IN THE COURT OF SH. SUDHANSHU KAUSHIK :
SPECIAL JUDGE (PC ACT) (CBI)-11 :
ROUSE AVENUE COURT COMPLEX : NEW DELHI

CC No. 279/19
CBI Vs. Manoj Kumar Sharma etc.
RC No. DLCT11-001110-2019

CENTRAL BUREAU OF INVESTIGATION

V E R S U S

1. **MANOJ KUMAR SHARMA**
Director, M/s Gauri Exim Private Limited
52, Yusuf Sarai, New Delhi

2. **KANWAR BHAN NANDWANI**
ZP-9, Ground Floor, Pitampura
New Delhi

3. **RAVI BHUSHAN ROY**
S/o Sh. R.B. Roy
Proprietor of M/s R.B. Consultants & Valuer
Anand Nagar, Railway Xing
Bhadohi, U.P.

4. **RAVINDER KUMAR JOSHI**
A-303, Delhi Rajdhani Apartments
I.P. Extension, Delhi – 110 092

5. **AMRESH KUMAR MISHRA**
C-25, South Extension Part-I, New Delhi

6. **RAM JI MISHRA**
C-25, South Extension Part-I
New Delhi

7. **PRAVEEN KUMAR**
498, Nimri Colony, Ashok Vihar
New Delhi

8. **SWADESH KUMAR MISHRA**
282, Satya Niketan
New Delhi

9. **ANAND JI MISHRA**
C-25, South Extension Part-I
New Delhi

10. **SHIV KUMAR SHARMA**
52, Yusuf Sarai, New Delhi

Date of registration of FIR	:	23.08.2007
Date of filing of charge-sheet	:	16.12.2008
Arguments concluded on	:	25.02.2025
Date of Judgment	:	11.03.2025

Appearance :

For Prosecution : Sh. Avanish Kumar Chand, Ld. PP for the CBI.
For accused persons : Ms. Daljeet Kaur, Counsel for A-2 K.B. Nandwani.
: Sh. Manish Tiwari, Counsel for A-3 Ravi Bhushan Roy and A-7 Parveen Kumar.
: Sh. Anil Kumar, Counsel for A-4 R.K. Joshi.
: Sh. Gurpreet Singh, Counsel for A-5 Amresh Kumar Mishra, A-6 Ramji Mishra, A-8 Swadesh Kumar Mishra, A-9 Anandji Mishra and A-10 Shiv Kumar Sharma.

J U D G M E N T

1. Accused persons were sent up for trial on the acquisition that they entered into a criminal conspiracy and cheated a Public Sector Bank by fraudulently obtaining credit facility in favour of a private limited company by opening a current account on the basis of forged & fabricated documents and siphoning off the funds so obtained by furnishing forged export bills and making transfers and cash withdrawals in the name of various individuals and fictitious business entities.

Factual Matrix as revealed from the record

2. The present case bearing RC-1(E)/2007-EOW-II/DLI came to be registered on 23.08.2007, on the basis of a written complaint of Sh. B.K. Dass, General Manager, UCO Bank, Parliament Street, New Delhi. The written complaint was against the Directors of the company, Valuer of land offered and accepted as collateral security and the officials of UCO Bank, Delhi High Court Branch. On registration of the case, investigation was carried out and the charge-sheet was filed against ten (10) individuals under Sections 120B of Indian Penal Code (*hereinafter referred to as 'IPC')* read with Section 419, 420, 467, 468 and 471 of IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act (*hereinafter referred to as 'PC Act')*; (i) Manoj Kumar Sharma (A-1); (ii) K.B. Nandwani (A-2) (both Directors of M/s Gauri Exim Private Limited); (iii) Ravi Bhushan Roy (A-3), Valuer; (iv) R.K. Joshi (A-4), the then Assistant General Manager, UCO Bank, Delhi High Court Branch; (v) Amresh Kumar Mishra (A-5); (vi) Ramji Mishra (A-6); (vii) Praveen Kumar (A-7); (viii) Swadesh Kumar (A-8); (ix) Anandji Mishra (A-9); and (x) Shiv Kumar Sharma (A-10).

3. The brief facts, as disclosed in the charge-sheet, are; On 13.12.2004, A-4 R.K.Joshi, Assistant General Manager of UCO Bank, High Court Branch, New Delhi (*hereinafter referred to as the 'Bank'*), sanctioned a credit limit of Rs.70 lakhs to M/s Gauri Exim Pvt. Ltd. (*hereinafter referred to as 'GEPL'*) as Advance against Foreign Bills under the Course of Collection (ABC) and an overdraft limit of Rs.25 lakhs by creating an equitable mortgage on a land situated at Uttar Pradesh. In order to secure the credit facility, A-3 Ravi Bhushan Roy, who was not the approved Valuer of the Bank, submitted an inflated valuation report showing the value of the land at Rs.169.31 lakhs, even though, the land was full of pits and was of negligible value. It is the case of prosecution that the bank officials released funds from the sanctioned credit limit of Rs.70 lakhs before the land came to be acquired by one of the Directors of the company. The land was purchased by A-1 Manoj Kumar Sharma (Director of GEPL) on 10.01.2005 but the funds from the credit facility were already released before the said date. The equitable mortgage was created subsequently and the terms and conditions of the sanction letter were also accepted by GEPL subsequently on 19.01.2005.

4. It is the prosecution's case that A-6 Ramji Mishra was the master mind behind the entire criminal conspiracy. Initially, his relatives owned the mortgaged land but it was transferred in the name of A-1 Manoj Kumar Sharma on 10.01.2005 through two (2) sale deeds bearing numbers 72/2005 and 73/2005 registered with the Sub-Registrar, Gyanpur, Uttar Pradesh. In the said sale deeds, the value of the land was shown as Rs.18.65 lakhs (Rs.10.30 lakhs + Rs.8.35 lakhs) and the entire sale consideration amount was shown to have been paid in cash. It has been alleged that thereafter, A-6 procured the valuation report (dated 13.01.2005) from A-3 Ravi Bhushan Roy, who inflated the value of the property more than 100 times and declared the estimated value at Rs.1,69,31,000/- whereas, the actual worth of the land was not more than Rs.1,32,500/- and the land was not even fit for agriculture. The allegations against A-4 R.K. Joshi are that he accepted the valuation report, even though, it was not submitted by an approved valuer of the bank and he flouted the prevalent banking norms by failing to get the condition of the land verified from the local branch of the bank. It has been alleged that A-4 intentionally committed various irregularities in sanctioning and disbursing the credit facility to GEPL.

5. Investigation revealed that the Directors of GEPL opened a current account no. 1947 with the bank on 07.07.2004 on the basis of fake and forged documents showing the address of GEPL as ZP-9, Pitampura, New Delhi, whereas, as per the record of Registrar of companies (RoC), the company was operating from a different address i.e. 148, Satya Niketan, New Delhi. It has been stated that in the documents submitted with the bank, A-1 Manoj Kumar Sharma and A-2 K.B.Nandwani were shown as Directors of GEPL but they were not holding the said position. It was found that the account was opened on the introduction of A-7 Praveen

Kumar @ Romi, who impersonated as 'Vijay Pal Singh Pali', Proprietor of M/s Pali Photostat and placed his signature in the 'introduction column' of the account opening form as Vijay Pal Singh Pali. M/s Pali Photostat was maintaining a current account no. 399 with the same branch of the bank.

6. It has been alleged that at the time of opening of the current account, A-1 Manoj Kumar Sharma and A-2 K.B. Nandwani furnished false documents under their signatures, the details whereof were; (i) Form-32 of GEPL, purported to have been submitted with the Registrar of Companies (RoC), wherein it was shown that they were appointed as Directors of GEPL with effect from 08.04.2004; (ii) Details of directors on the Letter Head of GEPL wherein it was shown that they were Directors along with two other directors, Subhash Chand Tiwari and Shishir Mohi; and (iii) Resolution on the Letter Head of GEPL, purportedly passed by the Board of Directors on 16.12.2003, whereby it was resolved that they have been authorised to open a current account and sign the necessary documents. On this letter head, the address of GEPL was shown to be that of Pitampura, New Delhi whereas, as per the record of the RoC, the company shifted to the said premises subsequently on 15.07.2004.

7. The prosecution's case proceeds further that the Investigation revealed that A-1 and A-2 appointed themselves as the Directors without obtaining the approval of the Board of Directors of GEPL and submitted a false resolution that a meeting of the Board of Directors was held on 16.12.2003. Minutes of the said meeting were signed only by A-1 Manoj Kumar Sharma as Director and A-2 K.B. Nandwani as Chairman of GEPL but it did not contain the signatures of the other Directors. It was revealed that these persons were appointed as Directors only on 08.04.2004.

8. It has been stated that at the time of opening of current account, A-4 R.K. Joshi deliberately committed various irregularities and failed to follow the accepted banking norms in sanctioning the credit facility and opening the current account of GEPL. He failed to obtain the requisite Form-18 to show the shifting of address of the company to Pitampura, New Delhi. He did not obtain any document to ascertain that A-1 & A-2 were made Directors. He omitted to take into account the discrepancy between the resolution dated 16.12.2003 and the details contained in Form-32. It was mentioned in the resolution that a meeting was held on 16.12.2003 and A-1 & A-2 signed the minutes as Directors of the company whereas, as per Form-32, they were appointed as Directors only from 08.04.2004. It has been further alleged that the photocopies of the documents were not certified by the bank and the KYC norms were also ignored at the time of opening of current account.

9. Investigation further revealed that after opening of current account, in complete disregard of the banking norms, continuous overdrafts were allowed in the account even for heavy cash withdrawal and transfer of funds to other connected accounts. It has been stated that according to the banking norms, overdraft is never allowed in new accounts, much less for cash withdrawals and transfer to the connected accounts. In terms of the banking norms, generally temporary overdrafts are allowed to establish that account holder was having genuine transaction for a short period. In the current account of GEPL an overdraft to the tune of Rs.69.60 lakhs was allowed, which was against the banking norms.

10. It has been stated that A-4 R.K. Joshi abused his official position and committed irregularities not only in sanctioning the credit facility but also in releasing a sum of Rs.70 lakhs on 15.12.2004 as advance against four (4) fake and forged export bills whereas the current account was already overdrawn to the tune of Rs.69.60 lakhs. Further, the credit limit of GEPL was enhanced on 27.02.2005 to Rs.185 lakhs by extending the equitable mortgage on the same land which was mortgaged at the time of the earlier credit facility and out of the enhanced limit, a sum of Rs.179 lakhs was further released as advance against twelve (12) fake & forged export bills. The export bills were sent for collection to the foreign banks but most of them were dishonoured. Although, payments were received against few bills but payments in respect of most of the bills were not received by the bank. In addition to this, a cash amount of around Rs.2,59,49,000/- was withdrawn from the account of GEPL through forty three (43) cheques in the names of different individuals, firms & companies, which were being managed and controlled by A-5 to A-10. On account of this, out of the total advance of Rs. 249 lakhs, only a sum of Rs. 64 lakhs was received by the bank through proper channel resulting in loss of Rs.185 lakhs in the ABC account of GEPL.

11. During the course of investigation, documents including the Bank statements, Memorandum & Articles of Association, Resolutions of GEPL, Sale deed of the mortgaged land, documents relating to the export bills, valuation report, legal search report and other relevant documents were collected. Statements of the witnesses were recorded and specimen handwriting of the accused persons were obtained and sent for comparison to CFSL. The CFSL returned a positive finding that the signatures in the 'introduction column' of the account opening form were made by A-7 Parveen Kumar and the handwriting on the resolutions of GEPL tallied with the handwriting of A-4 R.K. Joshi. The investigation concluded and the charge-sheet was filed in the court. The bank officials, Shiv Kumar Nautiyal and D.R. Sonkar, were kept in column no. 2 of the charge-sheet on the grounds that no incriminating evidence was found against them while the official Ranjeet Banerjee expired during the course of investigation. Since, A-4 R.K. Joshi stood dismissed from service, therefore, the requisite sanction under Section 19 of PC Act was not obtained on the ground that the same was not required.

Charges against the accused persons

12. Cognizance was taken and the accused were summoned. Copies of the charge-sheet and the documents were supplied to the accused persons. Arguments were heard on the point of charge and the charges were framed under Section 120B read with Sections 419, 420, 467, 468 and 471 of IPC and Section 13(1)(d) of PC Act against A-1 to A-10 and Section 13(2) read with Section 13(1)(d) of PC Act against A-4. Separate charge under Sections 467, 468 & 471 of IPC was framed against A-2 K.B. Nandwani. Separate charge under Section 419 of IPC was framed against A-7 Parveen Kumar. Separate charge under Section 420 of IPC was framed against A-2 K.B. Nandwani, A-5 Amresh Kumar Mishra, A-6 Ramji Mishra, A-8 Swadesh Kumar Mishra, A-9 Anandji Mishra and A-10 Shiv Kumar Sharma. All the accused persons pleaded not guilty and claimed trial.

Prosecution Witnesses

13. Fifty Seven (57) prosecution witnesses were examined:

Witnesses from different branches of UCO Bank

PW-1 *Brajender Kumar Das, General Manager at the Regional Branch of UCO Bank in Parliament Street, New Delhi* was the official, on whose complaint the present FIR came to be registered. The complaint dated 22.08.2007 lodged by him is Ex.PW1/A;

PW-14 *Sh. G.C. Mahajan, Chief Manager, UCO Bank, Delhi High Court Branch* narrated the procedure for the opening of a current account. He deposed that the documents attached with the account opening form were required to be verified by the bank officials. He mentioned that in the present case, the documents were not counter-signed by the bank officials. He pointed out that Form-18, PAN cards and the ID proofs of the directors were not obtained by the bank officials. He also identified the cheques vide which money was withdrawn from the current account of GEPL;

PW-15 *Sh. Y.S. Thakur, Special Assistant, UCO Bank, Delhi High Court Branch* identified the signatures of A-4 R.K. Joshi, A-1 Manoj Kumar Sharma and A-2 K.B. Nandwani on the account opening form and specimen signature card of GEPL;

PW-19 *Sh. Ramesh Kumar Taneja, Manager, UCO Bank, Parliament Street* identified his initials on the export documents of GEPL pertaining to bills for export of Indian hand knitted woollen carpets. He deposed that the payment in respect of certain bills were not received from the foreign bank. He deposed that certain export bills were returned unpaid by the foreign banks and handling charges were paid in that regard;

PW-20 *Sh. Sh. B.K. Sood, Chief Manager, UCO Bank, Delhi High Court Branch* deposed that he handed over to the CBI, the certified copy of equitable mortgage register, original account opening form, specimen card and other documents submitted by the directors of GEPL at the time of opening of the current account;

PW-21 *Sh. Ajit Singh, Manager, UCO Bank, Parliament Street* identified the signatures on the seizure memo dated 20.09.2007 whereby the export documents were seized by CBI. He deposed that the documents pertaining to the export consignment were seized by CBI;

PW-22 *Sh. Umesh Prasad Singh, Chief Officer, UCO Bank* stated about the legal search and valuation reports which were obtained by the bank subsequently. He deposed that he handed over the legal search report dated 24.09.2007 and valuation report of the mortgaged property dated 27.08.2007 to the CBI. The legal search report dated 24.09.2007, bearing signatures of Sh. Parswnath Yadav, Panel Advocate of UCO Bank, Zonal Office, Varanasi is Ex.PW22/B. The valuation report of Sh. Anil Singh, Panel Valuer of UCO Bank, Zonal Office, Varanasi is Ex.PW22/C;

PW-24 *Sh. Anil Singh, Panel Valuer of UCO Bank, Varanasi* identified his signatures on the valuation report (Ex.PW22/C) and deposed that the value of the mortgaged property was assessed by him at Rs.1,32,500/-;

PW-26 *Sh. Reeta Arora, Assistant General Manager, Zonal Office, UCO Bank, Parliament Street, New Delhi* deposed that he handed over certain circulars of the bank to the CBI along with a booklet containing scheme of valuation of security in standard and NPA accounts vide letter Ex.PW26/A. She mentioned that she also handed over the certified copy of the manual containing instructions of foreign exchange business, certified copy of guidelines & instructions governing exercise of lending powers of Indian branches and certified copy of circular dated 21.04.2006 to the CBI vide letter dated 06.12.2007 Ex.PW26/B;

PW-29 *Sh. Naveen Kumar Srivastava, Panel Advocate of the Bank* deposed that he conducted the legal search of the mortgaged property and submitted report to the Assistant General Manager, UCO Bank, Varanasi Region through UCO Bank, Mirzapur Branch. He mentioned that he visited the office of Sub-Registrar to inspect the documents of the property and also carried out physical inspection of the property before submitting the legal search report dated 20.06.2005 Ex.PW29/A (D-213);

PW-30 *Sh. D.P. Suman, DCO (ZO), Varanasi* deposed that he inspected the mortgaged land along with the CBI officials and found that the land was in a pit. He deposed that the land was situated at a distance of around 50 meters from the main road;

PW-32 *Sh. A.P. Narsimhan, Assistant General Manager, UCO Bank, Treasury Branch, Mumbai* stated that amounts of Rs.19,78,344/- and Rs.41,15,147/- were remitted in the account of GEPL vide two (2) payment advices and details thereof were handed over to CBI;

PW-37 *Sh. Parmod Kumar Aggarwal, Assistant General Manager, UCO Bank, Delhi High Court Branch* deposed that he supplied certain documents to the CBI. He gave the details of those documents as; (a) a booklet containing schemes of valuation of securities in standard & NPA accounts issued by the recovery department of UCO Bank; (b) a circular dated 29.04.2004; (c) two letters dated 12.03.2008 issued by Sh. U.P. Singh, Chief Officer, Zonal Office, Varanasi addressed to the Assistant General Manager, UCO, Zonal Office, Delhi High Court Branch; (d) original valuation report 27.08.2007 submitted by Sh. Anil Singh of M/s Bharat & Associates, Varanasi in respect of the mortgaged property;

PW-42 *Sh. Deshraj Sonkar, Assistant Cashier-cum-Godown Keeper, UCO Bank, Delhi High Court Branch* deposed about the documents, which were taken on record at the time of opening of the current account of GEPL. He also mentioned about the process note, which was prepared at the time of sanctioning of the credit facility;

PW-48 *Sh. Satender Kumar Gupta, Chief Vigilance Officer, UCO Bank, Parliament Street* deposed that he carried out vigilance investigation in respect of irregularities found in the current account of GEPL. He pointed out various discrepancies and irregularities noticed by him in the opening and managing of the said account. He deposed that Vijay Pal Singh Pali told him during internal investigation that he signed the account opening form of GEPL on the request of A-4 R.K. Joshi;

PW-49 *Sh. T.R. Gulati, General Manager, UCO Bank* deposed about the banking manuals and guidelines prevailing at the relevant time. He mentioned that according to the procedure adopted by the bank, the credit facilities for working capital were mandatorily required to be secured by a collateral security. He deposed that the branch manager was duty bound to get the documents of the property verified from empanelled advocate of the bank and obtain valuation report from an empanelled valuer. He stated that the bank manager was under an obligation to scrutinise the legal and valuation reports of the property and was also required to carry out the physical inspection of the property either himself or through any other bank official. He deposed that a bank circular dated 05.04.2005 and a booklet containing scheme of valuation of securities were handed over to the CBI by his colleague Ms. Rita Vohra, Assistant General Manager vide covering letter dated 19.02.2008 which is Ex.PW26/A. He identified the signatures of Ms. Rita Vohra on the said letter at point A;

PW-53 *Sh. Subhash Chandra Kucchal, Chief Manager, UCO Bank, Kolkata Branch* narrated the procedure for sanctioning of Advance against Foreign Bills under course of Collection (ABC). He mentioned that he did not personally deal with the process of opening of the current account of GEPL and he is not aware if Form No. 32 was required to be submitted for processing the request for the credit facility;

Witnesses from the Customs, Warehouse and RoC

PW-16 *Sh. Data Ram, Junior Technical Assistant,* RoC*, Delhi & Haryana* deposed that he handed over to the CBI the file maintained at RoC in respect of GEPL. He pointed out that neither Form No. 32 (showing the appointment of A-1 and A-2 as directors of GEPL) nor Form No. 18 (showing changed address of GEPL) was found on the said file;

PW-17 *Sh. Rajat Dua, Retd. Superintendent (Customs)* deposed that he dealt with the export consignment of GEPL. He mentioned that relevant documents including Statutory Declaration Form (SDF) containing an undertaking that the remittance shall be brought from the foreign company within time were submitted by the exporter (GEPL);

PW-18 *Sh. Rajesh Kumar Arora, Preventive Officer at Central Warehousing Corporation, Kalamboli, Nhavasheva* deposed that he examined the export consignment of GEPL. He mentioned that GEPL gave undertakings in respect of each consignment by submitting SDF form for each shipping bill;

PW-34 *Sh. A. Panda, Superintendent (Customs)* deposed that he handed over the copies of the export shipping bills, MATE receipts in respect of various consignments of HI-Tos, Saffemarine (India) Pvt. Ltd. and Notrans Marine Services Pvt. Ltd. (D-98 to D-112) to the CBI;

PW-44 *Sh. N.V. Dhotre, Superintendent of Customs, Mumbai* identified his signatures on the shipping bills of various consignments (D-98, D-100, D-101);

PW-45 *Sh. S.S. Gill, Assistant Commissioner (Customs)* identified his signatures on shipping bills and explained the process and procedure involved in exporting the goods;

PW-46 *Sh. N.Y. Thakur, Deputy Manager, SBI, Nhava Sheva Port Project Branch, Mumbai* deposed that a sum of

Rs.4,51,800/- was received in the bank account of GEPL as duty drawback from the customs department;

PW-47 *Sh. Sukhdev Shiv Saran, Assistant Commissioner, Custom House (JNCH)* deposed that he sent a reply dated 03.01.2008 whereby, the details of the duty drawback paid to GEPL against various shipping bills were forwarded to CBI. The letter is Ex.PW47/A and it bears his signatures at point A;

Witnesses from the Clearing House & other Agencies

PW-8 *Sh. Satya Prakash, Employee from Hi-TOS Liner Agency Pvt. Ltd.* deposed that a letter under the signatures of the General Manager of his company was received by him along with certain documents (pertaining to consignment of GEPL) through courier and he forwarded the same to CBI. The letter and the documents are Ex.PW8/A;

PW-35 *Sh. Sachin Ratnakant Bhagat, Manager (Accounts), M/s ATCL Container Line Pvt. Ltd.* deposed that his company was doing the business of freight forwarding and cargo consolidation by sea. He mentioned that he handed over the shipping bills, master bills of lading, MATE receipts of the export consignment of GEPL (D-124 to D-147) to the CBI;

PW-38 *Sh. Anand Devram Tambe, Managing Director of ATCL Container Line Pvt. Ltd*. deposed that his company provided services to A-5 Amresh Kumar Mishra and exported goods to Germany through a freight forwarding company named Mari Shipping & Transport. He mentioned that he handed over the documents in respect of the said consignment to the CBI;

PW-40 *Sh. L.S. Sahi, General Manager, M/s Hi-Tos Liner Agency Pvt. Ltd*. deposed about the authenticity of the Way bills Ex.PW38/C in respect of the export consignment. He mentioned that the Way bills were issued by M/s Hi-Tos Liner Agency Pvt. Ltd. as the agent of M/s Mac Andrews & Company Ltd;

PW-43 *Sh. Sumitro Mukherjee, Import Manager, Maersk India Pvt. Ltd. (North-East India)* deposed that his company was acting as an agent of Saffmarine Containers Line. He mentioned that he handed over to the CBI the copies of custom receipts, invoices and confirmation mails received from the overseas agent in respect of the delivery of cargo;

Witnesses of Investigation

PW-2 *Sh. S.K. Punhani, Stenographer in Department of Social Welfare, Govt. of NCT of Delhi* was the official in whose presence specimen handwriting and signatures of the accused persons were obtained;

PW-31 *Sh. Narender Pandey, Chartered Accountant* stated that he carried out the process of incorporation of GEPL on 21.05.2002. He mentioned that at the time of incorporation, the registered address of the company was premises no. 148, Satya Niketan, Delhi;

PW-33 *Sh. Rajesh Chandok, Branch Manager, Trans Corp International Ltd., Bhikaji Cama Palace, New Delhi* deposed that his company issued air tickets for foreign travel and traveller cheques of A-6 Ramji Mishra and A-8 Swadesh Kumar Mishra. He deposed that the payments in respect of the air tickets and traveller cheques were made from the current account of GEPL;

PW-52 *Sh. Subhash Chandra Tiwari, Director of GEPL* deposed that he was director of the company at the time of incorporation. He mentioned that at the time of incorporation, the office of the company was situated at Dhaula Kuan, Satya

Niketan, New Delhi. He mentioned that he remained director of the company for a year and thereafter, on his request, his name was deleted;

PW-54 *Sh. Devender Nath Mishra, brother of A-5 Amresh Kumar Mishra* deposed that his wife sold the land (which was mortgaged as collateral security) to A-1 Manoj Kumar Mishra vide sale deed dated 10.01.2005;

PW-56 *Sh. T. Joshi, Assistant Director, CFSL, Chandigarh* supported the opinion given by him in the CFSL report Ex.PW56/B. In terms of his report, the signatures in the 'introducer column' of the account opening form of GEPL tallied with the signatures of A-7 Parveen Kumar and the handwriting found on the resolutions of GEPL tallied with the handwriting of A-4 R.K. Joshi;

PW-57 *Sh. S.L. Garg, Investigating Officer* gave a detailed account of investigation. He mentioned about the documents collected and the statements of witnesses recorded during the investigation. He admitted in cross-examination that he does not recollect whether the admitted handwriting of accused persons was obtained and sent for comparison to CFSL;

Witnesses from other banks

PW-3 *Sh. Arjun Chand, Manager, Canara Bank, Vasundhra Enclave Branch* forwarded the documents pertaining to current account of Pandey Narender & Company to CBI vide letter dated 25.03.2008;

PW-4 *Sh. Abhinav, Official from Centurian Bank* forwarded the documents pertaining to the current account of M/s Bombay Andhra Transport Company to CBI vide letter dated 18.03.2008;

PW-5 *Sh. Sandeep Singh, Manager, IDBI, Siri Fort, New Delhi* forwarded the documents pertaining to current account of M/s Edge Garments Pvt. Ltd. (EGPL) to the CBI. He deposed that he handed over the statement of account to CBI which revealed that a sum of Rs.10 lakhs was transferred in the account by GEPL;

PW-6 *Sh. Yogesh Kumar Kalra, Official from Punjab National Bank, Bhikaji Cama Palace, New Delhi* identified the signature of his colleague Jaspal Singh on the letter dated 14.07.2008 Ex.PW6/A vide which the statement of current account of M/s Trans Corp International Ltd. was forwarded to

CBI;

PW-12 *Sh. Vidya Bhushan Kar, Chief Manager, Oriental Bank of Commerce* deposed that he handed over the certified copy of the statement of current account and the specimen signature card of M/s Travel Planner Ltd. to the CBI;

PW-25 *Sh. V.K. Grover, Assistant Manager, Indian Overseas Bank, Model Town, New Delhi* deposed that he handed over account opening form, specimen signature card and statement of account of the bank account no. 22669 of Smt. Sukhwinder Kaur to the CBI;

PW-27 *Sh. P.T. Devassy, Chief Manager, Central Bank, Overseas Branch, New Delhi* deposed that he handed over the certified copy of the account opening form, specimen signature card and the statement of account of M/s Whizz Export Pvt. Ltd. to the CBI. He deposed that the cheque bearing No.961421 dated 13.04.2005 was issued by GEPL and it was credited in the account of this company;

PW-39 *Sh. Vinay Madhusudan Nandgokar, Chief Manager, State Bank of India, Nhava Sheva Project Branch, Navi*

Mumbai deposed that GEPL was maintaining an account bearing no. 66490 in his bank and documents pertaining to this account were handed over to the CBI;

PW-55 *Sh. Aashish Nath Basak, Personal Banker, HDFC Bank, Kirti Nagar Branch* identified the signatures of his colleague Ms. Shipra Sharam, Branch Head, on the pay-in-slip and computer generated statement of account of M/s Trans Corp International Ltd., which were collected by CBI during the course of investigation;

Witnesses from the business entities wherein the funds were allegedly diverted

PW-7 *Sh. S.S. Negi, Employee of M/s Travel Planners Pvt. Ltd.* deposed that his company issued foreign exchange to Pramod Kumar Shukla vide cash memo dated 04.03.2005 and also issued international air tickets of Gaurav Shukla, R. Mishra and Pramod Kumar Shukla against two (2) invoices bearing no. 14504134 and 14504181;

PW-9 *Sh. Sanjeev Kumar, Accountant, M/s Ganpati Travels*, deposed that his firm received a sum of Rs.50,000/- from GEPL against which air tickets of Sh. Ashutosh Mishra were issued;

PW-10 *Sh. Avudaiappan, Chief Manager, Vijaya Bank, Defence Colony* identified the signatures of Sh. B.A. Srinivasan, the then Assistant General Manager of Vijaya Bank, on the letter dated 19.03.2008 whereby certified copies of certain documents including the account opening form and bank account statement of M/s Ganpati Travels were forwarded to the CBI;

PW-11 *Sh. Sarabjeet Sharma, Director of Whizz Exports Pvt. Ltd*. deposed that his company received a sum of Rs.1 lakh from GEPL vide cheque no. 961421. He conveyed that the amount was received on behalf of EGPL to whom certain goods were returned;

PW-13 *Sh. Vinod Chaudhary, Branch Manager, J & K Bank, Naraina Branch* deposed that he handed over the account opening form, authority of partnership, partnership letter, specimen signatures and the statement of current account of M/s Kukreja Tele Services to the CBI;

PW-36 *Sh. Surender Singh Bindra, Managing Director of B. Exim International Pvt. Ltd.* deposed that his company was maintaining a current account in UCO Bank, Delhi High Court Branch. He mentioned that although, his company was not doing any business with GEPL but payments of Rs.1 lakh and Rs.9 lakhs were received by his company vide the cheques issued by GEPL. He mentioned that A-6 Ramji Mishra was known to him as they were doing business with each other. He stated that the cheque books of the current account of his company were also lying with A-6;

PW-41 *Sh. Surya Dash, Personal Banker, HDFC Bank, Vasant Vihar* deposed that M/s K.K. International was maintaining an account in his bank and the statement of the same was handed over to the CBI along with the account opening form and specimen signature card. He mentioned that this company received a sum of Rs.3 lakhs from current account of GEPL vide cheque bearing no. 309976 dated 23.02.2005;

PW-50 *Sh. Jasdeep Singh, Partner of Kukreja Tele Services, Nanakpura* deposed that a sum of Rs.4759/- was received in the current account of his firm from GEPL by means of a cheque;

PW-51 *Sh. Rohit Aggarwal, son of the Proprietor of*

Bombay Andhra Transport Corporation deposed that a sum of Rs.15,157/- was received in the account of the firm from GEPL vide a cheque bearing no. 309962 dated 10.02.2005;

Witnesses who deposed about the mortgaged land

PW-23 *Sh. Anoop Kumar Srivastava, Lawyer, Civil Court, Varanasi (UP)* was the lawyer, who submitted the initial legal search report dated 13.01.2005 (Ex.PW23/A). He deposed that he inspected the revenue record of the mortgaged property before preparing the legal search report;

PW-28 *Sh. Ram Naresh, Sub-Registrar, Gyanpur, Bhadohi, U.P.* identified the signatures of Sh. Prem Prakash on the letter dated 28.02.2008, whereby a certified copy of circular pertaining to the circle rate of the property (during the relevant period) was handed over by him to the CBI. He deposed that the sale deeds no. 72/2005 and 73/2005 were registered at his office by the Registrar, Sh. Avnish Kumar Dwivedi. The sale deeds are Ex.PW28/B and Ex.PW28/C. He deposed that as per his understanding, the properties contained in the sale deeds were agricultural land.

Court witness

CW-1 *Sh. R.K. Saini, Senior Technical Assistant, RoC (CW-1)* produced the original file of GEPL from the RoC. The file was containing 157 pages but the Form No. 32 and Form No. 18 (part of Ex.PW14/X) were not found in the said file.

Statements of accused persons under Section 313 of Cr. P.C.

14. On conclusion of prosecution evidence, statements of accused persons were recorded under Section 313 of Cr. P.C wherein they denied the incriminating evidence and took the defence of false implication. They advanced a common explanation that they have been roped in merely because the exporters committed default in payments and the credit account turned into a Non Performing Asset (NPA). A-4 R.K. Joshi submitted that he complied with the standard banking protocols while sanctioning the credit facility and took all the necessary precautions. A-7 Parveen Kumar denied his signatures on the account opening form while A-3 Ravi Bhushan Roy stated that the valuation report was correct and based on sound reasoning. A-5 to A-10 denied the allegations of diversion of funds and claimed that the money was received by them against genuine business transactions.

Documents admitted under Section 294 of Cr. P.C.

15. Documents including cheques, sale deeds of the mortgaged property, export bills, FIR, Form no. 18, Form no. 32, account opening form of GEPL, documents submitted by GEPL along with account opening form, legal search report, bills of exchange, invoices in respect of export consignment were put to the accused persons under Section 294 of Cr. P.C. They admitted these documents vide statements dated 07.12.2022 and 23.12.2022.

Defence Witnesses

16. **Two (2)** defence witnesses were examined. Circulars of the bank were also placed on record by A-4 R.K. Joshi.

DW-1 *Sh. Devilal Meghwal, Multi-Tasking Staff, DRT-II, Parliament Street* produced two documents; (i) order dated 16.12.2023 passed by DRT-II in the matter of 'UCO Bank Vs. M/s Gauri Exim Pvt. Ltd.' OA No. 22/2008 which is Ex.DW1/A; and (ii) order dated 07.01.2017 of the Recovery Officer, DRT-II in RC No. 433/2013 which is Ex.DW1/B;

DW-2 *Smt. Jaswinder Kumari, Assistant General*

Manager, UCO Bank, Asset Management Branch, Parliament Street, New Delhi produced the following documents:

(a) Letter No. ND/AMB/2023-24/264 dated 15.01.2024 issued by Assistant General Manager, UCO Bank, Asset Management Branch, Sansad Marg, New Delhi to GEPL Ex.DW2/A;

(b) Letter No. DHC/ADV/2005-06/1779 dated 04.10.2005 issued by UCO Bank, Delhi High Court Branch to GEPL Ex.DW2/B;

(c) Letter dated 03.12.2005 addressed by M/s Gauri Exim Pvt. Ltd. to Assistant General Manager, UCO Bank, Delhi High Court Branch Ex.DW2/C;

(d) Process note for Rs.185 lakhs relating to GEPL Ex.DW2/D;

(e) Reply dated 'Nil' addressed by GEPL to Assistant General Manager, UCO Bank, Delhi High Court Branch in response to letter No. DHE/ GEPL/ADV/2004-05 dated 13.12.2004 Ex.DW2/E;

(f) Copy of letter No. DHC/ECGC/2004-05/195 dated 22.03.2005 addressed to Export Credit Guarantee Corporation of India Ltd., New Delhi Ex.DW2/F;

(g) Copy of letter dated 24.03.2005 addressed by UCO Bank, Delhi High Court Branch to Export Credit Guarantee Corporation of India Ltd., New Delhi Ex.DW2/G;

(h) Letter No. DHC/REC/08-09/257 dated 25.03.2009 of UCO Bank, Delhi High Court Branch, New Delhi addressed to M/s Gauri Exim Pvt. Ltd. regarding compromise settlement in the account Ex.DW2/H;

(i) Copies of Form No.8 dated 18.01.2005 and Form No.13 showing charge registered on 18.01.2005 for Rs.75 lakhs Ex.DW2/I;

(j) Form No.8 and Form No.13 showing charge registered on 23.03.2005 Ex.DW2/J (colly);

(k) Relevant pages of Security Register of UCO Bank, Delhi High Court Branch, New Delhi for the year 2004-05. The relevant entries at serial nos. 1 to 46 are Ex.DW2/K;

(l) Sanction Letter No. DHC/ GEPL/ ADV/ 2004-05 dated 13.12.2004 accepted by GEPL Ex.DW2/L; and

(m) Letter dated 25.01.2005 of Export Credit Gaurantee Corporation of India addressed to UCO Bank, Delhi High Court Branch, New Delhi on the subject 'Notification of the Limit (WTPSG, M/s Gauri Exim P. Ltd.)' Ex.DW2/M.

Final Arguments

Arguments on behalf of prosecution

17. Ld. PP for CBI has submitted that charges against all the accused persons stand proved beyond reasonable doubt. He has argued that in case of a criminal conspiracy, it is not possible to find direct evidence and the angle of conspiracy needs to be inferred on the basis of the conduct of the accused persons and the other proved circumstances. He has mentioned that the evidence on record establishes that A-4 R.K. Joshi abused his official position and sanctioned the credit facility without obtaining the collateral security from GEPL. He has argued that there is evidence to demonstrate that A-4 accepted false and fabricated documents for granting the credit facility. He has contended that it stands established that A-7 Parveen Kumar impersonated as Vijay Pal Singh Pali, Proprietor of M/s Pali Photostat. He has mentioned that A-4 ignored established banking procedures and guidelines with the sole objective of obtaining pecuniary advantage for the accused persons. He has argued that it has been established that A-4 not only granted the credit facility but also enhanced the same without insisting on an additional collateral security. He has argued that it is proved that the valuation report of the mortgage property was inflated and it was not submitted by an empaneled valuer of the bank. He mentioned that A-4 accepted the valuation report from a non-empaneled valuer and failed to physically inspect the property. He has argued that the valuation report was grossly inflated and A-4 accepted the same without getting the property physically inspected from the local branch of the bank. He stated that it is established that funds from the credit facility were released even before the execution of equitable mortgage. He has mentioned that these circumstances establish the complicity of A-4.

17.1 He has argued that the report of the handwriting expert establishes that the signatures of A-7 Parveen Kumar were found on the account opening form and the resolutions of the company were in the handwriting of A-4. He has stated that the report of the handwriting expert leaves no scope for doubt that accused persons were acting towards the common object of cheating the bank. He has argued that it is established that the funds from the credit facility were transferred in the current account of GEPL on the basis of false and fabricated export bills. He has contended that the export bills were generated without actual movement of goods and the funds so released in the current account were subsequently siphoned off with the help of various business entities, which were managed and controlled by the accused persons. He has mentioned that it is established that the funds of the credit facility were diverted and cash withdrawals were also made from the current account of GEPL. He has argued that it is proved that the standard banking norms and practices were flouted to provide pecuniary advantage to GEPL. He has submitted that the role of each accused has been brought out during the trial and all of them should be convicted. In order to support these submissions, he has placed reliance on the judgments delivered by the Supreme Court of India in the matters of ***Central Bank of India & Anr. Vs. Prabha Jain Civil Appeal No. 1876 of 2016 dated 09.01.2025***, ***Anil Bhanwar Lal Jain & Anr. Vs. State of Maharashtra Special Leave Petition (Crl.) No. 10078/ 2023 decided on 20.12.2024***, ***Vijay Singh & Anr. Vs. State of Uttrakhand Criminal Appeal No. 122 of 2013 decided on 25.11.2024*** and ***State of Karnataka Vs. Chander Shah Criminal Appeal No. 2646 of 2024 decided on 26.11.2024***.

Arguments on behalf of A-4 R.K. Joshi

18. Counsel for A-4 argued that prosecution has miserably failed to establish charges against the accused. He has contended that there is no evidence to establish that there was any irregularity in opening the current account of GEPL. He mentioned that all the requisite formalities were complied with at the time of opening of the current account. He stated that prosecution has failed to place on record any circular or guideline which may specify the documents that were required to be mandatorily obtained at the time of opening the current account. He mentioned that the evidence has come on record to demonstrate that the formalities for opening of the current account were required to be completed by the lower ranking staff of the bank and the function of A-4 was to overview the working of the lower staff. He stated that there is no evidence to show that the documents filed at the time of opening of the current account were forged. He mentioned that according to the prevailing banking norms, introduction by a person known to the bank was sufficient for opening of the current account and under such circumstances, there was no need for the KYC compliance. He mentioned that GEPL was an artificial juristic person and the documents obtained were sufficient to establish its identity. He mentioned that the entire process of opening of the current account was done by PW-15 Sh. Y.S. Thakur and the official has admitted the said fact. He mentioned that PW-15 also admitted in cross-examination that concurrent auditors were posted in the branch. He stated that in case of discrepancy, if any, the same would have been pointed out by the concurrent auditor and the fact that no such discrepancy was found goes on to show that there was no irregularity in the opening of the current account.

18.1 Counsel has argued that the allegations that A-4 failed to obtain the documents showing the appointment of A-1 Manoj Kumar Sharma and A-2 K.B. Nandwani as directors of GEPL have not been substantiated. He has contended that the prosecution has failed to place on record any circular to demonstrate that such documents were mandatorily required for opening of the current account. He mentioned that although, it was not required, still, Form no. 32 was obtained from the directors of GEPL. He has stated that there is no evidence to conclude that the Form no. 32 was forged. He has argued that no presumption can be raised that the said document was forged merely because it was not found in the record file of the RoC. He stated that evidence has come on record to show that the documents were filed at the counter of the RoC and thereafter, the same were placed in the concerned file. He has mentioned that there is a possibility that Form no. 32 was filed with the RoC but the same was not produced in the court. He mentioned that prosecution was under an obligation to establish that the Form no. 32 was forged and fabricated by leading cogent evidence and not on the basis of presumption.

18.2 Counsel has contended that the allegations that the office of GEPL was not located at premises of Pitampura have also not been substantiated. He has argued that at the time of incorporation, the registered office of GEPL was situated at Satya Niketan, New Delhi but it was subsequently shifted to Pitampura, New Delhi. He mentioned that the requisite Form no. 18 was submitted with the RoC wherein the said change of address stands duly reflected and the investigating officer (PW-57 Sh. S.L. Garg) has admitted this fact. He has stated that there is evidence to show that at the time of opening of the current account, company was existing and operating from the address of Pitampura.

18.3 Counsel has contended that the allegations of impersonation by A-7 Parveen Kumar have not been substantiated. He has argued that there is evidence to show that the account opening form was signed by Sh. Vijay Pal Singh and not by A-7. He has contended that prosecution has failed to examine Sh. Vijay Pal Singh Pali and there is no other evidence to show that A-7 impersonated as Vijay Pal Singh Pali at the time of opening of the bank account. He has mentioned that PW-48 Sh. Satender Kumar Gupta has deposed that Vijay Pal Singh Pali admitted during internal investigation that he placed his signatures in the introduction column of the account opening form at the instance of A-4 R.K. Joshi. He has argued that the testimony of this witness demolishes the prosecution's case that A-7 impersonated as Vijay Pal Singh Pali and signed the account opening form of GEPL.

18.4 Counsel has further argued that the credit facility extended to GEPL amounted to a working capital loan and the same cannot be equated with a loan against mortgage of immovable property. He has mentioned that a working capital loan is calculated and sanctioned on the basis of the requirement of an export firm so as to ensure that it is able to carry out the export orders. He has mentioned that there is evidence to establish that on the basis of the request made by GEPL, a process note Ex.PW20/B was prepared in the bank and the requirement of the loan was proportionate to the requirement of working capital. He has argued that the credit facilities granted as working capital were not required to be secured by any immovable property but still, as an abundant caution, A-4 R.K. Joshi secured the title deed of the property as a collateral security. He has mentioned that it can be seen from the record that A-4 complied with all the banking guidelines while sanctioning the credit facility and the funds were released against the export bills presented by the GEPL.

18.5 Counsel has argued that there is no evidence to prove the charge under Section 13(1)(d) of the PC Act. He has argued that the conduct of A-4 cannot, by any stretch of imagination, be categorised as criminal misconduct. He has argued that in order to prove a charge under Sections 7 and Section 13(1)(d) of PC Act, it is obligatory to establish that accused not only misused his official position but also obtained either for himself or for any other person pecuniary advantage without public interest. He has argued that the demand and acceptance of illegal gratification is an essential ingredient of the offences punishable under Sections 7 and 13(1)(d)(i) & (ii) of PC Act but the same are missing in the present case. He has argued that A-4 was competent to sanction the credit facility and no criminal liability can be fastened upon him merely because the loan account turned into a Non Performing Asset (NPA). He has argued that no inference can be drawn that the A-4 acted without public interest because GEPL failed to repay the funds disbursed under the credit facility. He has argued that it is a matter of common understanding that credit facility is granted to the export firms so as to enable it to meet the export orders. He has submitted that by carrying out the export orders, GEPL was collecting foreign exchange and there were guidelines in place that bank officials should ensure that the export firms do not commit default in executing the export orders due to shortage of working capital.

18.6 Counsel has argued that there is no evidence to support the allegations that the export bills presented by GEPL were forged and fabricated. He has contended that the testimonies of the custom officials demonstrate that the goods were genuinely exported by GEPL. He has contended that the genuineness of the export transactions is evident from the fact that GEPL had been receiving regular duty drawback in respect of the export orders.

He has argued that the material placed on record demonstrate that various payments were received in the current account from the foreign banks and this goes on to show that GEPL was genuinely exporting the goods. He has argued that although, regular overdraft was allowed in the current account of GEPL but it was a standard business practice to allow such withdrawals. He has argued that prosecution has failed to place on record any document to show that there was any bar for allowing such overdrafts.

18.**7** Counsel has argued that A-4 cannot be held criminally liable merely because cash withdrawals were made from the current account of GEPL. He has mentioned that the funds were disbursed in the current account of GEPL by debiting the ABC account and, thereafter, the same were utilised by GEPL. He has argued that A-4 had no control over the manner in which GEPL utilised the funds for the purpose of its business requirements. He mentioned that there is evidence to show that apart from the funds received from the credit facility, GEPL also received funds from various other sources and the same were credited in the current account. He mentioned that total amount of Rs.249 lakhs was released in the current account from the credit facility, while, as per the version of the prosecution, a sum of Rs.415.18 lakhs was debited and transferred to various accounts. He has stated that the amount over and above the disbursed amount belonged to GEPL and it was at liberty to utilise the same as per its requirement. He mentioned that according to the terms of sanction, a margin of 25% was to be maintained and the same was required to be contributed by GEPL. He mentioned that funds were disbursed in the account on the basis of export bills and the fact that GEPL also contributed funds goes on to show that genuine exports were made, for which, the funds were also pumped by GEPL.

18.8 Counsel has argued that the transactions of GEPL were covered under the insurance policy of Export Credit Policy with Export Credit Guarantee Corporation (ECGC) which is taken to protect the interest of the bank in case of any default by a foreign buyer. He mentioned that it was a condition contained in the sanction letter dated 13.12.2004 (Ex.PW20/C) that all the export bills, tendered to the bank for collection, shall be covered under the whole turnover post-shipment credit policy of ECGC and the premium shall be paid by the exporter. He has mentioned that the prosecution deliberately concealed this fact and PW-19 Sh. Ramesh Kumar Taneja falsely stated in his cross-examination that the transactions of GEPL were not covered under the said insurance. He has argued that had this policy been invoked by the bank officials, the bank would have been able to recover the unpaid bills from the foreign parties but the same was not done on account of negligence on the part of the bank officials. He has argued that A-4 cannot be held criminally liable because of the negligence of the other bank officials.

18.9 Counsel has pointed out various infirmities in the investigation as well as the testimonies of prosecution witnesses. He has argued that prosecution was duty bound to establish its case beyond reasonable doubt by leading reliable evidence but it has failed to do so. He has argued that there is no evidence either to establish that A-4 entered into a conspiracy with other accused persons or to demonstrate that he was acting towards the common object of the conspiracy. He has mentioned that the prosecution's case, at best, can be taken that there were some minor shortcomings and omissions in the sanctioning of credit facility and opening of the current account but this, in itself, is not sufficient to establish the charges. He has argued that A-4 acted in a *bona fide* manner and granted the credit facilities after complying with all the formalities and there is no evidence to establish the alleged criminality. He has contended that prosecution has failed to establish the charges and A-4 may be acquitted. In support of his contentions, Counsel has relied upon decisions in the matters of ***P. Satyanarayan Murthy Vs. The District Inspector of Police & Anr. (2015) 10 SCC 152, Devender Goyal & Ors. Vs. CBI & Ors. W.P. (Crl.) No. 762/2021, Tarina Sen Vs. Union of India & Anr. 2024 (10) SCR 417, K. Bharthi Devi & Anr. Vs. State of Telangana & Anr., Ramesh Chnnithala Vs. The State of Kerala & Anr. O.P. (Crl.) No. 83/2017, A. Sivaprakash Vs. State of Kerala Crl. Appeal No. 131/2007, Anil Maheshwri Vs. CBI Crl. Appeal No. 1455/2012*** and ***Ram Sharan Chaturvedi Vs. The State of Madhya Pradesh Crl. Appeal No. 1066/2010***.

Arguments on behalf of A-2 K.B. Nandwani

19. Counsel for A-2 submitted that the charges against the accused have not been proved. She mentioned that although A-2 was the director of GEPL but he was not managing and controlling its affairs. She stated that the entire business of GEPL was managed and controlled by A-1 Manoj Kumar Sharma. She contended that A-2 was only working in the capacity of an employee of GEPL. She adopted the arguments advanced on behalf of A-4 R.K. Joshi and mentioned that that prosecution has not been able to establish its case. She has submitted that prosecution has failed to establish that there was any irregularity in the sanctioning of the credit facility and opening of the current account of GEPL. She mentioned that all the relevant documents were submitted by GEPL at the time of the opening of the current account and none of the documents were found to be forged or fabricated. She contended that the evidence has come on record to demonstrate that GEPL was actually involved in carrying out the exports and the export bills were genuine. She has contended that there is no evidence to establish that A-2 was part of the criminal conspiracy. In order to support these submissions, Counsel has placed reliance on the decisions in the matters of ***Vesa Holdings (Pvt.) Ltd. Vs. State of Kerala 2015 (8) SCC 293, P.N. Ramkrishnan Vs. Neilkanth Mahadeo Kamble 1998 SCC Online Bom. 551, A.K. Khosla Vs. P.S. Vankatesan &***

State of West Bengal 1991 SCC Online Cal. 225, Sheila Sebastian Vs. R. Jawaharaj 2018 (7) SCC 581, Parminder Kaur Vs. State of U.P. 2010 (1) SCC 322 and ***Manohar Vs. State of Maharashtra 2003 SCC Online Bom. 560***.

Arguments on behalf of A-3 Ravi Bhushan Roy

20. Counsel for A-3 argued that the allegations against the accused have not been substantiated. He has contended that there is no evidence to show that A-3 was either a part of the criminal conspiracy or he submitted a fake valuation report in respect of the mortgaged property. He has argued that A-3 submitted the valuation report by following all the prevailing norms and furnished sound reasoning for the valuation of the property. He has argued that there is no evidence to demonstrate that the property was overvalued by A-3 to help A-1 Manoj Kumar Sharma and A-2 K.B. Nandwani in securing the credit facility under ABC. He mentioned that the valuation report cannot be faltered merely because A-3 was not an empanelled valuer of the bank. He mentioned that A-3 prepared the valuation report after carrying out proper appraisal and analysis of the prevalent conditions and specifications of the mortgaged property.

20.1 Counsel has argued that prosecution has tried to discredit the valuation report of A-3 by placing on record the valuation report of another Valuer (PW-24 Sh. Anil Kumar Singh) but the reliance is misplaced. He has argued that although, prosecution has set up a case that this valuer was on the empanelled list of the bank but there is no documentary evidence to establish the said fact. He has mentioned that prosecution has placed on record a circular no. CHO/RCR/08/2004-05 dated 29.09.2004 (D-216) issued by UCO Bank which contains the list of empanelled valuers for Varanasi region but the name of PW-24 does not appear in the said list. He has mentioned that the valuation report submitted by PW-24 is incorrect and inconclusive as he failed to take into account the specifications of the mortgaged property. He has argued that PW-24 prepared the valuation report in a mechanical manner to support the prosecution's case. He has argued that A-3 is a Civil Engineer holding a degree in Civil Engineering from a prestigious institution and he prepared the valuation report to the best of his ability. He has mentioned that PW-48 Sh. Satender Kumar Gupta has deposed that during the course of vigilance inquiry, the valuation report was examined and it was found to be proper. He has argued that A-3 is a professional and he cannot be held criminally liable merely because some other valuer holds a different opinion on the valuation of the property. He has mentioned that A-3 cannot be saddled with criminal liability unless it is shown that he acted in a *mala fide* manner to cheat the bank. In order to support these submissions, Counsel has placed reliance on the decision in the matter of ***CBI, Hyderabad Vs. K. Narayan Rao 2012 (9) SCR 54***.

Arguments on behalf of A-7 Parveen Kumar

21. Counsel for A-7 argued that although, prosecution has set up a case that A-7 impersonated as the proprietor of M/s Pali Photostat but there is no evidence to establish these allegations. He has contended that it is a common banking procedure that the identity of an account holder is established by comparing his signatures with the signatures placed on the specimen signature card. He has argued that it can be seen from the record that in the current account opening form of GEPL Ex.PW14/B (D-11), there is a space earmarked as 'Introduced By' where the stamp of M/s Pali Photostat has been affixed and the signatures of Vijay Pal Singh Pali appears at the said place. He has argued that the said signatures were duly verified by a bank official and there is an endorsement in that regard with a rubber stamp, "signatures verified" and it bears the initials of the official, who compared the signatures of Vijay Pal Singh Pali with the one found on the specimen signature card. He has argued that these facts clearly establish that the introducer was present at the time of introduction and the rubber stamp of M/s Pali Photostat was affixed by him.

21.1 Counsel has contended that the presence of the proprietor stands verified from the testimony of PW-49 Satender Kumar Gupta (bank official), who has deposed that he made enquiries from Vijay Pal Singh Pali, who disclosed him that he had put his signatures with the rubber stamp as introducer of the current account of GEPL. Counsel has argued that the testimony of this witness runs counter to the prosecution's case that A-7 impersonated as the proprietor of M/s Pali Photostat and introduced GEPL for the opening of current account. Counsel has further argued that there are infirmities in the investigation as the admitted signatures of Vijay Pal Singh Pali were not sent for comparison with the signatures found in the introduction column of the account opening form. He has argued that in order to establish the allegations of impersonation, prosecution has heavily relied on the expert opinion but the reliance is misplaced.

21.**2** Counsel has argued that it is the prosecution's case that the handwriting expert returned a finding that the signatures found in the introduction column of account opening were that of A-7 but the opinion is not reliable. He has contended that the handwriting and signatures of A-7 were not mixed with handwriting and signatures of any other person. He has stated that only the signatures on the account opening form and the specimen signatures of A-7 were sent for comparison and under such circumstances, reliance cannot be placed on the expert opinion as no other signatures were compared with the questioned documents. He has mentioned that the result of the comparison was pre-conceived and the same has been given in a mechanical manner at the instance of the investigating agency. He has contended that it is unsafe to base a conviction solely on the opinion of an expert witness without substantial corroboration. He has argued that an expert opinion must always be received with great caution and perhaps, more so, when the opinion is of a handwriting expert. In order to support the submissions, Counsel has relied upon the decisions in the matters of ***Fakhruddin Vs. State of M.P. AIR 1967 SC 1326, Magan Bihari Lal Vs. State of Punjab 1977 (2) SCR 1007*** and ***Murari Lal Vs. State of M.P. 1980 (2) SCR 249***.

Arguments on behalf of A-5 Amresh Kumar Mishra, A-6 Ramji Mishra, A-8 Swadesh Kumar Mishra, A-9 Anandji Mishra and A-10 Shiv Kumar Sharma

22. Joint written submissions were filed on behalf of these accused persons. It was their common stand that there is no evidence against either of them to prove the angle of criminal conspiracy. Counsel for the accused persons argued that the only allegations against these accused persons were to the effect that certain funds were transferred in their accounts from the current account of GEPL and certain cash withdrawals were also made through cheques. He has contended that these allegations, even if taken on their face value, do not establish that accused persons cheated the bank. He has argued that there is evidence to demonstrate that GEPL was exporting goods and payments in respect thereof were received from foreign buyers. He has mentioned that it can be seen from the record that besides the funds received from the credit facility under ABC account, GEPL also contributed its own funds in the current account. He has mentioned that the funds received under the credit facility and the one contributed by GEPL cannot be segregated and compartmentalised.

22.1 Counsel has argued that there is no material to demonstrate that GEPL was not authorised to transfer the funds from the current account in favour of various individuals. He contended that the funds were transferred for the purpose of buying the export goods and incurring the ancillary expenditure. He has mentioned that investigating officer failed to carry out any investigation to ascertain the purpose of the transfers made in the account of the accused persons by GEPL. He has mentioned that the funds transferred in the account of the accused persons were against genuine business transactions and these transfers cannot be categorised as diversion of funds. In order to support these submissions, Counsel has relied upon the decisions in the matters of ***Vesa Holdings (P) Ltd. Vs. State of Kerala (2015) 8 SCC 293***, ***Sarabjit Singh Vs. State of Punjab (2013) 6 SC 800***, ***Ram Biraji***

Devi & Anr. Vs. Umesh Kumar Singh & Anr. 2006 (5) Scale 638, ***P.M. Ramkrishnan Vs. Neelkanth Mahadeo Kamble 1998 SCC Online Bom 551***, ***A.K. Khosla Vs. T.S. Venkatesan & State of West Bengal 1991 SCC Online Cal 225***, ***Panchanan Maity Vs. State 1953 SCC Online Cal 169***, ***Sheila Sebastian Vs. R. Jawaharaj (2018) 7 SCC 581***, ***Parminder Kaur Vs. State of U.P. (2010) 1 SCC 322***, ***A.S. Krishnan Vs. State of Kerala (2204) 11 SCC 576***, ***Manohar Vs. State of Maharashtra 2003 SCC Online Bom 560***, ***Kehar Singh & Ors. Vs. State (Delhi Administration) AIR 1988 SC 1883***.

Analysis & Finding

23. I have perused the record including the testimonies of witnesses and the documents in the light of the respective arguments and judgments.

24. The allegations levelled against the accused persons are that A-4 R.K. Joshi, Assistant General Manager of a public sector bank, entered into a criminal conspiracy with A-1 Manoj Kumar Sharma, A-2 K.B. Nandwani, A-3 Ravi Bhushan Roy, A-5 Amresh Kumar Mishra, A-6 Ramji Mishra, A-7 Parveen Kumar, A-8 Swadesh Kumar Mishra, A-9 Anandji Mishra and A-10 Shiv Kumar Sharma to abuse his official position and cheat the bank by sanctioning credit facility to GEPL on the pretext that the funds were required for exporting goods. The funds so obtained were siphoned off by the directors of GEPL by furnishing fake export bills and thereafter, the funds were diverted through cheques and cash withdrawals in the names of various companies, firms and individuals resulting in loss of Rs.1.85 crores to the bank. The case of prosecution unfolds as; Towards the common object of the conspiracy, A-1 Manoj Kumar Sharma and A-2 K.B. Nandwani, claiming themselves to be the directors of GEPL on the basis of a forged resolution of the company, furnished a fictitious address of the company as ZP-9, Pitampura, New Delhi and opened a current account bearing no. 1947 in the bank on 07.07.2004; The current account was opened on the introduction of A-7 Parveen Kumar, who impersonated as Vijay Pal Sigh Pali, Proprietor of M/s Pali Photostat, holding a current account no. 399 with the bank; Thereafter, a credit limit of Rs.70 lakhs (ABC) and an overdraft limit of Rs.25 lakhs were sanctioned on 13.12.2004 to GEPL, which was collaterally secured by an equitable mortgage of a property situated at Uttar Pradesh on the basis of an inflated valuation report furnished by A-3 Ravi Bhushan Roy, who was not an empanelled valuer of the bank; A-4 R.K. Joshi accepted the valuation report of a non-empanelled valuer without carrying out the physical inspection of the property; It was found that on the date on which the credit facility was sanctioned, the property was not even standing in the name of A-1 Manoj Kumar Sharma and he acquired the same subsequently; From the credit facilities, a sum of Rs.70 lakhs was released on 15.12.2004 as advance against four (4) export bills whereas, the said current account was already overdrawn to the tune of Rs.69.60 lakhs; The credit limit was subsequently enhanced on 27.02.2005 to Rs.185 lakhs by extending the equitable mortgage on the same property and thereafter, a sum of Rs.179 lakhs was further released as advance against twelve (12) forged export bills; In addition, cash amount of Rs.2,59,40,000/- was withdrawn from the current account through cheques in the names of different persons and funds were diverted to different companies, firms and individuals on the basis of sham transactions resulting in the loss to the bank to the tune of Rs.185 lakhs.

Criminal Conspiracy

25. It can be seen that the entire case of the prosecution revolves around the criminal conspiracy, allegedly hatched by the accused persons. It has been alleged that the various offences were committed by the accused persons in furtherance of the common object of the said conspiracy. It is a settled law that conspiracy to commit a crime is in itself punishable as a substantive offence and every individual offence committed pursuant to the conspiracy is separate and distinct offence for which individual offenders are liable to be punished independent of the conspiracy. In the present case, there is no direct evidence to prove the conspiracy and it is an inference which the prosecution insists on drawing on the basis of the alleged acts committed by the accused persons and as well as their omissions and the outcome of these acts and omissions. Before evaluating the evidence, it would be expedient to refer to the relevant provisions of law and the consideration that are required to be kept in mind for arriving at a finding about the existence of criminal conspiracy.

26. Section 120A of IPC defines "criminal conspiracy" and states that when two or more persons agree to do, or cause to be done (i) an illegal act, or (ii) an act which is not illegal, by illegal means such an agreement is designated as "criminal conspiracy". In view of this definition, the gist of the offence is "an agreement to break the law". The basic ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means.

27. The ingredients of criminal conspiracy and the manner in which the same is required to be established was elaborated by the Supreme Court of India in the matter of ***State of Kerala Vs. P. Sugathan & Anr. 2000 (8) SCC 203*** wherein it was observed that an agreement forms the core of a conspiracy and the conspiracy must surface in the evidence through criminal manifestation. It was observed that just like in all other criminal cases, even for the purpose of establishing a conspiracy, the prosecution has to discharge its onus of proving the case beyond reasonable doubt. It was observed that a few bits of evidence here and there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the offence of criminal conspiracy. It was pointed out that the most important ingredient of the offence is the agreement between two or more persons to do an illegal act. It was held that in a case where criminal conspiracy is alleged, the court must enquire whether the two persons are independently pursuing the same or they have come together to pursue the unlawful object. The former does not held them to be conspirators but the later does. It was emphasised that for the offence of conspiracy, some sort of physical manifestation of agreement is required to be established, although, the express agreements need not be proved. However, it was pointed out that merely the evidence of transmission of thoughts sharing the unlawful act would not be sufficient to prove criminal conspiracy.

28. In the matter of ***State (NCT of Delhi) Vs. Navjot Sandhu (2005) 11 SCC 600***, it was held as under:

> *"101. One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable*

> *doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution.”*
>
> *(emphasis supplied)*

29. In the matter of ***Tanviben Pankaj Kumar Divetia Vs. State of Gujarat (1997) 7 SCC 156,*** the Supreme Court of India cautioned that the courts should remain cautious while appreciating the circumstantial evidence to ascertain the existence of criminal conspiracy. It was observed as under :

> *“45. The principle for basing a conviction on the basis of circumstantial evidences has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has*

> *also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions. [Jaharlal Das v. State of Orissa (1991) 3 SCC 27)]"*
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> *(emphasis supplied)*

30. Since, the conspirators are tried jointly, therefore, in cases of joint trial, there must be cogent and convincing evidence against each of the accused charged with the offence of conspiracy as it is difficult in tracing the precise contribution of each member. For the purposes of considering the conduct of the accused so as to deduce about his complicity with the other conspirators, a "rule of caution" has been laid down. In a joint trial care must be taken to separate the admissible evidence against each accused and the judicial mind should not be allowed to be influenced by evidence admissible only against others. These words of caution were delivered in the matter of ***State Vs.***

Nalini 1999 (5) SCC 253 wherein it was observed:

> *"There is a need to guard against prejudice being caused to the accused on account of the joint trial with other conspirators. The learned Judge observed that "there is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy".*

31. Thus, in view of the aforesaid judicial pronouncements, it can be concluded that the condition precedent for holding the accused persons to be guilty of a charge of criminal conspiracy must be considered on the anvil of the facts i.e., meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means and the said facts must be established by the prosecution beyond reasonable doubt either by direct or circumstantial evidence. The prosecution must establish the entire chain of circumstantial evidence to prove the angle of conspiracy. It is equally correct that while drawing an inference from the material brought on record to arrive at a finding as to whether the charge of the criminal conspiracy has been proved or not, the court should always bear in mind that a conspiracy is hatched in secrecy and it is difficult to obtain direct evidence to establish the same. The manner and circumstances in which the offence has been committed and the role played by each of the accused is also relevant to arrive at a finding about criminal conspiracy.

32. Coming back to the present case. It is the common argument advanced by all the accused persons that prosecution has failed to adduce any direct evidence to substantiate that there was any meeting of minds between a public servant and private individuals. It has been further submitted by them that in the absence of direct evidence, the conspiracy could only be established on the basis of such circumstantial evidence as to form a chain of events leading to an irresistible conclusion about their guilt but the prosecution has failed to discharge the said burden. The evidence on record, including the statements of witnesses and the documents, need to be evaluated to ascertain whether the prosecution has been able to establish the charge of conspiracy and the substantive offences.

Irregularity in opening of the Current Account

33. The starting point of the execution of the alleged common design of the conspiracy was the opening of the current account on the basis of forged and fabricated documents. It has been alleged that A-4 R.K. Joshi intentionally ignored the standard banking practices and allowed the opening of the current account at a fictitious address without insisting on any document to ascertain that A-1 Manoj Kumar Sharma and A-2 K.B. Nandwani were the directors of GEPL and he did not insist on the KYC compliance. In order to counter the case of prosecution, Counsel for A-4 R.K. Joshi has presented three fold arguments; *Firstly*, that there was no irregularity in the opening of the current account and all the prescribed formalities were duly complied with; *Secondly*, that A-4 did not play any role in the opening of the current account and the account was opened by the officials who were lower in hierarchy; and *Thirdly*, that in case there would have been any irregularity in the opening of current account, the same would have been pointed out during the concurrent audit of the bank accounts. I have perused the record in the light of these submissions.

34. In order to describe the procedure for opening of the current account, prosecution examined PW-14 Sh. V.K. Mahajan, who worked as Chief Manager of the bank for a substantial period from 16.12.2007 to 08.06.2011. He gave a detailed account of the usual procedure adopted by the bank for opening of the current account of a private limited company. He mentioned that in order to open a current account, the company was required to submit duly filled account opening form along with the prescribed documents such as signatures of the directors on the specimen signature form, copy of PAN card of the company and its directors, copy of resolution for opening of the current account, original Memorandum & Articles of Association of the company, Letterhead containing registered official address of the company as well as ID proof and photographs of the directors. He conveyed that the bank officials were required to verify these documents from the originals. He identified the signatures of Sh. B.K. Sood (the then Chief Manager) on the seizure memo dated 18.09.2007 Ex.PW14/A (D-10) whereby the original account opening form of GEPL and the documents submitted along with it were seized. The seized documents include the photocopies of the ID proof (driving licence) of A-1 Manoj Kumar Sharma, Certificate of Importer-Exporter Code (IEC) issued by Government of India, letter dated 12.05.2004 issued by ITO Ward-12(2) containing the Permanent Account

Numbers (PAN) of GEPL and Form No. 32. The witness identified the signatures of A-4 R.K. Joshi on the account opening form. He pointed out the shortcomings by conveying that although, the documents were submitted at the time of the opening of account but none of them were counter signed by the bank officials. He highlighted other deficiencies mentioning that Form No. 18 (containing the address of GEPL) and PAN & ID proofs of directors were also not submitted at the time of opening of the current account. However, he admitted various facts in cross-examination which contradicted his own stand about the alleged irregularities in the opening of the current account.

35. It was found that the account opening form contained a detailed list of prescribed documents at serial no. B. This list contained details of the documents, which were required to be submitted at the time of the opening of the account by partnership firms, joint stock companies, trusts, clubs, societies, associations and other bodies. In terms of the details contained at Serial no. B, documents which were prescribed to be filed in case of joint stock companies were; (i) copy of Memorandum & Articles of Association; (ii) Certificate of Incorporation; (iii)

Certificate of Commencement of Business/Registration Certificate; and (iv) Certified copy of Resolution of Board of Directors regulating the conduct of such accounts (as per pro forma given in the form). On being confronted with these details, PW-14 Sh. V.K. Mahajan admitted in cross-examination that said documents were obtained from GEPL at the time of opening of the current account. It goes on to show that all the prescribed documents were obtained at the time of opening of current account of GEPL.

36. The testimony of PW-14 also provides support to the version of defence that opening of the current account was carried out by the officers in the lower rung of the management. PW-14 admitted in cross-examination that process of opening of current account used to be carried out by the In-charge of the Current Account Department of the bank and thereafter, the matter used to be put up to the branch head for the final approval. He mentioned that before giving the approval for opening of the current account, the branch head was obligated to ascertain that all the requisite formalities have been completed. The stand of the defence that the formalities in respect of the account opening form were completed by the lower staff of the bank is further substantiated from the deposition of PW-48 Sh. Satender Kumar Gupta. He was the Chief Vigilance Officer, who carried out an internal inquiry in respect of the alleged irregularities in opening of the current account. He admitted in cross-examination that all the formalities in respect of the opening of the current account were to be completed by the lower staff of the bank.

37. The testimonies of PW-14 Sh. V.K. Mahajan and PW-48 Sh. Satender Kumar Gupta are to be read in the light of the directions contained in circulars of the bank. These circulars were brought on record by means of an application filed by A-4 R.K. Joshi. The relevant circulars defining the role and responsibility of the various levels of management are; (i) Circular No. CHO/DEP/13/94-95 dated 31.10.1994; (ii) Circular No. CHO/SUA/80/98 dated 27.10.1998; and (iii) Circular No. CHO/SUA/44/2000 dated 15.09.2000. These circulars clearly provide that the branch head of the bank would primarily aim at mobilisation of business, maintenance of public relations, recovery of NPA and overseeing the key aspects of operations while the second in command shall be responsible for efficient conduct of the routine work of the branch. In view of the testimony of the bank official and the directions contained in these circulars, it can be safely concluded that any lapses or irregularity found in the opening of the current account could not be attributed solely to the branch head.

38. There is evidence to conclude that prescribed documents, as mentioned in the account opening form, were submitted at the time of opening of the current account of GEPL. The documents submitted by GEPL included; (i) Certified copy of Memorandum & Article of Association Mark PW57/1 (D-15); (ii) Copy of Certificate of Incorporation Mark PW16/B (D-15); (iii) Copy of Certificate of Importer-Exporter Code (IEC) issued by the Ministry of Commerce, Government of India in favour of GEPL Ex.PW14/X (D-13); (iv) Resolution of the company Ex.PW56/D (D-14); (v) Letter dated 12.05.2004 of Income Tax Department allocating the Permanent Account Number to GEPL Ex.PW14/X (part of D-13); (vi) Photocopy of driving licence of A-1 Manoj Kumar Sharma Ex.PW14/X (part of D-13); and (vii) Photocopy of Form No. 32, whereby A-1 and A-2 were appointed as directors of GEPL with effect from 08.04.2004 Ex.PW14/X (part of D-13). Prosecution has not led any evidence to demonstrate that these documents were forged and fabricated.

39. Now, coming to the argument of the prosecution that A-4 R.K. Joshi committed irregularity in opening of the current account by not insisting on the KYC compliance. Record shows that the account of GEPL was opened by PW-15 Sh. Y.S. Thakur. He has deposed that the current account was opened by him with the permission of A-4. It implies that the entire processing of account opening form and the requisite formalities were done by the said official. A-4 R.K. Joshi has brought on record circular no. DBOD.AML.BC.18/14.01.001/2002-03 dated 16.08.2002 containing "Guidelines on Know Your Customer Norms and Cash Transactions" and circular no. CHO/SUA/2003-04 dated 29.12.2003. The circular dated 16.08.2002 provided that Know Your Customer (KYC) procedure should be the key principle for identification of an individual/corporate opening an account with the bank. It provided that the customer identification should entail verification either through an introductory reference from an existing account holder or a person known to the bank or on the basis of the documents provided by the customer. Under the circular, the objective of KYC framework has been defined as two fold; (i) To ensure appropriate customer identification; and (ii) To monitor transactions of a suspicious nature. It provided that the bank should obtain all the necessary information to establish the identity and legal existence of new customers based preferably on the disclosures made by the customers themselves. It clarifies that typically easy means of establishing the identity of customers would be documents such as, passport, driving licence and other similar documents but where such documents are not available, verification by existing account holder or introduction by a person known to the bank would suffice. It also provided a caution that it needs be ensured that the procedure adopted does not lead to denial of access to the general public. These guidelines and directives were reiterated in the subsequent circular dated 29.12.2003.

40. A-4 R.K. Joshi has set up a defence that the documents filed along with the account opening form were sufficient to establish the identity of GEPL and its directors and therefore, the KYC compliance of the same was not obtained. The defence raised by him needs to be appreciated in the light of the evidence placed on record which demonstrates that all the prescribed documents (prescribed in the account opening form) were obtained at the time of opening of the current account. It is further noticed that PW-15 Sh. Y.S. Thakur has deposed that at the time of opening of the current account, A-1 Manoj Kumar Sharma and A-2 K.B. Nandwani were present at the bank and they signed the documents in his presence, meaning thereby that the directors were physically present at the time of opening of the account and they signed the account opening form and completed the other formalities in the presence of a bank official. As observed earlier, there is no evidence to demonstrate that the documents filed along with the account opening form were forged or fabricated. The Certificate of Incorporation and the Memorandum & Articles of Association established the existence and identity of GEPL. The directors of GEPL also placed on record Form No. 32 wherein it was recorded that they have been appointed as directors from 08.04.2004. The directors also filed a Resolution dated 06.07.2004 whereby they were authorised to open the account on behalf of GEPL. One of the directors, A-1 Manoj Kumar Sharma, submitted his driving licence to establish his identity. These proved circumstances provide support to the defence taken by A-4 R.K. Joshi that the bank officials opened the current account after satisfying themselves about the identity of GEPL and did not find it necessary to undertake the KYC compliance.

41. Taking forward the argument that there was no irregularity in opening of the current account, Counsel for A-4 argued that there is evidence to show that accounts of the bank were being regularly audited but no shortcoming was pointed out in those audits. He has pointed out towards the cross-examination of PW-15 Sh. Y.S. Thakur wherein he admitted that the accounts of the bank were being regularly audited. PW-15 admitted in cross-examination that during the relevant period, concurrent auditors were posted in the bank. He stated that concurrent audits were being carried out in the bank and no irregularity was found in those audits. He defined the scope of the concurrent audit mentioning that the concurrent auditors used to check the accounts opened in the branch and point out any discrepancy found in the opening of the accounts. He identified the signatures of Sh. K.P. Mishra, ACO (Inspection) at point 'Y' on the account opening form and mentioned that he does not know if any discrepancy was pointed out by the concurrent auditors in respect of the current account of GEPL. He disclosed that the said branch of the bank was usually inspected every year by the internal inspectors of the bank. Thus, it can be concluded that the concurrent auditor did not find any irregularity in opening of the current account of GEPL. This circumstance further provides support to the argument of the defence that there was no irregularity in the opening of the current account.

42. It is the case of prosecution that at the time of opening the current account, A-4 R.K. Joshi did not obtain any document from the directors of GEPL which may reveal as to how they became the directors of the said company. The prosecution has tried to build up a case that this omission was deliberate and the same was committed in furtherance of the criminal conspiracy to facilitate the opening of the current account. I am not convinced with the said line of reasoning. Although, prosecution presented a case that A-4 committed irregularity in opening of the current account by deviating from the standard banking practices but not even a single document has been placed on record to establish those practices. Neither any circular nor any guidelines of the bank were produced during the trial, which stipulated that before allowing the opening of the account, A-4 was required to obtain a document from A-1 Manoj Kumar Sharma and A-2 K.B. Nandwani to show as to how they became the directors of GEPL. The directors filed Form No. 32 wherein their names were reflected as directors of GEPL with effect from 08.04.2004. In these circumstances, the explanation that the bank officials did not find it necessary to insist on any other documents appears to be reasonable and the same cannot be rejected.

43. The prosecution has also tried to set up a case that the Form No. 32 was a forged and fabricated document. In order to bring home this point, prosecution has relied on the testimony of PW-16 Sh. Data Ram, Junior Technical Assistant, RoC, who deposed that the said form was not found in the file of GEPL at the office of RoC. Counsel for A-4 has countered the prosecution's case by putting forward an argument that it cannot be inferred or presumed that the Form No. 32 was forged and fabricated merely because it was not found in the file produced by PW-16. I have perused the testimony of this witness. He produced the relevant file of GEPL and it was found that Form No. 32 and

Form No. 18 were not traceable in the said file. Subsequently, the file of GEPL was also summoned through CW-1 R.K Sani, Senior technical Assistant, RoC but these documents were not found in the said file. It can be seen that in the cross-examination of PW-16, Counsel for A-4 confronted him with Form No. 32 as well as Form No. 18 (filed at the time of opening of the current account) and he admitted that the forms were received at the office of RoC as they contained an endorsement to the said effect encircled at point 'A'. He deposed that the said endorsement is in the form of a receipt which was used to be given at the time of filing of the documents at the RoC.

44. It is an admitted position that prosecution has not led any positive evidence to establish that the Form No. 32 was a forged and fabricated document. It is an inference which the prosecution intends to draw merely because the said form was not traceable in the file of the RoC. In a criminal trial, the prosecution is duty bound to establish its case by leading cogent and reliable evidence. The prosecution is under an obligation to establish its case beyond reasonable doubt while on the other hand, the accused is only required to establish his defence by preponderance of probabilities. There is no material to conclude that Form No. 32 was a forged and fabricated document. On the contrary, Form No. 32 was carrying an endorsement from the office of RoC and the witness from the RoC deposed that such an endorsement used to be placed as a receipt at the time of receiving the documents in the RoC. This goes on to show that there is a probability that the document might have been deposited at the office of RoC but it did not land up in the file of GEPL. It is not the case of the prosecution that some other individuals were the directors of GEPL at the relevant time as no such evidence was adduced. In such circumstances, the defence presented by the accused persons cannot be discarded.

45. Coming to the case of prosecution that the directors of GEPL furnished fictitious address at the time of opening of the current account. It is the prosecution's case that at the time of opening of the current account, A-1 and A-2 submitted Form No. 18 dated 20.05.2002 (part of D-5) showing that the registered office of the company has been shifted to ZP-9, Ground Floor, Pitampura, New Delhi with effect from 01.07.2004. It has been alleged that the company was not existing at the said address and incorrect address of the company was furnished to dupe the bank. I have perused the Form No. 18 as well as the other material on record. It can be seen that at the time of incorporation, the registered office of GEPL was disclosed as premises No. 148, Satya Niketan, New Delhi-110021. In terms of Form No. 18 dated 02.07.2004 (Ex.PW16/B/DC), the registered office of GEPL was changed to ZP-9, Ground Floor, Pitampura, New Delhi-110085 with effect from 01.07.2004. Prosecution has failed to produce any evidence to disclose that the company was not functional at the said address. No investigation was carried out to ascertain if the office of the company was not located at the address disclosed in Form No. 18. PW-57 Sh. S.L. Garg, (investigating officer) has simply deposed that according to Form No. 18 (Ex.PW16/DC), with effect from 01.07.2004, the address of GEPL became ZP-9, Ground Floor, Pitampura, New Delhi. He has not stated anything further. No other prosecution witness has deposed that the company was not operational from the said address. In view of this, it becomes obvious that the prosecution has failed to establish that GEPL was not existing at the address disclosed in the Form No. 18.

Impersonation by A-7 Parveen Kumar as Vijay Pal Singh Pali Proprietor of M/s Pali Photostat

46. Coming to the allegations of impersonation by A-7 Parveen Kumar. The allegations of impersonation has two facets; (i) *Firstly*, that A-7 Parveen Kumar impersonated as the proprietor of a photostat shop named M/s Pali Photostat and this shop was already having a current account in the bank; (ii) *Secondly*, that while impersonating as the proprietor of the shop, A-7 introduced GEPL for the opening of a new account by putting the signatures of proprietor Vijay Pal Singh Pali in a column meant to be signed by the 'introducer' of the account. In order to establish these allegations, prosecution has mainly relied on the report of handwriting expert, who gave a positive finding that the signatures on the account opening form were made by A-7 Parveen Kumar. Defence has countered the allegations of impersonation on the ground that there is evidence to suggest that the signatures were in fact done by Vijay Pal Singh Pali himself. It is the version of the defence that there is no reliable or cogent evidence that the signatures found on the account opening form were made by A-7.

47. Defence has attacked the report of the handwriting expert on the ground that the report is not reliable and further, on the ground that the report itself cannot form the basis of conviction unless corroborated from some independent source. It has been argued on behalf of the accused persons that the evidence placed on record falls short of establishing that A-7 impersonated as 'Vijay Pal Singh Pali'. Counsel for A-4 R.K. Joshi has argued that in common banking practice, the introduction of an account means that the introducer was certifying the identity of the account opener. He has argued that it can be seen that the introducer correctly identified the account opener (GEPL), which was an artificial juristic person. He has mentioned that GEPL could have been identified only on the basis of the Certificate of Incorporation and there was no other mode of physically identifying an artificial person. He has contended that A-1 Manoj Kumar Sharma and A-2 K.B. Nandwani submitted a valid Certificate of Incorporation of GEPL and the introducer identified GEPL on the basis of the same. He has argued that it is not even the case of the prosecution that the Certificate of Incorporation was either fake or fabricated. He has mentioned that GEPL was a valid company, which was incorporated under

The Companies Act, 1956 on the basis of a valid Certificate of Incorporation issued by the RoC.

48. It has been stated that specimen signatures of A-7 Parveen Kumar were obtained during the course of investigation and the same were sent for comparison to the CFSL, which returned a positive finding that the signatures on the account opening form were done by him only. PW-56 Sh. T. Joshi, Handwriting Expert, CFSL has supported the opinion given by him in the report Ex.PW56/B. I have gone through the testimony of the expert in the light of other material on record. It can be seen from the record that there is evidence which runs counter to the opinion of the expert witness. The testimonies of prosecution witnesses have raised significant doubt over the prosecution's case that the signatures found on the account opening form were made by A-7. It is an admitted position that the Sh. Vijay Pal Singh Pali, Proprietor of M/s Pali Photostat could not be examined on account of his demise. Prosecution examined PW-48 Sh. Satender Kumar Gupta, who, as per the case of prosecution, carried out vigilance inquiry in respect of the allegations levelled against A-4 R.K. Joshi. He deposed that he contacted Vijay Pal Singh Pali during the course of inquiry, who disclosed him that he had signed the account opening form of GEPL on the request of A-4 R.K. Joshi. He has mentioned that Vijay Pal Singh Pali told him that although, GEPL was not known to him, but he agreed to put his signatures along with stamp as 'introducer' at the instance of A-4. The version of this witness demolishes the argument of prosecution that A-7 impersonated as Vijay Pal Singh Pali and signed the account opening form as the Proprietor of M/s Pali Photostat. It is noticed that prosecution has not placed on record the report of the vigilance inquiry. In view of this, an adverse inference needs to be drawn that the report was deliberately not filed as it would have revealed the fact that Vijay Pal Singh Pali himself signed in the 'introduction column' of the account opening form.

49. Prosecution has put forward an argument that Vijay Pal Singh Pali disclosed in his statement recorded under Section 161 of Cr. P.C. that on account of old age and illness, he had handed over his shop to A-7 Parveen Kumar and the said individual was managing the shop. Ld. PP for CBI has argued that the testimony of PW-48 Sh. Satender Kumar Gupta needs to be read and appreciated in the backdrop of the facts disclosed by Vijay Pal Singh Pali in his statement recorded under Section 161 of Cr. P.C. He has mentioned that Vijay Pal Singh Pali disclosed in his statement that although, he handed over his shop to A-7 but he did not close the current account of the shop and the same was being operated by A-7. He has argued that it was on account of this reason that Vijay Pal Singh Pali made a statement during the internal inquiry that he had put his signatures in the introducer column of the account opening form. He has tried to convey that by stating so, Vijay Pal Singh Pali was trying to convey to PW-48 that the account opening form was signed by A-7. I do not agree with the said line of reasoning. It is a settled law that the statement of a witness recorded under Section 161 of Cr. P.C. cannot be used for any other purpose except for contradicting the witness in the manner provided under Section 145 of Indian Evidence Act. It can be seen that PW-48 expressly mentioned in his statement that Vijay Pal Singh Pali told him during internal inquiry that he had signed the account opening form and he did so at the instance of A-4 R.K. Joshi. The testimony of the witness is explicit and clear. His testimony cannot be twisted and interpreted in a manner which may be advantageous to the prosecution, more particularly, when there is no reliable evidence to substantiate the prosecution's version that A-7 signed the account opening from of GEPL.

50. Further, the signatures of the introducer, found on the account opening form, were never compared with the actual signatures of Vijay Pal Singh Pali. It is a matter of common understanding that a specimen signature card is kept in the records of the bank for comparing the signatures of an account holder with the signatures placed by him on cheques and other documents. There was a space earmarked in the the account opening form as 'introduced by' and it can be seen that at the said place, there are signatures of Vijay Pal Singh Pali and a rubber stamp of M/s Pali Photostat. There is evidence to demonstrate that the signatures were duly verified by the bank official. Within the round stamp, there are initials of a bank official, who must have compared the signatures of the Proprietor of M/s Pali Photostat with the signatures on record and thereafter, put his initials in confirmation of tallying the signatures of the introducer with signatures kept in the bank record. This fact provides support to the line of defence taken by the accused persons that the signatures of the proprietor of M/s Pali Photostat must have been found to be similar to the signatures kept in the bank's record and therefore, the introducer was correctly identified. It is noticed that during the cross-examination of PW-57 Sh. S.L. Garg (investigating officer), his attention was drawn to the initials of the bank official and he mentioned that he does not remember whether he carried out any investigation from the said official, who had verified the signatures of the introducer. He further mentioned that he does not remember whether he collected any document to show that the introduction of the current account of GEPL was done at the instance of A-4 R.K. Joshi.

51. Record shows that the investigating officer did not seize the account opening form and the specimen signature card of the current account of M/s Pali Photostat. PW-57 Sh. S.L. Garg has deposed that he does not remember if these documents were collected by him during the course of investigation. He stated that in case, the documents might have been collected, the same must have formed the part of the charge-sheet. Admittedly, these documents do not form the part of the charge-sheet. The fact that the specimen signatures on the specimen signature card and the one found in the column of 'introducer' were not sent for comparison to the CFSL gains significance in view of the proved facts that Vijay Pal Singh Pali admitted to have signed the account opening form of GEPL as an 'introducer'. On the one hand, prosecution has set up a case that A-7 Parveen Kumar signed the account opening form by impersonating as Vijay Pal Singh Pali while on the other hand, Vijay Pal Singh Pali disclosed during the course of vigilance inquiry that he signed the account opening form as 'introducer' at the instance of A-4 R.K. Joshi. It is not possible to reconcile these contradictory versions. This contradiction could have been clarified, in case, a report was obtained from an expert on the signatures found on the introduction column and the one placed on the specimen signature card but no effort was made in that direction. In the absence of the same, no conclusion can be drawn that A-7 Parveen Kumar signed the column of 'introducer' in the account opening form of GEPL.

52. It can be seen that prosecution has heavily relied on the report of the handwriting expert (PW-56 Sh. T. Joshi) to establish that A-7 Parveen Kumar signed the account opening form but the reliance is misplaced as no such finding can be arrived at, more particularly, when there is evidence to suggest the contrary. The report of a handwriting expert falls under the category of expert opinion. An expert opinion has been made relevant under Section 45 of the Indian Evidence Act and where the court has to form an opinion upon a point as to the identity of handwriting in question, the opinion of a person 'specially skilled' as to identity of handwriting', is expressly made a relevant fact. The manner in which the courts are required to appreciate the report of a handwriting expert has been clarified by the Supreme Court of India in the matter of ***Magan Biharilal Vs. State of Punjab 1977 (2) SCR 1007*** by means of the following observations:

> *"... It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precendential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in Ram Chandra v. State AIR 1957 SC 381 that it is unsafe to treat expert hand- writing opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in Ishwari Prasad v. Md. Isa AIR 1963 SC 1728 that*

expert evidence of hand- writing can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in Shashi Kumar v. Subodh Kumar AIR 1964 SC 529 where it was pointed out by this Court that expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by Circumstantial evidence. This Court had again occasion to consider the evidentiary value o[expert opinion in regard to handwriting in Fakhruddin v. State AIR1967 SC 1326 and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence. The court must always try to see whether it is corroborated by other evidence, direct or circumstantial. It is interesting to note that the same view is also echoed in the judgments of English and American courts. Vide Gurney v. Langlands 1822, 5B & Qld 330 Fogter's Will(1). The Supreme Court of Michigan pointed out in the last mentioned case: Every one knows how very unsafe it is to rely upon any one's opinion concerning the nice- ties of penmanship--Opinions are necessarily evil" and may be valuable, but at best this kind of evidence, vii". We need not subscribe to the extreme view expressed by the Supreme Court of Michigan, but there can be no doubt that this type of evidence being opinion evidence, is by its very nature, weak and infirm and cannot of itself form and the basis for a conviction. ...”

53. The above stated position of law has been reiterated in the matter of ***Murari Lal Vs. State of MP 1980(2) SCR 249*** wherein it has been held as under:

> *"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. …"*

54. The position of the law laid down in ***Magan Biharilal's case (supra)*** and ***Murarilal's case*** (***supra***) was echoed in the matter of ***Padum Kumar Vs. State of U.P. AIR 2020 SC 447*** wherein it was held that without independent and reliable corroboration, the opinion of the handwriting expert cannot be relied upon to base a conviction. It was observed in this matter that the expert opinion should always be received with great caution and it is unsafe to base conviction solely on an expert opinion without substantial corroboration. It was held that this rule has been universally acted upon and has become a rule of law. In view of the proposition of law laid down in the aforesaid judicial pronouncements, it is well settled that before acting upon the opinion of handwriting expert, prudence demands that the court should ascertain that such evidence is corroborated either by direct or substantial evidence. Thus, while placing reliance on the opinion of the handwriting expert, the court is required to exercise caution and look for corroboration before arriving at a concrete finding in respect of the culpability of an accused.

55. On examining the report of PW-56 Sh. T. Joshi, on the touchstone of the proposition of law laid down by the Apex Court, one reaches to an inescapable conclusion that the report itself cannot form the basis of conviction of A-7 Parveen Kumar. As observed earlier, the best evidence to establish that Vijay Pal Singh Pali did not sign in the introduction column of the account opening form was to compare his admitted signature with the signatures found on the account opening form. Prosecution has failed to obtain the specimen signature card of Vijay Pal Singh Pali from the bank and no explanation has been tendered for the said failure. There is evidence to demonstrate that Vijay Pal Singh Pali signed the account opening form in the column of 'introducer' and he disclosed this fact to PW-48 Sh. Satender Kumar Gupta. It can be seen that rather than corroborating, the proved circumstances contradicts the expert opinion. In view of this, no reliance can be placed on the opinion of the handwriting expert to establish the culpability of A-7 Parveen Kumar.

Irregularity in accepting the Collateral Security

56. Coming to the allegations of the prosecution that A-4 R.K. Joshi accepted the collateral security of a property on the basis of an inflated valuation report. It is the case of prosecution that at the time of obtaining the credit facility, directors of GEPL furnished a land situated at District Bhadohi, Uttar Pradesh, as collateral security. It has been alleged that A-1 Manoj Kumar Sharma was not the owner of the land at the time when the credit facility was sanctioned and the funds were disbursed even before an equitable mortgage was created over the land. It has also been alleged that A-3 Ravi Bhushan Roy furnished an inflated valuation report of the land and the same was accepted by A-4 R.K. Joshi without verifying it from some independent source. Prosecution has alleged that although, A-3 was not an empanelled valuer of the bank but even then A-4 accepted the report and intentionally failed to carry out the spot inspection either himself or from an official from the local branch of the bank where the land was situated. Counsels for A-3 and A-4 have countered these allegations by arguing that there is no evidence to substantiate these allegations.

57. The contention of the prosecution that the property was overvalued is not backed by any reliable evidence as there is no material to suggest that the value of the property was less than what was disclosed in the valuation report. Reliance placed by the prosecution on the valuation report dated 27.08.2007 (Ex.PW22/C) to counter the valuation report submitted by GEPL, is misplaced as PW-24 Sh. Anil Singh, who valued the said property, failed to take the measurements of the property and did not take into account its market value. Defence has successfully brought out deficiencies in his valuation report during his cross-examination and his report cannot be used to conclude that the property was overvalued. His valuation report also stands contradicted from other material brought on record. He stated in his report that the property falls in a rural area under Village Panchayat whereas it was revealed from the document MarkPW28/A (D-230) that the property was located within the declared area of Municipal Corporation of Gopiganj and it was classified as 'Urban'. He mentioned in his report that the property should be considered as 'Agricultural Area' but PW-28 Sh. Ram Naresh, Sub-Registrar, Gyanpur, deposed that the land, where the property was situated, was for industrial purpose. He deposed that the registered sale deeds of the lands were produced before him and it can be seen from the sale deeds that the type of land was mentioned therein as 'Industrial'. However, no explanation has been tendered by him as to how he arrived at a finding in the valuation report that the type of land was 'Agricultural'. Defence has also been successful to demonstrate that he gave the valuation report without identifying the property and without taking the actual measurement. No reliance can be placed on such a report.

58. Counsel for A-4 has further submitted that the sanctioned credit facility was not in the nature of a loan against immovable property and the same was a working capital limit sanctioned for the export business of GEPL. Counsel has submitted that there is a difference between a mortgage based loan and a working capital limit secured by an equitable mortgage of a property and the same can be appreciated from the fact that the working capital limits are sanctioned for one (1) year whereas the mortgage based loans are sanctioned for longer periods. He has submitted that the working capital limits are sanctioned as running account facility wherein credits and debits are allowed during the period of one (1) year and thereafter, the limits are renewed and in such cases, the account does not get closed after one year. On the other hand, the mortgaged based loans are loans over terms longer than one year and that is why they are called term loans. Counsel has submitted that in mortgage based loans, the sanctioned loan amount is disbursed in one or two (2) instalments and the availed loan amount is liquidated by repaying the loan over the period of its tenure by way of equated instalments. Once the availed loan amount is repaid, the account gets closed and the sanctioned limit gets exhausted and there is no renewal. However, in case of working capital limits, the same are secured by hypothecation or pledge of the primary security which is always in the form of stock of raw materials, work-in-progress, finished goods and receivable (sundry debtors). The working capital limit may or may not be collaterally secured by an equitable mortgage of immovable property. Counsel has submitted that in order to boost exports, Reserve Bank of India (RBI) keeps on issuing directives to the bank that they should not insist on collateral security while sanctioning credit limits whereas in mortgage based loans, the primary security is the immovable property and there is no collateral. He has argued that there is evidence to demonstrate that amount sanctioned in favour of GEPL was in the nature of working capital limit and not a mortgage based loan. Counsel has mentioned that even though, such a working capital limit was not required to be secured by an equitable mortgage, still, in order to guard the interest of the bank, A-4 made the directors of GEPL execute an equitable mortgage in respect of the property. He has submitted that the conduct of A-4 cannot be termed as criminal misconduct.

59. The argument of the defence that the credit facility was a working capital limit for export business and it was not a mortgage based loan needs to be appreciated in the light of the circumstances which preceded before the said facility was sanctioned to GEPL. There is evidence to show that before availing the credit facility, GEPL wrote a letter to the bank that it is in the export business and would be requiring funds for the meeting the export orders. It can be seen that vide letter dated 31.11.2004 MarkPW57/2 (D-18), GEPL informed the bank that it has successfully completed two (2) years of operation with turnovers of Rs.30.52 lakhs and Rs.35.67 lakhs respectively. It was mentioned in this letter that the company has received an order worth Rs.200 lakhs to export carpets to Germany and the order needs to be executed by the end of March, 2005. It was further conveyed in the letter that the company has prepared CMA data form and according to the same, the working capital requirement comes at around Rs.100 lakhs and out of the said requirement, the company intends to avail Rs.75 lakhs by way of discounting the foreign bills and the balance Rs.25 lakhs by way of packing credit. Along with this letter, the company enclosed documents such as, audited balance-sheets, CMA data form, PAN of the company, IEC of the company, copy of order, memorandum of the company, papers for collateral security and income tax return of the relevant year. On the basis of the said letter, the request of GEPL was processed as per the process note Ex.PW20/B (D-20) for sanctioning of working capital limits. It can be seen that the precise purpose of the advance given to GEPL was specified at serial no. 8 of the process note as 'working capital for export' and at serial no. 2 of the said note, the business of the company was mentioned as 'merchant exporter'.

60. A-4 has placed on record a circular no. 17/04.02.01/98-99 dated 28.02.1999 titled as 'export credit in foreign currency at internationally competitive rates - simplification of procedure' which contains guidelines in respect of schemes promoted for exporters relating to 'Pre-shipment Credit in Foreign Currency (PCFC)' and 'Re-discounting of Export Bills Abroad (EBR)' in order to make the schemes more popular and accessible, the para-5, clause-B (vi) of this circular provided that assessment of export credit limits should be need based and not directly linked to the collateral security. It provided that as long as the requirement of credit limit was justified on the basis of export performance and track record, the credit should not be denied merely on account of non-availability of collateral security. Para-5, clause-E of the circular provided guidelines for fast tracking the clearance of export credit.

61. I have perused the valuation reports as well as the testimony of PW-24 and the other material on record including the process sheet prepared by the bank at the time of granting the credit facility. On perusing the same, I find force in the submissions made by the defence counsels that the prosecution has not brought on record any material or evidence to demonstrate that it was obligatory for the bank to secure the credit facility by executing an equitable mortgage of immovable property. This finding draws support from the testimony of PW-49 Sh. T.R. Gulati, who stated in cross-examination that advance against export bills in course of collection facility was a post-shipment credit facility and the said facility falls under working capital credit facility. He has further deposed that the credit facility used to be sanctioned to an exporter against the primary security of stocks and book debts and it was a working capital facility, which may not be called loan against mortgage of immovable property. It is noticed that PW-48 Sh. Satender Kumar Gupta stated in his cross-examination that during the relevant period, no collateral security was mandatorily required in the export finance. In order to bring home the argument that the credit facility was a working capital limit for export business, defence has relied on RBI circular no. DBOD.IECS.No.24/04.02.02/2004-05 dated 10.08.2004 (brought on record by A-4) wherein it has been mentioned that banks may adopt any of the methods for assessment of the working capital requirement of their export customers *viz.* projected balance-sheet, turnover method or cash budget, whichever was more suitable and appropriate to their business. While applying the aforesaid circular to the facts and circumstances of the present case, it can be seen that in process notes Ex.PW20/B (D-20), at serial no. 9, calculation for working capital assessment was shown and the permissible bank finance was assessed at Rs.185 lakhs. The process note further reflects that the permissible bank finance was assessed on the basis of working capital assessment and not on the basis of value of the collateral security. Thus, it can be safely inferred that assessment of permissible bank finance was not dependent on the value of security offered as the sanctioned credit limit of GEPL was independent of the value of collateral security.

62. Record reflects that after availing credit facility, GEPL again approached the bank for enhancement of the credit facility by means of letter Ex.DW2/E. In this letter, GEPL informed the bank that during the period 20.11.2004 to 24.01.2005, it had submitted in the bank export documents worth Rs.1,91,18,196.59. It disclosed to the bank that the existing limits were not sufficient to maintain the export level at which the company was working and as such requested for enhancement of credit limit to Rs.190 lakhs. The request was considered by the bank and the process note for the enhancement of the credit facility was prepared. In the said note prepared by Sh. Ranjeet Banerjee (Ex.PW2/D), it has been mentioned that GEPL tendered export bill amounting to Rs.191.18 lakhs during the period 20.11.2004 to 24.01.2005 and that it was hopeful of achieving sales of Rs.300 lakhs by the end of the current financial year. It was further mentioned therein that for the year ending 31.03.2006, the sales of GEPL have been projected at Rs.480 lakhs which appeared achievable. On the basis of these projected sales, GEPL's requirement came to Rs.185 lakhs and in the sanction note, the said credit limit was recommended for sanction.

63. DW-2 Smt. Jaswinder Kumari, Assistant General Manager, UCO Bank, Assets Management Branch, Parliament Street, New Delhi produced the security register of the bank Ex.DW2/K. The extract from the said security register shows that in the list of documents of loan account of GEPL, at serial no. 2, 'process note dated NIL for Rs.185 lakhs' is mentioned. Although, this document was not seized by the investigating officer but it can be seen that in the process note prepared at the time of enhancing the credit facility, Ex.DW2/D, while assessing the enhanced working capital requirement, the same CMA data was used as was used in the process note prepared at the time of the sanctioning of initial credit facility of Rs.70 lakhs. This implies that even for enhanced credit limit, the working capital requirement was assessed on the basis of projected sales of the company and not on the basis of value of security offered by the company as collateral security. A-4 has placed on record RBI circular dated 10.08.2004, as per which, the sanction of fresh and enhanced export credit limits should be made within forty five (45) days from the date of receipt of credit limit application and it has been further stipulated that Banks should simplify the application form by reducing data requirements from exporters for assessment of their credit needs and the same should not be directly linked to the availability of collateral security. The contents of the circular provide force to the argument of the defence that there were directions in place that as long as the requirement of credit limit was justified on the basis of performance and track record of exporter, the credit should not be denied merely on the ground of non-availability of collateral security. As observed earlier, PW-48 Sh. Satender Kumar Gupta has also deposed that during the relevant period, no collateral security was mandatorily required in the export business.

64. The aforesaid circumstances provide support to the defence put forward by A-4 R.K. Joshi that since GEPL was sanctioned credit facilities for its export business on the basis of working capital requirements, therefore, collateral security in the shape of immovable property was not required and he was only required to see the projected balance-sheet of GEPL. The prosecution has placed on record the statement of ABC account of GEPL (Ex.PW20/H) (D-81) and the details of the payment received against the export orders (Ex.PW14/B) (D-80). On perusing and comparing these documents, it becomes evident that a sum of

Rs.249 lakhs was disbursed to GEPL in the ABC account and payments worth Rs.1,23,01,546/- were received towards export realisation. Thus, it shows that GEPL was in fact engaged in the export business and A-4 R.K. Joshi was within his power to sanction the credit facilities without securing the same against any collateral security. Nevertheless, as a matter of abundant caution, in order to protect the interest of the bank, he took the collateral security of an immovable property even though, he could have sanctioned the credit facility without obtaining the same.

Disbursal and diversion of funds against fake export bills

65. Now, coming to the allegations that GEPL furnished forged and fabricated export bills for the disbursements of funds from the sanctioned credit facility. It has been alleged by the prosecution that GEPL furnished four (4) forged and fabricated export bills for obtaining the funds from the initial credit facility and in a similar manner, submitted twelve (12) forged and fabricated export bills for obtaining funds from the enhanced credit facility. It has been stated that the funds so obtained were siphoned off either by transfers in the account of business entities or by cash withdrawals. However, the evidence falls short of establishing these allegations. On the contrary, there is evidence to show that GEPL was involved in actual exports of goods and payments were also received from the foreign buyers in respect of various export consignments, which were duly credited in the bank account of GEPL. So far as disbursement of amount in pursuance to the sanction of the credit facility in favour of GEPL is concerned, the same was as per the operational requirement of the said credit facility under ABC as whenever GEPL submitted export bills, the permissible amount was calculated by deducting margin at the rate of 25% from the total amount of export bills. It can be seen from the record that GEPL submitted the export bills and each bill comprised of a bill of exchange, invoice, packaging list, certificate of origin, EP copy of shipping bill and bill of lading. In each case, the certificate of origin was issued by the Export Promotion Council of India. None of the prosecution witnesses has deposed that the bill of exchange, invoices, packaging list or the certificate of origin of export bills were forged and fabricated. The testimonies of the officials from the Central Warehousing Corporation and the Customs Department provide support to the defence raised by the accused persons that

GEPL was actually exporting goods and the export bills were genuine.

66. PW-17 Sh. Rajat Dua, Official from Container Freight Station, Central Warehousing Corporation, Kalamboli, Nhava Sheva mentioned that he was working at the Warehouse during the year 2005 and was assigned the duty of examining the export cargo from the Electronic Data Interface (EDS) system. He identified his signatures on the SDF Form Ex.PW17/A (Part of D-51) which is in the form of a declaration under Foreign Exchange Management Act, 1999. He stated that vide this form, the exporter (GEPL) gave an undertaking to the effect that the remittance shall be brought from foreign country within time. In the same manner, PW-18 Sh Rajesh Kumar Arora, Preventive Officer, Central Warehousing Corporation, Kalamboli deposed that he was assigned the duty of examining the export consignment. He identified his signatures on SDF forms of shipping bills of GEPL; (i) bill no. 3128230 dated 29.11.2004 Ex.PW18/A; (ii) bill no. 3128233 dated 29.11.2004 Ex.PW18/B; (iii) bill no. 3128235 dated 29.11.2004 Ex.PW18/C; (iv) bill no. 3171664 dated 21.12.2004 Ex.PW18/D; (v) bill no. 3169795 dated 21.12.2004 Ex.PW18/E; (vi) bill no. 3169797 dated 21.12.2004 Ex.PW18/F; and (vii) bill no. 3169790 dated 21.12.2004 Ex.PW18/G. He admitted in cross-examination that the shipments of GEPL were allowed on the basis of documents and all the documents were found in proper order.

67. PW-44 Ms. N.V. Dhotre, Superintendent (Customs), Kalamboli, Panvel, Nava Sheva, Mumbai identified her signatures as well as the signatures of her colleague Ms. Sheltkar on the shipping bills dated 28.10.2004 and 29.11.2004 Ex.PW34/B (colly.) (D-98, D-100, D-101). PW-45 Sh. S.S. Gill, Superintendent (Customs), Kalamboli, Panvel, Nava Sheva, Mumbai explained the procedure involved in exporting the goods and custom clearance. He deposed that as a standard practice, the goods proposed to be exported were first received at the warehouse and thereafter, the shipping bills were prepared after ensuring that documents were in proper order. He mentioned that after the shipping bills were generated, the goods used to be physically examined and the examination report used to be sent to Superintendent of Customs along with other documents such as invoice and packing list. He stated that thereafter, the

Superintendent used to issue ‘Let Export Order’ after checking that everything was in order and used to forward the report to Deputy Commissioner. He mentioned that the entire process used to be carried out on the computer system. He mentioned that on the basis of ‘Let Export Order’, the system used to generate shipping bills. Thereafter, printouts of the bills used to be taken out with four (4) copies, each meant for; (i) Exporter or his Clearing Agent; (ii) Export Promotion Department (EP copy); (iii) The concerned Branch of the Bank; and (vi) The Duty Drawback Section. He mentioned that thereafter, the exporter used to approach the shipping agent for stuffing the export goods in the containers and the same used to be done under the supervision of Superintendent (Stuffing Officer). He disclosed that after stuffing the goods, the containers used to be sealed with the seal of the shipping company as well as that of the customs. He stated that all the details of the consignment were endorsed on the shipping bills and the containers were moved to the Port for shipment. He disclosed that after the containers used to be placed on the ship, a MATE Receipt, showing the receiving of the goods, used to be prepared by the shipping company and the receipt used to be endorsed by the boarding officer of the Customs. He identified his signatures on the shipping bills of GEPL Ex.PW34/B (colly.) (D-102 to D-106 and D-108 to D-112) and (D-124, D-125, D-127, D-128, D-130, D-131, D-132, D-133, D-135, D-136, D-137, D-138 and D-139).

68. PW-35 Sh. Sachin Ratnakant Bhagat, Manager Accounts, M/s ATCL Container Line Pvt Ltd., Vashi, New Mumbai deposed that his company was in the business of freight forwarding and cargo consolidations by sea. He mentioned that he handed over various documents to the CBI including copy of shipping bills, MATE receipts and master bill of lading. The documents are Ex.PW35/D to Ex.PW35/Y. He identified the other master bills of lading. He admitted in cross-examination that MATE receipt was the final proof that the export consignment had been shipped. The testimony of this witness demonstrates that the export consignments were genuinely shipped with the requisite documents. PW-38 Sh. Anand Devram Tambey, Managing Director of ATCL Container Line Pvt. Ltd. deposed that he handed over sixteen (16) MATE Receipts MarkPW38/X (D-115) to the CBI. He stated in cross-examination that MATE Receipt was issued after complying with all the requisite formalities and procedural aspects and it was a conclusive proof that the shipment has sailed.

69. PW-43 Sh. Sumitro Mukherjee, Import Manager, Maersk India Pvt. Ltd. (North-East India) stated that he handed over the photocopies of custom MATE Receipt, invoice copies and confirmation mails received from the overseas agent in respect of delivery of cargo (Marked as Mark PW43/1). He stated in cross-examination that the containers were shipped overseas and the same were delivered to the consignees. His testimony establishes that the export consignments were actually shipped. PW-34 Sh. K. Panda of customs Department and PW-46 Shri N.Y. Thakur of SBI have also established the genuineness of the exports made by GEPL. PW-40 Sh. L.S. Sahi, General Manager, HI-Tos Liner stated that his company used to load containers provided by its shippers on various carriers vessels. He identified the MATE Receipts and Way Bills of combined transports issued in respect of the consignments of GEPL. PW-32 A.P. Narsimhan, AGM (Treasury Branch), UCO Bank deposed about the payments received by the bank from the foreign banks in respect of the consignments exported by GEPL. He stated that a sum of Rs.

19,78,344/- was received by the bank in the account of GEPL.

70. PW-47 Sh. Sukhdev Shivsharan, Assistant Commissioner, Customs deposed about the duty drawback sanctioned and received by GEPL in respect of export bills. He stated that duty draw back used to be given to exporters as incentive by the Government for carrying out the exports. He mentioned that he furnished the details of the duty drawback to the CBI vide reply dated 03.01.2008 which is Ex.PW47/A (D-151). PW-39 Sh. Vinay Madhusudan Nandgonkar, Chief Manager, SBI Nava Sheva Project Branch, JNCH, Sheva Navi Mumbai proved the certified copy of statement of current account of GEPL from the period 27.10.2004 to 22.01.2008 Ex.PW39/D (D-155). In the statement of account, the payments received on account of duty drawback against each shipping bill stands duly reflected.

71. It can be seen from the evidence that it is established that the issuers of bill of exchange, invoices, packaging list, certificate of origin, house bill of lading, MATE receipts, shipping bills and master bills of lading confirmed having issued the respective documents. The custom officials who handled these shipping bills and issued 'Let Export Orders' confirmed their signatures and proved the genuineness of these documents. There is evidence to show that the goods meant for export were examined by the concerned customs officials and were thereafter stuffed into the containers. There is also evidence to demonstrate that containers were loaded and boarded on the vessels and the containers were sailed to the port of destination. Not only this, GEPL also claimed and received duty drawback against each shipping bill. There is overwhelming evidence to establish that GEPL actually exported the goods and the export bills were genuine.

Diversion of funds

72. It is the case of prosecution that out of the funds disbursed in the current account from the credit facility under the ABC account, GEPL diverted funds in the accounts of the other accused persons and also made cash withdrawals through cheques. It has been alleged that out of Rs.219 lakhs made available under the credit facility, GEPL diverted a sum of Rs.1,55,78,216/- in favour of A-5 Amresh Kumar Mishra, A-6 Ramji Mishra, A-8 Swadesh Kumar, A-9 Anandji Mishra and A-10 Shiv Kumar Sharma. The manner in which the funds were transferred through cheques has been disclosed as under:

S.No.	Name of company/firm	Total amount (in Rs.)	No. of cheques	Cheque Dates	Crediting Bank
1.	M/s Dubey Exports	11 lakhs	2	01.09.2004, 10.12.2004	HDFC Bank Ltd., Anand Niketan, New Delhi
2.	M/s Transcorp International Ltd.	1362750/-	2	20.11.2004, 06.12.2004	Bank of Punjab, Connaught Circus, New Delhi & PNB. Bhikaji Kama Place, New Delhi.
3.	M/s Edge Garments Pvt. Ltd.	30 lakhs	2	03.12.2004, 03.12.2004	IDBI Rank Ltd., KG Marg, New Delhi.
4.	M/s Travel Planner Pvt. Ltd.	165466/-	3	26.02.2005, 04.03.2005, 04.03.2005	OBC Central Clearing
5.	M/s Ganpati Travels	50000/-	1	17.03.2005	Vijaya Bank, Defence Colony, New Delhi.
6	M/s Whizz Exports Pvt. Ltd	1 lac	1	13.04.2005	Federal Bank, Overseas Branch, Connaught Circus. New Delhi

7.	M/s. K.K. International	3 lakhs	1	23.02.2005	HDFC Bank, Vasant Vihar, New Delhi.
8.	M/s B Exim International Pvt. Ltd, a/C No.2498	10 lakhs	5	17.03.2005, 13.04.2005	Internal Transfer
9.	Amresh Kumar Mishra, a/c No.2307	48 50 lakhs	5	08.01.2005, 17.01.2005, 02.03.2005, 17.03.2005, 07.01.2005	Internal Transfer
10.	Anandji Mishra, a/c No.2285	8.50 lakhs	1	17.01.2005	Internal Transfer
11.	M/s. Umesh Impex a/c no.2404	28 lakhs	3	03.03.2005, 14.03.2005, 13.04.2005	Internal Transfer

73. On appreciating the record and perusing the transfers made from the current account of GEPL, in the light of the evidence placed on record, it is impossible to conclude that GEPL was not authorised to utilise the amount lying in the current account in the manner it was done. Indeed, it stands established that the funds were transferred from the current account but there is no evidence that the transfers were made to cheat the bank. The statements of accounts of the individuals and business entities, wherein the funds were allegedly transferred, reflects that there were transfers in the said accounts even prior to the sanctioning of the credit facility. Prosecution has also failed to bring on record any circular or guideline of the bank to establish that these transfers were required to be monitored by A-4 R.K. Joshi. The submissions made by the defence that there is no evidence to show that the transferred funds were out of the sanctioned credit facility also find support from the record. Record shows that GEPL submitted export bills aggregating Rs.352.44 lakhs with the bank. The total disbursement made by the bank under the sanctioned limit was Rs.249 lakhs. In these circumstances, the only logical conclusion could be that GEPL contributed the balance amount of Rs.103.44 lakhs from its own sources to purchase the goods meant for export. It can be seen from the statement of the current account of GEPL Ex.PW20/E (D-44) that there were total debits of around Rs.386.44 lakhs by way of cash withdrawals, transfer or clearing through cheques during the period from July, 2004 to 18.07.2005. This also negates the case of the prosecution that GEPL was not carrying any business and the export bills were forged and fabricated.

74. Prosecution has indeed established that the funds were transferred in the account of A-5 Amresh Kumar Mishra, A-6 Ramji Mishra, A-8 Swadesh Kumar Mishra, A-9 Anandji Mishra and A-10 Shiv Kumar Sharma but it has failed to demonstrate that GEPL was not authorised to make these transfers. The credit limits of GEPL were sanctioned by the bank against export bills. It was stipulated in the sanction letter that there would be a margin of 25%, which implies that the finance from the bank was restricted to 75% of the tendered export bills and the balance would be contributed by GEPL. It was an arrangement between the bank and GEPL that GEPL would tender export bills after making shipment against which bank would disburse the permissible amount by debiting ABC account and crediting the current account of GEPL. The funds so placed in the current account were permitted to be utilised by GEPL and no restriction was imposed in the sanction letter that the funds needs to be utilised in a particular manner. There is material on record to demonstrate that GEPL was making cash purchases for procuring the export goods. The audited balance-sheet of GEPL for the year ending 31.03.2004 Ex.PW31/B (D-226) contains 'notes to account' wherein it stands mentioned that all the purchases and sales were reported to have been made in cash. Prosecution has not brought any evidence to establish otherwise. PW-48 Sh. Satender Kumar Gupta stated in cross-examination that he came to know that the borrower was engaged in the manufacturing and export of carpets. He mentioned that he made no enquiries in respect of the prevalent mode of payment in the said line of business. There is no evidence to negate the arguments of the defence that the payments so reflected were in respect of the purchases made for carrying out the exports.

75. There is evidence to demonstrate that apart from the funds received from the credit facilities, GEPL provided funds from its own sources in the bank account. In terms of the statement of current account of GEPL Ex.PW14/B (D-80), the total sum of all withdrawals from the period 07.07.2004 to 10.02.2007 comes to around Rs.539 lakhs whereas admittedly, in total, a sum of Rs.249 lakhs was credited in current account from the ABC account. This implies that the balance amount was received either in the form of export realisation or from other sources. Thus, it can be safely concluded that there is no concrete evidence to indicate that the transfers from the current account of GEPL were made out of the funds received from the credit facilities. In fact, the statement of bank accounts of the business entities, wherein the funds were allegedly transferred, reflects that there were transfers in those accounts even prior to the sanction of the credit facility. On the basis of the evidence produced by the prosecution, it cannot be concluded that the funds from the credit facility under ABC account were diverted and transferred to A-5 Amresh Kumar Mishra, A-6 Ramji Mishra, A-8 Swadesh Kumar Mishra, A-9 Anandji Mishra and A-10 Shiv Kumar Sharma.

Criminal Misconduct on the part of A-4 R.K. Joshi

76. Coming to the allegations of criminal misconduct committed by A-4 R.K. Joshi. It is the case of prosecution that A-4 committed the offence of criminal misconduct, as defined under Section 13(1)(d) of PC Act, by employing corrupt and illegal means to obtain funds under the credit facility for GEPL and allowed the diversion of those funds against fake export bills and cash withdrawals. Charge under Section 13(1)(d) read with Section 13(2) of PC Act was framed against A-4. Before evaluating the evidence, it would be appropriate to refer to the relevant provisions of Section 13(1)(d) of PC Act, which defines the offence of criminal misconduct as under :-

> *"**Section 13. –** Criminal misconduct by a public servant: - (1) A public servant is said to commit the offence of criminal misconduct, -*
> *(a) . . .*
> *(b) . . .*
> *(c) . . .*
> *(d) if he,*
>
> *(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage ; or*
>
> *(ii) by abusing his positioning as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage ; or*
>
> *(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest ; or*
> *(e) . . ."*

77. Thus, it can be seen that the essential ingredients of Section 13(1)(d) of the PC Act are; (i) the person should be a public servant; (ii) he should have used corrupt or illegal means or otherwise abused his position as such public servant and obtained valuable thing or pecuniary advantage for himself or for any other person; or (iii) he should have obtained valuable thing or pecuniary advantage for himself or for any other person without any public interest.

78. In the matter of ***P. Satyanaryana Murti Vs Dist. Inspector of Police & Anr. AIR 2015 SC 3549***, the Supreme Court of India, while setting aside the conviction of an accused under Section 13(1)(d) read with Section 13(2) of the PC Act, observed that proof of demand of illegal gratification is the grave-men of the offence under Sections 7 & 13(1)(d)(i) and (ii) of the PC Act and in the absence thereof, the charge under the said sections would fail. The court made the following observations:

> *"18. This Court in A. Subair vs. State of Kerala (2009)6 SCC 587, while dwelling on the purport of the statutory prescription of Sections 7 and 13(1)(d) of the Act ruled that the prosecution has to prove the charge thereunder beyond reasonable doubt like any other criminal offence and that the accused should be considered to be innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification, which are vital ingredients necessary to be proved to record a conviction.*
>
> *19. In State of Kerala and another vs. C.P. Rao (2011) 6 SCC 450, this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence*

to prove payment of bribe or to show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

20. In a recent enunciation by this Court to discern the imperative pre-requisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Sections 7 as well as 13(1)(d)(i)&(ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Section 13(1)(d)(i)&(ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

21. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections

7 and 13(1)(d)(i)&(ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act.

22. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Sections 7 or 13 of the Act would not entail his conviction thereunder."

79. Thus, in view of the law propounded by the Supreme Court of India in the aforesaid judicial pronouncement, the proof of demand of illegal gratification is an essential ingredient to bring home a charge under Section 7 as well as Section 13(1)(d)(i) & (ii) of PC Act. It is an indispensable ingredient to establish a charge under these Sections.

80. Coming back to the present case. There is no evidence to demonstrate that A-4 entered into a criminal conspiracy with the other accused persons to cheat the bank. Record shows that A-4 followed the usual banking practice while sanctioning the loan. There is evidence to show that he had no knowledge about the alleged impersonation by A-7 Parveen Kumar. There is evidence to demonstrate that the formalities for the opening of the account were completed by junior officers of the bank and A-4 only permitted the opening of the account. There is evidence to show that for sanctioning the credit facilities, collateral security of a property was obtained although, the same was not mandatorily required. The same was obtained to guard the interest of the bank. There is no evidence to prove that A-4 violated guidelines of the bank at the time of sanctioning the credit facility. Admittedly, it is not the case of the prosecution that A-4 exceeded his discretionary powers while sanctioning the credit limits in favour of GEPL. It is also not the case of prosecution that A-4 demanded bribe for sanctioning the credit limits in favour of GEPL. Prosecution has failed to place on record any evidence to show that A-4 obtained either for himself or for other accused persons any valuable thing or pecuniary advantage by abusing his official position as a public servant. Since, these key ingredients are missing, therefore, the charge under Section 13(2) read with Section 13(1)(d) (i) &(ii) of PC Act would fail.

81. The ingredients of Section 13(1)(d) (iii) of PC Act are also missing. It cannot be concluded that A-4 R.K. Joshi obtained any valuable thing or pecuniary advantage for the accused persons without any public interest. A-4 was working as Chief Manager of the bank and in the said capacity, he was performing various functions including sanctioning of the credit facilities to the borrowers. Admittedly, granting of credit facility cannot be considered as an activity without public interest. The bank grants credit facility in the interest of public as well as in its own interest as the same generates income for the bank in the form of 'interest'. The credit facility is also granted to the exporter so that may meet the export obligations and earn foreign exchange for the country. There is evidence to show that at the time when the credit facility was granted, there were circulars in place to ensure prompt sanction and disbursal of credit facilities to the exporters. There is no evidence to show that A-4 employed corrupt or illegal means to sanction the credit facility in favour of GEPL.

82. In so far as the allegations of the loss to the tune of Rs.185 lakhs are concerned, it has been revealed during the course of the trial that even if the bank incurred such a loss, it cannot be attributed to any lapse or misconduct on the part of A-4 R.K.

Joshi. Not even a single witness has deposed that loss was caused to the bank on account of lapse on the part of A-4. It is also noted that A-4 remained in the bank till 06.05.2005 and by that time, there was no intimation about non-payment of the export bills by the foreign buyers. No intention or criminal misconduct can be attributed to A-4 merely because the loan account was classified as NPA.

83. Prosecution has also failed to demonstrate that there was either meeting of mind or nexus between A-4 R.K. Joshi and other accused persons and loss was caused to the bank by wilful conduct of A-4. No presumption about the guilt of the accused can be raised merely because the loan account turned NPA. In a criminal trial, prosecution is duty bound to establish its case beyond reasonable doubt and it is under an obligation to rule out any hypothesis that may point towards the innocence of the accused. It is a golden principle which runs through the jurisprudence of the criminal law that suspicion, however vague, cannot take place of proof and the prosecution cannot rest its case in the realm of 'may be' true but has to upgrade it in the domain of 'must be' proved in order steer clear of any surmise or conjecture. It is the settled proposition that if in the facts and circumstances of a case, two views are possible, then the benefit of doubt must be given to the accused. Reliance in this regard can be placed on the observation made in the matter of ***Sujit Biswas Vs. The State of Assam 2013 (2) SCC 406***.

84. The line of defence taken by A-4 R.K. Joshi is that the credit facility was granted to GEPL for discounting the export bills and the facility was used exactly for the said purpose. There is evidence to support the defence taken by A-4. An explanation has been tendered that the cash transfers were made for the purpose of business and making payments to the supplier. No evidence was collected during investigation which may negate this explanation. No inference about criminal misconduct can be drawn merely because the foreign buyers committed defaults in payments. Drawing such an inferential deduction is impermissible in law. The possibility that the defaults in payments might have been due to natural course of business, cannot be ruled out. There is nothing on record to substantiate the allegations that A-4 committed an offence under Section (13)(1)(d) of PC Act.

85. Further, it came on record during the course of trial that the bank launched proceedings against GEPL under SARFASI Act, 2002 before Debt Recovery Tribunal (DRT) and in those proceedings titled as “UCO Bank Vs Gauri Exim Pvt. Ltd.”, an order dated 16.12.2023 Ex.DW1/A was passed in favour of the bank wherein it was held that the bank was entitled to recover the debt by the sale of mortgaged property. It has also come on record that the bank subsequently entered into a settlement with GEPL and received the entire settlement amount. Defence has placed on record a letter No. DHC/REC/08-09/275 Ex.DW2/H, whereby the bank entered into an agreement with GEPL and accepted a sum of Rs.140 lakhs under One Time Settlement (OTS) Scheme of RBI. Defence has also placed on record an order dated 07.01.2017 of DRT Ex.DW1/D wherein it stands recorded that the settlement amount was received by the bank and it issued a ‘No Dues Certificate’ Ex.DW2/A. Thus, in so far as the loss is concerned, the bank voluntarily entered into a settlement and accepted the settlement amount paid by GEPL. No doubt, a subsequent settlement does not reduce the criminality of an offence but the proceedings before DRT does demonstrate that a valid mortgage was created in respect of the mortgaged property.

Noting and Protesting- Its significance in ECGC Policy Coverage

86. There is evidence to demonstrate that the credit facility was granted on the condition that the export shipments shall be covered under the policy of 'Export Credit Guarantee Corporation' (ECGC). The sanction letter dated 13.12.2004 Ex.PW20/C (D-21) contained a condition that all the export bills tendered by the party to the bank for collection shall be covered under the whole turnover post-shipment credit policy of ECGC and the premium for the said policy shall be paid by the exporter. It was also one of the conditions that ECGC exporter's policy shall remain in force for a minimum sum of Rs.2 crores and the premiums shall be paid regularly. In accordance with the said condition, the ECGC policy was taken by GEPL to protect the interest of the bank in case of any default as can be seen from the letter dated 25.01.2005 addressed by ECGC to the bank Ex.DW2/M in which Whole Turnover Packing credit Guarantee (WTPCG) limits have been notified for GEPL. This letter provides support to the defence taken by A-4 R.K. Joshi that he acted in the best interest of the bank to protect its interest. GEPL regularly paid the premium to ECGC and the payments so made stand duly reflected in its statement of current account Ex.PW14/D (Colly) (D-80).

87. PW-19 Sh. Ramesh Kumar Taneja disclosed in cross-examination that the bills for foreign collection Ex.PW19/1 (D-46) were subject to uniform rules for collection. He mentioned that the transactions of GEPL were not covered under the insurance policy of ECGC but his submissions are contradictory to the record. The bills, which were forwarded to the foreign buyers, contained a clause of 'Noting and Protesting' to be done as per the instructions of GEPL (exporter). The manner in which the ECGC policies are invoked to cover risk in case of non-payment by the foreign buyers was discussed in the judgment dated 27.07.2024 passed by this court in the connected matter titled as ***CBI Vs. Shiv Kumar Sharma & Ors CC No. 372/19***, wherein a similar issue came up for consideration. The certified copy of the judgment has been placed on record. It can be seen that ECGC provides post-shipment risk insurance policy to the exporters to cover insurance for non-payment risk in the export consignments. In case of default in payment by the buyer, the exporter would submit report of default to the ECGC within 45 – 60 days from due date of payment and thereafter, ECGC would send letter to exporter advising the exporter not to make further shipment to the same buyer. It would establish communication with the buyer and send a letter to Indian Embassy in the said country for recovery of payment and initiate the steps for Noting and Protesting.

88. Noting and Protesting is a common recognised procedure under the Negotiable Instruments Act. In case the acceptor of the bill refuses to pay the amount on maturity or becomes insolvent, it is called 'dishonour of the bill of exchange'. To establish the fact that the bill was properly presented and dishonoured, it is usually handed over to a person called Notary Public appointed by the court. The Notary Public again represents the dishonoured bill to the acceptor for payment and if the acceptor again refuses to make the payment, the Notary Public notes down the fact of dishonour on the bill itself. Such an act of Notary Public is called 'Noting'. In this situation, the liability of the acceptor is restored. It has been pointed out by the defence that for the goods exported by GEPL, the bank became holder in due course as the bills of lading were endorsed in its favour and in case, the Noting & Protesting method would have been followed, the bank could have recovered the money from the foreign buyer in case of default. It is the version of accused persons that in the absence of such a Noting & Protesting, the bank lost its legal right to claim the amount from the foreign buyer and was therefore left with no alternative but to sue GEPL. Counsel for A-4 has mentioned that on account of this omission of the bank, GEPL lost its remedy against the foreign buyer.

89. In the present matter, pre-shipment and post-shipment losses suffered by the bank were covered under the risk cover obtained from ECGC against the default of buyers. In case, exporter defaulted in making payment, the exporter bank would classify the account of the said borrower as NPA and accordingly, communicate to ECGC. After verifying the aforesaid facts from the bank, ECGC would have requested the exporter bank to submit the claim which would have been processed as per the internal guidelines by competent authority. The entire amount of credit facility sanctioned to GEPL was guaranteed under the whole turnover post-shipment guarantee of ECGC. The condition of this guarantee was that 'Noting & Protesting' must be done in respect of export bills dishonoured either due to non payment or due to non acceptance. The bank failed to comply with this important requirement and did not adopt the course of action to recover and minimise the risk. In the absence of Noting and Protesting, the bank lost its legal right to claim the amount from the foreign buyer and the right to claim from ECGC was also lost. This omission cannot be attributed to A-4 R.K. Joshi.

Failure to comply with the procedure does not give rise to criminal liability

90. Prosecution has failed to demonstrate that A-4 R.K. Joshi committed procedural lapses in processing and sanctioning the credit facility to GEPL. There is no material to show that A-4 either intentionally violated rules and regulations of the bank or omitted to follow the usual procedure while sanctioning the credit facilities. Even if it is taken that A-4 committed some minor procedural irregularities in sanctioning the loans, still, he cannot be held criminally liable for the same. It has been held in the matter of ***C. Chenga Reddy & Ors. v. State of A.P., (1996) 10 SCC 193*** as under:

> *"22. On a careful consideration of the material on the record, we are of the opinion that though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter of allotment of work of jungle clearance on nomination basis and have committed departmental lapse yet, none of the circumstances relied upon by the prosecution are of any conclusive nature and all the circumstances put together do not lead to the irresistible conclusion that the said circumstances are compatible only with the hypothesis of the guilt of the appellants and wholly incompatible with their innocence."*

91. In ***Abdulla Mohd. Pagarkar V. State (Union Territory of Goa, Daman and Diu), (1980) 3 SCC 110***, under somewhat similar circumstances, the Supreme Court of India opined that mere disregard of relevant provisions of the Financial Code as well as ordinary norms of procedural behaviour of government officials and contractors, without conclusively establishing, beyond a reasonable doubt, the guilt of the officials and contractors concerned, may merely give rise to a strong suspicion but that cannot be held to establish the guilt of the accused. The same view point was reiterated by the Supreme Court of India in the matter of ***A. Sivaprakash Vs. State of Kerala, Crl. Appeal***

No. 131/2007 decided on 10.05.2016 wherein it was observed that even when codal violations and irregularities were committed on the part of public servants in violation of circulars of the department, it by itself, was not sufficient to prove that he is criminally liable.

Conclusion

92. In view of the discussions made in the afore-stated paras, I have reached a conclusion that prosecution has failed to establish that A-4 R.K. Joshi hatched a conspiracy with other accused persons to cheat the bank. It stands established that A-4 acted in a *bona fide* manner for sanctioning the credit facility and opening the current account of GEPL. There is evidence to demonstrate that all the prescribed documents were obtained by the bank at the time of opening of the current account. Evidence has also come on record to show that the introducer 'Vijay Pal Singh Pali' was present at the bank at the time of opening of the current account and he signed in the 'introduction column' of the account opening form of GEPL. There is nothing on record to conclude that A-7 Parveen Kumar impersonated as Vijay Pal Singh Pali and signed the account opening form. Prosecution has failed to place on record any evidence to suggest that there was any reason to doubt either the identity of the directors of GEPL or the genuineness of the documents submitted by the directors. The directors submitted Form No. 32 bearing the endorsement of the RoC and also placed on record the Certificate of Incorporation of GEPL. There is evidence to show that the process of opening of the current account is usually carried out by the junior officials of the bank and the Chief Manager only approves the same after the formalities have been complied with. No reliance can be placed on the report of the handwriting expert as there are circumstances which contradicts his findings. It is seen that the admitted signatures of Vijay Pal Singh Pali and A-7 Parveen Kumar were never sent for comparison. Similarly, the admitted signatures and handwriting of A-4 R.K. Joshi were also not sent for comparison. Only the specimen handwriting and signatures, obtained during the course of investigation, were sent to the CFSL. This circumstance further raises doubt over the reliability of the CFSL report.

93. The case of the prosecution that the valuation report was inflated has not been proved. There is no concrete evidence to draw an inference that the valuation report was inflated. In order to establish that the value of the land was inflated, prosecution placed on record the valuation report from another valuer but his report was not conclusive. There were various deficiencies in his report. He furnished the valuation report without taking the actual measurement of the land and also did not correctly specify the permitted usage of the land. No reliance could have been placed on such a report. The case of the prosecution that the funds from the credit facility were siphoned on the basis of fake export bills has also not been proved. Evidence has come on record to establish that goods were actually exported and the payments were received by GEPL from foreign buyers. The payments so received were duly reflected in the bank account of GEPL. Testimonies of the officials of Warehouse, Clearing Agents and Customs Department have demolished the prosecution's case that the export bills were forged and fabricated. Testimonies of these witnesses demonstrate that the goods were examined and stuffed in the containers and thereafter, the same were put on board for being transported to the foreign destinations. The documents prepared at each stage of the movement of the export consignments substantiate that the goods were genuinely exported. Evidence has come on record to show that GEPL also obtained duty drawback in respect of export consignments. There is overwhelming evidence to support the defence taken by the accused persons that the goods were actually exported.

94. It is established from evidence that A-4 R.K. Joshi validly sanctioned the credit facility and he was competent to do so. Evidence has come on record that the credit facility was in fact in the nature of a working capital limit which was calculated on the basis of the working capital requirement of GEPL. The process note prepared by the bank at the time of granting of the initial credit facility as well as the one prepared at the time of subsequent enhancement of the credit facility demonstrate that the credit facility was in the nature of working capital limit. It has also come on record that such working capital limit was not mandatorily required to be secured by means of a collateral security. Defence has placed on record circulars of the bank to demonstrate that there were guidelines in place to encourage the bank officials to grant credit facility to exporters so that they can meet their export commitments. The guidelines also provided that the bank officials should be prompt in granting the credit facility so as to ensure that a genuine exporter does not suffer. A-4 has tendered an explanation that at the time of obtaining the credit facility, the directors of GEPL placed on record previous chain of title deeds of the land as well as an agreement to sell, which demonstrated that they were in the process of acquiring the said land. On evaluating the conduct of A-4 R.K. Joshi in the said backdrop, I am unable to draw a conclusion that his conduct amounted to criminal misconduct as defined under Section 13(1)(d) of PC Act. Although, the record shows that A-4 could have been more vigilant while sanctioning the credit facility but no conclusion can be drawn on this account that he committed criminal misconduct. There is evidence to show that the sale deed of the mortgaged land was genuine. There is material on record to conclude that a genuine equitable mortgage was created in respect of the mortgaged land. There is evidence to show that GEPL exported goods and received payments from the foreign buyers but some of them failed to honour the bills resulting in non-payment of the disbursed amount to the bank. However, no criminal liability can be fastened upon A-4 merely because of this reason. It has been held by the Supreme Court of India in the matter of ***Satish Chandra Ratan Lal Vs. State of Gujarat, Crl. Appeal No. 09/09 decided on 03.01.2018*** that mere inability of the accused to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction as *mens rea* is the crux of offence. In the present case, no such dishonest intention can be inferred at the time of granting the credit facility.

95. Prosecution has also failed to establish that the funds disbursed against the export bills were either diverted or siphoned off against fake and dummy transactions. There is no evidence to establish that the funds obtained by GEPL could not have been utilised in the manner in which the same were shown to have been used. It stands established that apart from the funds disbursed under the credit facility, funds from other sources were also received in the current account of GEPL. No evidence has come on record to refute the line of defence taken by the accused persons that the transfers were made for making payments for procuring the goods which were exported by GEPL. In view of discussions held in preceding paras, it is an inescapable conclusion that prosecution has failed to establish the charges against either of the accused persons. Accordingly, Accordingly, A-2 K.B. Nandwani, A-3 Ravi Bhushan Roy, A-4 R.K. Joshi, A-5 Amresh Kumar Sharma, A-6 Ramji Mishra, A-7 Parveen Kumar, A-8 Swadesh Kumar Mishra, A-9 Anandji Mishra and A-10 Shiv Kumar Sharma stand acquitted of the charges under Section 120B of IPC read with Sections 419, 420, 467, 468 & 471 of IPC read with Sections 13(2) read with Section 13(1)(d) of the PC Act. A-4 R.K.Joshi is also acquitted of the charge under Section 13(2) read with Section 13(1)(d) of the PC Act. A-2 K.B. Nandwani stands acquitted of the charge under Sections 467, 468 & 471 of IPC. A-7 Praveen Kumar is acquitted of the charge under Section 419 of IPC. A-2 K.B. Nandwani, A-5 Amresh Kumar Mishra, A-6 Ramji Mishra, A-8 Swadesh Kumar Mishra, A-9 Anandji Mishra and A-10 Shiv Kumar Sharma are acquitted of the charge under Section 420 of IPC.

File be consigned to record room.

Announced in the open Court on
this **11th day of March, 2025**

SUDHANSHU KAUSHIK

Digitally signed by SUDHANSHU KAUSHIK
Date: 2025.03.11 14:31:20 +0530

(**Sudhanshu Kaushik**)
Special Judge, (PC Act)/ CBI-11
Rouse Avenue Courts, Delhi : 11.03.2025

Note: 'D' specifies the Document Numbers as mentioned in the charge-sheet.