for the forged voucher the bank would not have accepted the SBNs. These SBNs were ultimately to be sent to RBI, exchanged with legal tender by/from the RBI. Hence on the strength of forged voucher the Bank of Baroda was deceived to accept SBNs and deposit/deliver them to RBI. Therefore, accused Sonu indeed committed offences u/s 420 IPC as well as 468 IPC. Furthermore, by forgery of the voucher and sending it to the back office of the bank for entry & posting thereby using the forged voucher as genuine, knowing fully well that it is/was forged, the accused committed offence punishable u/s 471 IPC.

13.58        As far as offence under section 201 IPC is concerned, the detailed discussed as above squarely establishes that the original voucher was destroyed, made to disappear and in its place forged bank voucher Ex. PW5/D was created/got created. This voucher was destroyed, removed from the bank so

as to avoid his misdeeds coming to fore. But for PW5 approaching the bank it would have never revealed that the accused indeed committed forgery of the bank voucher, bank part of the pay-in-slip. Therefore, the accused committed offence punishable u/s 201 IPC.

13.59 As far as offence u/s 409 IPC is concerned, it was argued by Ld. Defence Counsel, while relying upon *Delhi Racecourse Club (supra)*, argued that offence u/s 420 IPC and 409 IPC cannot co-exist simultaneously, however, it is to be seen that these offences can be committed against different individuals during the same transaction. As discussed above, the cheating was committed with the bank and against the bank's customer/account holder/PW5 the accused committed offence of criminal breach of trust. While acting as a Cashier at Bank of Baroda, the accused was performing public duties and therefore he is/was a public servant. As per section 2 (b) of the PC Act, 1988 "public duty" means "*a duty in the discharge of which the State, the public or the community at large has an interest*". According to section 2 (c) of the said Act "*public servant*" means, - (i) *any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;.....(viii)any person who holds an office by virtue of which he is authorised or required to perform any public duty;*". In his capacity as a Cashier, he was entrusted with legal tenders by PW5. They were so entrusted to be deposited in his account, however, the accused retained these legal tender for himself, his known tos and

replaced them with SBNs. He forged the bank voucher for the deposits to reflect, deposit of SBNs whereas the customer had deposited his legal tenders with him. He thereby committed criminal breach of trust against the said customer/account holder/PW5. Hence the accused is held guilty for offence punishable u/s 409 IPC as well.

13.60 Section 13 of the PC Act defines as well as provides punishment for criminal misconduct by a public servant. The detailed discussed as above squarely proves that the accused dishonestly, fraudulently misappropriated the legal tenders deposited with him by the bank customer/account holder/PW5 and converted them by replacing them with SBNs for his own use, use by his known tos. He by forging the voucher, by committing criminal breach of trust while abusing his position as Cashier/public servant retained, procured the legal tender for himself, his known tos. These legal tenders/currency were valuable thing and though there is no proof of any pecuniary advantage obtained/caused to him, however, the accused would not have undertaken the entire exercise without receiving any pecuniary advantage. Once he retained the legal tender, handed over them to his known tos, he/they would have indeed received pecuniary advantage. Therefore, the accused is held guilty for offence u/s 13 (1)(c) read with section 13 (2) of the PC Act.

## **Conclusion**

13.61 In view of above, accused Sonu stands convicted for offences punishable u/s 420, 468, 471, 409, 201 IPC as well as 13 (1) (c) r/w section 13 (2) of PC Act 1988.

13.62 Copy of the judgment be provided free of cost to the accused and let he be heard separately on the point of sentence.

**Announced in the open court  
on 3<sup>rd</sup> June 2026**

**(GAURAV RAO)  
Special Judge CBI (PC Act)-01  
Rouse Avenue Court  
Complex, New Delhi**

*Note: Annexures are appended with this judgment in terms of directions of Hon'ble Apex court passed in Manojbhai Jethabhai Parmar (Rohit) vs. State of Gujarat 2025 SCC OnLine SC 2803.*