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Digitally signed by RUPA C VAGGA
Location: Prl.,Civil Judge and JMFC-Sindhanur C/c II Addl Civil Judge and JMFC, Sindhanur

IN THE COURT OF THE PRL., CIVIL JUDGE & JMFC AT SINDHANUR

PRESENT : **Smt. RUPA C.VAGGA.** B.B.A. LL.B.,
Prl.Civil Judge and JMFC-Sindhanur.
C/C IInd Addl Civil Judge and JMFC-Sindhanur.

DATED THIS THE 01st DAY OF JULY-2026.
C.C.NO.739/2014

COMPLAINANT:

The State
through Sindhanur Town Police Station.

(By A.P.P,)

//Vs//

ACCUSED:

1. Shivakumar,
S/o. Jambunathaswamy Hiremath,
Age: 27 Yrs.,
Occ: Empoyee in Pvt, Firms
R/o. Gudadur,
Tq: Sindhanur & Dist: Raichur

2. Veeramma.
D/o. Shekharappa Dharvatti,
Age: 25 Yrs.,
Occ: Empoyee in Pvt., Firms
R/o. Thalekhan, Tq: Lingasugur, Dist: Raichur

(A.1 by Sri. S.G.K., Adv)
(A.2 by Sri. S.S.K., Adv)

J U D G M E N T

The PSI of Sindhanur Town Police Station, has filed the Charge Sheet against the accused for the offences punishable Under Secs,. 408 and 420 R.w 34 of Indian Penal Code.

2. **<u>The brief facts of the Prosecution case is as follows:</u>**

It is the allegations of prosecution that, within the limits of Sindhanur Town PS, in Shriram City Union Finance Limited branch in Basava Circle, accused no.1 being the Assistant Gold Loan Manager and accused No.2 being the Deputy Assistant Executive Officer of Gold Loan. With them locker keys of the gold loan department are the responsibility of both the accused, the customers have taken loans by depositing their gold items, the said gold items are under the responsibility of accused no.1 and 2, while performing their duties during the period from 25-06-2013 to 22-08-2013, accused no.1 has misappropriated ₹.54,709,00/- which belongs to the finance company. The accused No.2 had taken valuable gold items with the intention of defrauding, used them for her own benefit, and misappropriated, thereby betraying the trust of the company. It is alleged that the accused No.2 had known about the betrayal of trust and cheating by the accused no.1 and had cooperated with the accused no.1 by giving him the locker keys and thereby accused committed an offences punishable under Sec., 408 and 420 Read with 34 of Indian Penal Code.

3. Based on complaint, PSI of Sindhanur Town Police station have registered the case in Crime.No.184/2013 against Accused persons. On filing of charge sheet, this court has taken the cognizance for the offences punishable U/Secs., 408 and 420 R/w Sec., 34 of Indian Penal Code and registered the case against accused persons. On taking cognizance, this court has issued summons to the accused. On service of summons accused persons appeared before the court through their counsel and enlarged on bail.

4. The copy of charge sheet were supplied to accused persons as contemplated U/Sec.207 of Cr.P.C. Charges framed for the offences punishable U/Secs.

408 and 420 R/w Sec., 34 of Indian Penal Code. The accused persons denied the same and claimed to be tried. Then, the case posted for prosecution evidence.

5. Accordingly, on commencement of trial the prosecution got examined 28 witnesses from P.W-1 to 28 and got marked 104 documents as per Ex.P-1 to Ex.P-104 and got marked materiel objects as per M.O-1 to 23 and closed prosecution side evidence.

6. After completion of prosecution side evidence the accused were examined Under Section-313 of Cr.P.C and all the incriminating circumstances against the said accused persons appearing in the evidence of the prosecution was put forth to the accused persons and their explanation was sought. The accused persons after understanding the same denied all the incriminating circumstances and submitted their defense by way of filing memos, **the accused no.1** contended that, he was appointed as Assistant Gold Manager in Shriram City Union Finance Ltd. Sindhanur Branch on 03-12-2010. Later, he was given oral orders

as Area Manager and as per the said orders, he was working as Area Manager in Gangavathi, Siruguppa, Lingasagur and Raichur branches since 2013. On 23-8-2013, the Branch Manager of his Shriram Chit Fund branch filed a complaint against him for taking Rs.54,70,900/- related to the company and he work for with the intention of cheating and taking it for his own. Further contented that, there were two lockers in the Sindhanur branch where he worked, one for storing gold ornaments and the other for handling slush fund transactions. The keys to the said lockers were to be operated by whomever the branch manager told them to, so the keys to the said lockers were operated by Shivakumar.N and Efthakar Hussain, JC 2 and 1 respectively. Since he was working as the Area Manager of Gangavathi, Siruguppa Lingasagur and Raichur branches, he did not operate the locker keys. But on the dates: 15-07-2013 and 16-08-2013, he operated only one of the 2 keys of the lockers. The branch manager and the senior accountant had at the end, they would check the gold inventory and total transaction details and send a copy of the report with their signatures to the head office. Therefore, this case is not related to him. Further contended that after the case was registered, the police did not investigate properly and even though there was a CCTV system in the room where the lockers were located, they did not collect their pages. The said police took his signature on blank sheets and took his own money, Rs. 11,47,000 / - from him step by step by threatening him by forcing. Although he did not do anything wrong, they filed a false complaint against him and gave false testimony. He has not committed any breach of trust or mistake. Therefore, he prayed to acquit him and return his money of ₹.11,47,000/- to him.

6(a). Further, **accused no.2** contended by filing memo that, she was an Assistant Executive in Sri. Ram City Union Finance Limited Sindhanur Branch and have been appointed since 24-04-2012. The Branch Manager of Sri Rama Chit Fund Branch has filed a complaint against her alleging that she has taken ₹.54,709,00/- related to the company they work for with the intention of defrauding and taking it for their own use. Further contended that, in the Sindhanur branch where she worked, there were a total of 2 lockers, one for storing gold and the other for handling chit fund transactions. The keys to the said lockers were to be handled by whomever the branch manager told them. Usually, the keys to the said lockers were operated by Shivakumar. N and Ifekar Hussain, who operated JC 2 and 1 keys respectively. But only on 15-07-2013 and 16-08-2013, she handled only 1 key out of the 2 keys of the lockers. At the end of the week, the branch manager and the senior accountant would check the gold inventory and total transaction details and send a copy of the report to the head office with their signatures. Therefore, this case has no connection with her. Further, after the case was registered, the police did not investigate properly and did not collect the footage of the CCTV system in the locker room. The said police took her signature on blank sheets and created a self-incrimination statement. In fact, she did not give any self-incrimination statement. Even though she did not do anything wrong, they filed a false complaint against her. They filed a false charge sheet. They gave false testimony. She has not committed any breach of trust. Therefore, she prays to acquit her from this case. Hence, the matter was posted for arguments.

ARGUMENTS

7. The Ld. APP has argued that, the prosecution has filed final report against the accused persons for the offences punishable under Section-408, 420 read with Section-34 of Indian Penal Code. It is further argued by the Ld. APP that they got examined 28 witnesses as P.W-1 to 28. This case is based on documents but not oral evidence. They got marked 104 documents as per Ex.P-1 to 104 and got marked M.O-1 to 23. Ex.P-4, 5 and P-46 are material documentary evidence to prove the aforementioned offences. In this case Ex.P-4, Ex.P-5, Ex.P-6 and Ex.P-7 are very important. The entire

case is based upon these documents. Ex.P-4 is key register, Ex.P-5 is Stock Register, Ex.P-46 is the document with respect to duties and responsibilities of accused No.1. In order to prove the alleged offences, the prosecution got marked above said material objects. Those are muds, stones, anklets and some other material objects were marked on behalf of prosecution case. Further they vehemently argued about Section-106 of Indian Evidence Act, till today the accused persons not disputed their signatures available on Ex.P-4, P-5 and P-46. When those documents were presented he managed, he verified and keys were with them and they operated the same and committed an offence of cheating. As per Section-408 from the very inception both the accused have mens-rea to commit such a kind of offence. Till today they were not disputed those signatures, as per Section 25 of Indian Evidence Act, it is sufficient to hold that the accused persons while the investigation they admitted about their guilt for the aforementioned offences. Hence they sought to convict the accused persons for the aforesaid offences.

7(a). Per contra, the Ld. counsel for accused no. 1 has vehemently argued that as per the case of prosecution, the alleged offence of cheating under Section-408 and 420 were committed from the duration i.e. 25.06.2013 to 22.08.2013. Further argued that as per Section-420, The prosecution must prove deceiving and as per Section-408 the prosecution must prove entrustment. Further they argued that in this case the prosecution heavily relied upon Ex.P-3, P-4, P-5 and P-46, Ex.P-3 is attendance register, Ex.P-4 is case. Key operating register. Ex.P-5 is a stock register. Ex.P-46 is with respect to the duties and responsibilities of accused no. 1 only. Further vehemently argued that the accused's name is Shivakumar.N. But In the Ex.P-4, the documents relied by the prosecution shows that one Shivakumar H.M and Iftekar Hussein were operated those keys. Ex.P-6 indicates that it is the duties and responsibilities only with respect to accused no. 1 to show that the entrustment of keys to the accused No.1 only. As per Ex.P-5, the accused No.1 put his signature on 15.07.2013 and 16.08.2013 only, He may be the incharge of Ex.P-4 or the keys. But he is not the custodian of the keys as alleged by the prosecution. Further it is vehemently argued that the prosecution heavily relied upon key number 1 and 2. But these keys were not at all seized by the prosecution. Further, they vehemently argued that accused no. 1 is an area manager but not assistant manager. This fact is also admitted by P.W-1 during his cross-examination by the defence at page number 8. Further argued that no name in Ex.P-3, then how he signed in Ex.P-5. It creates doubt about the case of prosecution. The P.W-19 admitted during his cross examination that action taken against Shivakumar.H.M. and Iftekar Hussain. But the prosecution has not produced any documentary evidence. Further they argued about the admissions, omissions and contradictions of the material witnesses examined by the prosecution. Further they relied on few decisions reported in 2022 Livelaw SC 519 and argued about Section 408 of Indian Penal Code. Further, they relied on a decision. reported in 1979 Criminal Law Journal 733 and relied on some other decisions. Further they argued about their application filed under Section-452 of CrPC prays to release the seized amount of ₹.11,47,000/- in favour of accused no. 1. They further argued that these amount recovered from the accused no. 1. If the prosecution has failed to prove their case beyond all reasonable doubt, then the accused no. 1 is entitled for the same. Hence, they sought to acquit the accused no. 1.

7(b). The Ld. Counsel for Accused No.1 has relied on following decisions :-

1. 2022 LiveLaw (SC) 519
2. 2024 o Supreme (SC) 689
3. Criminal Revision Petition No.722/2004
4. Criminal Revision Petition No.1303/2010
5. AIR 2003 SC 3714

7(c). On the other hand, the Ld. Counsel for Accused No.2 adopted the arguments made by the Ld. Senior counsel for Accused No.1 and further argued about the admissions, omissions, non-seizure of small guitar, non-seizure of Redemption register, non-lodging the case against Iftekar Hussain and Shivakumar H.M. They further argued that, there is no duties and responsibilities of accused No.2 in Ex.P-46. The prosecution utterly failed to prove their case beyond all reasonable doubt. Hence, prayed to acquit the accused No.2.

7(d). The Ld. Counsel for Accused No.2 has relied on following decisions :-

1. AIR 2003 SC 3714
2. 2022 LiveLaw (SC) 519
3. 2025 LiveLaw (SC) 950

This court has perused the materials available on record and the decisions furnished by learned counsels

8. The following Points that would arise for this court consideration :-

POINTS

1. Whether the prosecution proves beyond all reasonable that, within the limits of Sindhanur Town PS, in Shriram City Union Finance Limited branch in Basava Circle, accused no.1 being the Assistant Gold Loan Manager and accused No.2 being the Deputy Assistant Executive Officer of Gold Loan. With them locker keys of the gold loan department are the responsibility of both the accused, the customers have taken loans by depositing their gold items, the said gold items are under the responsibility of accused no.1 and 2, while performing their duties during the period from 25-06-2013 to 22-08-2013, accused no.1 has misappropriated ₹.54,709,00/- which belongs to the finance company. The accused No.2 had taken valuable gold items with the intention of defrauding, used them for her own benefit, and misappropriated, thereby betraying the trust of the company. It is alleged that the accused No.2 had known about the betrayal of trust and cheating by the accused no.1 and had cooperated with the accused no.1 by giving him the locker keys by cheating and dishonestly inducing the delivery of property and thereby accused have committed on offence punishable under Section **420 R/W Section-34 of Indian Penal Code .?**

2. Whether the prosecution proves beyond all reasonable doubt that, accused in furtherance of common intention, being the official of Shriram Finance committed Criminal breach of trust of public and Firm and thereby accused persons committed the offence punishable under **Section 408 R/W Section-34 of Indian Penal Code .?**

3. What order

9. My answers to above points are as follows :

Point Nos. 1 and 2 : In the Negative.
Point No.3. : As per final order for the following :

R E A S O N S

10. **POINT NO.1 & 2:-** These points are interlinked with each other hence, I have taken these points together for common discussion in order to avoid repetition of facts.

10(a). It is the case of the prosecution is that, within the limits of Sindhanur Town PS, in Shriram City Union Finance Limited branch in Basava Circle, accused no.1 being the Assistant Gold Loan Manager and accused No.2 being the Deputy Assistant Executive Officer of Gold Loan. With them locker keys of the gold loan department are the responsibility of both the accused, the customers have taken loans by depositing their gold items, the said gold items are under the responsibility of accused no.1 and 2, while performing their duties during the period from 25-06-2013 to 22-

08-2013, accused no.1 has misappropriated ₹.54,709,00/- which belongs to the finance company. The accused No.2 had taken valuable gold items with the intention of defrauding, used them for her own benefit, and misappropriated, thereby betraying the trust of the company. It is alleged that the accused No.2 had known about the betrayal of trust and cheating by the accused no.1 and had cooperated with the accused no.1 by giving him the locker keys.

11. In order to prove the case of the prosecution, the prosecution examined the following witnesses as P.W-1 to 28.

Specimen Chart for Witnesses Examined.

Prosecution Witness No.	**Name of Witnesses**	**Description**
1	D.Mallikarjuna	Complainant
2	Sharanappa	Witness
3	Vijaykumar	Official of Shriram Chits
4	Chandappa	Witness
5	Reddappa	Witness
6	Umesh GK	Official of Shriram chits

7	Veerendra	Witness
8	Shekhaappa	Witness
9	Earappa	Witness
10	Sharanappa	Witness
11	Rajashekhar Gouda	Witness
12	Hanumappa	Witness
13	Mallappa	Witness
14	Rudrappa	Witness
15	Lakkappa	Witness
16	Naresh Babu	Witness
17	Moulasab	Witness
18	Shivakumar	Witness
19	Praveen	Official of Shriram Insurance
20	Madhu	Official of Shriram Finance
21	Mahesh	Pancha witness
22	Chandrashekhar	Pancha witness
23	Basha	Pancha witness
24	Babu	Pancha witness
25	Tayappa	Pancha witness
26	Somashekhar	Pancha witness
27	Ningappa N R	Investigated officer
28	Balanagouda	Investigated officer

11(a). The prosecution got marked 104 documents as per Ex.P-1 to 104.

Specimen Chart for Exhibited Documents.

Exhibit No.	Description of the Exhibit	Proved by/Attested by
1	Complaint	Not proved
2	Certificate of Registration	Not proved
3 to 5	Various Registers	Not proved
6 to 42	Loan Sanctioned copies and statements	Not proved
43 to 45	Statements	Not proved
46	Role and responsibilities form	Not proved
47	Letter of Authorization	Not proved
48 to 59	Statements	Not proved
60	Audit particulars	Not proved
61 to 65	Panchanamas	Not proved
66	FIR	Not proved
67 to 69	Confession statements	Not proved
70	Communication letter	Not proved
71 to 104	Appointment proceedings and related documents	Not proved

11(c). The prosecution got marked material objects as per M.O-1 to 23 as follows :-

Specimen Chart for Exhibited material objects.

Exhibit No.	Description of the	Proved

	Exhibit	by/Attested by
MO.1	One pocket	Not proved
MO.1(a)	Empty pocket	Not proved
MO.1(b)	Pocket of 4 stones	Not proved
MO.1(c to f)	4 stones	Not proved
MO.1(g)	Jewellery's box	Not proved
MO.1(h)	Coin and key chain	Not proved
MO.2	One pocket	Not proved
MO.2(a)	Cloth pockets	Not proved
MO.2(b to f)	Stones	Not proved
MO.2(g)	Customer copy	Not proved
MO.3	One pocket	Not proved
MO.3(a)	One Box	Not proved
MO.3(b&c)	Stones	Not proved
MO.3(d)	One plastic cover and two pair silver anklets	Not proved
MO.3(e)	Stones	Not proved
MO.3(f)	Receipt	Not proved
MO.4	One cover	Not proved
MO.4(a)	Receipt	Not proved
MO.5 to 7	Cash mis use pockets	Not proved
MO.8 to 11	Gold Missed pockets	Not proved
MO.12 to 23	Pockets	Not proved

12. The prosecution has examined the complainant C.W.-1 as P.W-1. P.W-1 deposed that, on 23-08-2013, when the technical auditors came to his

branch and while auditing the gold mortgage loan, it was found that there was a fraud in the gold loan from 25-06-2013 to 22-08-2013. It was found that gold items worth approximately Rs. 60 lakhs were exchanged and fake gold items and other items were kept in that place. The auditors said that the audit is continuing and they will provide full information in 2 more days. The locker keys were with the accused Shivakumar and Veeramma at the time of the fraud. Since all the gold ornaments belong to the customers and they have to be returned to the customers, then they came to know that, the accused persons misused the gold ornaments therefore, he has lodged a complaint on 23-08-2013 as per Ex.P-1 regarding the misuse of work equipment in their organization by Shivakumar and Veeramma from 25-06-2013 to 22-08-2013. Further deposed that, accused no.1 Shivakumar on 03-12-2010 to 2014 worked as Assistant Manager, Gold Loan Department in Shriram City Union Finance. Accused no.2 Veeramma on 24-04-2012 to 2014 worked as Assistant Executive in Shriram

City Union Finance. The work of the accused was to provide loans by keeping quality gold as collateral from the customers who needed it. The key of the locker where the said gold ornaments were kept was in the possession of the accused and the entire and same was their responsibility. They had audited the accounts on 24-06-2013. They informed their branch about the irregularities on 23-08-2013. Then on 24-08-2013, in the first floor of the building owned by Shabir Ahmed Nayak, Nataraja Colony, behind Basavavritta Bus Stand in Sindhanur Nagar, Sri Rama City Union Finance is operating in the north-east side of the Sri Rama Chits Fund office, which has a separate room. Its door faces west. There is a separate sitting arrangement in front of it. There are 3 lockers in those rooms, one big locker and 2 small lockers. They used to store and remove gold items in those lockers. Further deposed that, from 9-15 to 10-00, the PSI came and conducted a panchanama. Himself has shown the spot. There were 16 gold loan pockets in it, out of the 16 pockets, 13 pockets were empty. There were 3 pockets containing small stones, a piece of brick, silver anklets, Rs. 5/- coins, and a key chain. One pocket contained small stones, brick anklets, and 2 pairs of anklets. The second pocket contained 11 coins of ₹.5/- denomination and a small stone. The other contained 4 gold loan-expired covers. There were 3 cash misuse packets. He identified the above said items as per MO-1 to 23 and further he identified the Ex.P-2 to 104 and accused persons.

13. The prosecution examined the witness as P.W-2. P.W-2 deposed that, he had earlier run a shop selling gaming equipment called Kumble Sports and a book shop in Sindhanur, Basava Circle. There was a Shriram Finance above his shop, in which the accused no.1 worked in the gold branch. He has seen him, he is his brother's friend. Further deposed that, he do not know the accused no.2. His brother Ambaresh had asked him to provide an Aadhaar card and fingerprints to open an account with Shriram Finance, which he did. It turned out that the accused had taken a gold loan in

his name. After that, the police called him. They took his signature sample and sent it. They said that his signature and the signature on the gold loan documents did not match and sent it. Further he do not know what happened after that. The police did not enquired him and even he has not given any statement before the police.

14. The prosecution examined the Manager of Shriram Chit funds, Sindhanur as P.W-3. He deposed that, he worked as a Divisional Branch Manager at Shriram Chit Fund Sindhanur from 2005 to December 2013. C.W-1, 3, 5 to 23 are known to him and also accused are known to him. Further deposed that, C.W-1 was the branch manager. C.W-3 was the gold loan branch Manager. C.W-5 to 23 are the customers of their branch. Accused No.1 was working as a Manager of a gold loan. The accused no.2 was working as a branch Assistant of a gold loan. Further deposed that, on 24-06-2013, auditors came from Chennai to audit their branch. When they audited, everything was fine.

Similarly, on 23-08-2013, the same auditors came to their branch again for audit. When he was in Gangavathi, they called him and informed him that there was a fraud during the audit. At that time, himself and CW-3 were working in Gangavathi. On the same day, at 12-00 pm., himself and C.W-3 went to Sindhanur branch and questioned the auditors. It was learned that, from 25.06.2013 to 28.08.2013 accused persons together collected the gold loan money was received from the customer and given to the customer, and the loan money was used for their own use without depositing it with the bank, and the packets containing the gold were filled with bricks, stones, anklets, key chains, ₹.5 coins and the packets were left empty, thus committing a misappropriation. It was learned that a total of ₹.54,709,00/- was misappropriated. He questioned the accused no.1 about this. He admitted the misappropriation and wrote a consent letter. Further deposed that, one of the gold locker keys was with the accused no.1 and the other with the accused no.2. Further, it was found that, the key that was with the accused no.2 was given to the accused no.1 and misappropriated. C.W-1 has lodged a complaint against the accused in this regard. The police have enquired him about the incident. Further deposed that, two accused opened fake accounts in the names of 13 customers out of C.W-5 to 23, showed loans for empty packets, and misused the money for their personal use.

15. The prosecution examined the witnesses as P.W-4,14,16,17,18 they deposed in their evidence that, they do not know the accused. They have not opened any account in Shriram City Unit Finance, have not taken any loan, have not mortgaged any item. They do not know C.W-1 he has not told them anything. Further they have not given any statement before the police. They do not know what the accused have done.

16. The prosecution examined the account holder of said finance as P.W-5, 7, 8, 9, 10, 11, 12, 13, 15 they deposed in their evidence that, they do not know the accused. They had taken a gold loan from Shriram City

Unit Finance in 2013 and have repaid the loan and released their gold. After that, they have not taken any loan, nor have they mortgaged any item. They do not know C.W-1, he did not tell them anything. They did not give any statement before the police. They do not know what the accused did.

17. The prosecution examined the employee of said finance as P.W-6. P.W-6 deposed that, he know the C.W-1, 4 to 24 and also accused persons. Further deposed that, he worked as an Assistant General Manager in the gold loan branch of Shriram City Union Finance, Sindhanur from 2003 to 2017. At that time, the finance was located next to the KSRTC bus stand. At that time, C.W-1 was the manager of that finance. The accused no.1 was the manager of the loan branch of that finance and the accused no.2 was an assistant. Further deposed that, in the year 2013, there was a fraud in the gold branch of that finance. accused gave gold loans without any gold, and instead of gold, accused took loans by putting stones, bricks, key

chains and anklets in pockets. On: 23-08-2013, the internal auditors of their gold loan department came and found it. While auditing the accounts, it was found that the accused had committed fraud to the tune of Rs.54,70,900/-. Further deposed that, gold locker key was entrusted to two accused, one each. The locker could be opened only by using two keys. They had prepared documents showing that loans had been taken in the names of C.W-4,5,7,8 and others. He identified the accused persons.

18. The prosecution examined the official of said Chits as P.W-19. He deposed that, he worked as a recovery Assistant at Shriram Chits in Sindhanur from 2010 to 2016. At that time, C.W-1 was its manager. He know the accused. Accused were in charge of the gold loan branch. Further deposed that, on 21-09-2012, he had taken a loan of Rs. 25,500/- for gold by pawning a gold chain and a ring. After this matter came to light, he repaid the loan and got back the gold ornaments that he had pawned. Further deposed that, thereafter C.W-1

said that the accused had taken out gold loans in the names of different people and misappropriated about 54 lakhs. Similarly, when the auditor came in November 2013, it was found out from C.W-1 that the accused had cheated the company.

19. The prosecution examined the auditor of said Finance as P.W-20. P.W-20 deposed that, he is the auditor of Sriram Finance. He do not know C.W-1. He know C.W-2, 3 and 25A. On 24-08-2013, he had come from Bangalore. C.W-25A and another person named Rajkumar had come from Chennai. They had come to their Sriram Finance Sindhanur branch for an audit. When they checked the gold section, 16 packets did not contain gold, there were empty packets. There were no four packets with gold. There were no three packets with money. Further deposed that, one Shankar prepared a report about CW-25-A and same was sent it to the Chief officer of State and same was identified by this witness. Further deposed that, said report, which

has 5 pages and found that, Shivakumar and Eramma had done misappropriated ₹.54,709,00/-.

20. Prosecution examined pancha witnesses as P.W-21 and 22 to the Spot panchanama as per Ex.P-61. They deposed that they were not examined by the police authority, that panchanama was conducted by the police as per Ex.P-61 was drawn in their presence they do not know the recitals of Ex.P-1 and they have not signed to Ex.P-61. P.W-21 and 22 were treated as hostile by the prosecution and they were cross-examined by Ld. APP. During the course of cross-examination they were suggested about the panchanama as per Ex.P-1, but they denied the same.

21. The prosecution examined pancha witnesses to panchanama Ex.P-64/where the cash of ₹.3,00,000/- was seized by the police as P.W-23 and 24. They deposed that they were not examined by the police authority, that panchanama was conducted by the police as per Ex.P-64 was drawn in their presence they do not know the recitals of Ex.P-64 and they have not

signed to Ex.P-64. P.W-23 and 24 were treated as hostile by prosecution and they were cross-examined by Ld. APP. During the course of cross-examination they were suggested about the panchanama as per Ex.P-64, but they denied the same.

22. The prosecution examined pancha witnesses to panchanama Ex.P-65/where the cash of Rs.4,00,000/- was seized by the police as P.W-25 and 26. They deposed that they were not examined by the police authority, that panchanama was conducted by the police as per Ex.P-65 was drawn in their presence they do not know the recitals of Ex.P-65 and they have not signed to Ex.P-65. P.W-25 and 26 were treated as hostile by prosecution and they were cross-examined by Ld. APP. During the course of cross-examination they were suggested about the panchanama as per Ex.P-65, but they denied the same.

23. The prosecution examined the investigation officers as P.W-27 and 28. They have deposed with respect to recording the statements of witnesses,

drawing panchanama, collection of documents and conducting the chain of investigation in their official capacity.

24. This Court has carefully gone through the recitals of Section-408 and 420 of Indian Penal Code.

25. **Essential Ingredients of Section-408 Indian Penal Code** is as follows :–

<u>Criminal Breach of Trust by Clerk or Servant.</u>

To establish an offence under Section 408 Indian Penal Code, the prosecution must prove the following ingredients.

The accused was a clerk, servant, or employed in such capacity.

1. Property or dominion over property was entrusted to the accused in his capacity as a clerk or servant.

2. The accused committed criminal breach of trust in respect of that property, namely:

   a. Dishonestly misappropriated or converted the property to his own use; or

   b. Dishonestly used or disposed of the property in violation of any legal direction or contract.

26. Thus, the essential requirements are i. Entrustment of property, ii. Capacity as clerk/servant, iii. Dishonest misappropriation, conversion, use, or disposal of the entrusted property.

27. **Essential Ingredients of Section-420 Indian Penal Code** –

Cheating and Dishonestly Inducing Delivery of Property

To bring home a charge under Section 420 Indian Penal Code, the prosecution must prove:

1. Deception of a person by the accused.
2. Fraudulent or dishonest inducement of the person so deceived.
3. Because of such inducement, the person deceived:
   a. Delivered property to any person; or

   b. Consented to the retention of property; or

   c. Made, altered, or destroyed a valuable security.
4. Dishonest intention existed from the very inception of the transaction. Mere breach of contract or failure to keep a promise is not sufficient unless the intention to deceive existed at the beginning.

28. On careful reading of the same, the prosecution must prove, 1. Deception, 2. Dishonest intention from the inception, 3. Inducement, 4. Delivery of property or alteration/destruction of valuable security as a consequence of such inducement.

29. The prosecution relied on Ex.P-1 to Ex.P-104. **Ex.P-1** is the complaint lodged by the complainant against the accused persons for the offences punishable under Section 408, 420 r/Section 34 of Indian Penal Code. **Ex.P-2** is the certificate of registration of Shriram City Union Finance Ltd. Sindhanur branch. **Ex.P-3** is the attendance register said to have been. To show that the accused no.1 and 2 were present during the period of 25.06.2013 to 22.08.2013. **Ex.P-3A and Ex.P-3B** are the signatures available on Ex.P-3 in serial number 2 and 9. Said to have been signed by one Shivkumar alleged to be the accused no. 1 and accused no. 2. **Ex.P-4** is the Jail key register said to have been operated by the accused no. 1 by using key numbers 1 and 2 to

commit an offence of cheating as alleged by the prosecution. **Ex.P-4A and B** are the signatures of accused no. 1 and 2. **Ex.P-5** is the jewel stock register. Ex.P-5A and Ex.P-5B said to have been the signatures of accused no. 1 and 2 during the period from 25.06.2013 till 22.08.2013. **Ex.P-6** is the Loan sanction copies of Venkatarady's son of Basappa dated 24.01.2013. Ex.P-6A is the signature of Accused no. 1. **Ex.P-7** is the loan sanction copy of Naresh Babu, son of Satyanarayana dated 03.03.2013. **Ex.P-7A** is the signature of accused no. 1. Ex.P-8 is the loan sanction copy of one Uma, wife of Govindaraju dated 22.04.2013. **Ex.P-9** is the loan sanction copy of Hanumappa, son of Veerappa dated 20.06.2013., Ex.P-9A is the signature of accused no. 1, Ex.P-10 is the loan sanction copy of Praveena son of Shankarappa dtd. 21.09.2012, **Ex.P-10A** is the signature of accused no. 1, Ex.P-11 is the loan sanction copy of Moula Sahib son of Ali Sahib dated 10.12.2012, 29(a). **Ex.P-11A** is the signature of accused no. 1. **Ex.P-12** is the loan sanction copy of Shivkumar son of Shambana dated 14.09.2012. **Ex.P-12A** is the signature of accused no. 1. **Ex.P-13** is the loan sanction copy of Sharanappa dated 16.08.2013. **Ex.P-14** is the loan sanction copy of Chandappa dated 31.07.2013. **Ex.P-15** is the loan sanction copy of Rudrappa dated 03.08.2013. **Ex.P-16** is the loan sanction copy of Chandappa dated 03.07.2013. **Ex.P-17** is the loan sanction copy of Chandappa dated 13.08.2013. **Ex,P-18** is the loan sanction copy of Virendra dated 25.06.2013. **Ex.P-19** is the loan sanction copy of Rajeshwari dated 02.07.2013. **Ex.P-20** is the loan sanction copy of Rajashekhar Gouda dated 21.06.2013.

29(b). **Ex.P-21** is the loan sanction copy of Lachamappa dated 31.07.2013. **Ex.P-22** is the loan sanction copy of Mallappa dated 28.06.2013. **Ex.P-23** is the loan sanction copy of Sharanappa dated 24.05.2012. **Ex.P-24** is the loan sanction copy of

Chakodishkarappa dated 19.06.2013. **Ex.P-25** is the loan sanction copy of Irappa dated 30.07.2013. **Ex.P-26** is the loan sanction copy of Sharanappa dated 25.06.2013. **Ex.P-27** is the loan sanction copy of Sharanappa dated 03.04.2013. **Ex.P-28** is the loan agreement copy dated 25.06.2013 belongs to one Sharanappa. **Ex.P-29** is the loan agreement copy dated 30.07.2013 belongs to one Irappa. **Ex.P-30** is the loan agreement copy dated 19.06.2013 belongs to one Sharanappa.

29(c). **Ex.P-31** is the loan agreement copy dated 28.06.2013 belongs to one Mallappa. **Ex.P-32** is the loan agreement copy dated 31.07.2013 belongs to one Lachamappa. **Ex.P-33** is the loan agreement copy dated 21.06.2013 belongs to one Rajashekhargouda. **Ex.P-34** is the loan agreement copy dated 02.07.2013 belongs to one Rajeshawari. **Ex.P-35** is the loan agreement copy dated 25.06.2013 belongs to one Veerendra. **Ex.P-36** is the loan agreement copy dated

03.07.2012 belongs to one Chandappa. **Ex.P-37** is the loan agreement copy dated 03.08.2013 belongs to one Rudrappa. **Ex.P-38** is the loan agreement copy dated 31.07.2013 belongs to one Chandappa. **Ex.P-39** is the loan agreement copy dated 29.06.2013 belongs to one Hanumappa. **Ex.P-40** is the loan agreement copy dated 22.04.2013 belongs to one Uma.

29(d). **Ex.P-41** is the customer copy of jewel pawn ticket memorandum of securities. **Ex.P-41A** is the signature of accused no. 1. **Ex.P-41B** is the signature of accused no. 2. **Ex.P-42** is also a customer copy of jewel pawn ticket memorandum of securities. **Ex.P-42A** is the signature of accused no. 1. **Ex.P-42B** is the signature of accused no. 2. **Ex.P-13 to Ex.P-45** are the statements denied to had been given by P.W-2, P.W-4, P.W-5. **Ex.P-46** is the role and responsibilities of one Mr. Shivakumar, Assistant Manager, Sindhanur branch. **Ex.P-46A** is the portion of confrontation made by the Ld. counsel for accused no.1 to P.W-1. **Ex.P-47A** is the letter of authorization dated 03.01.2013. **Ex.P-47A** is the signature of one Umesh. GK Assistant General Manager, Sriram City Union Finance Limited, Bengaluru. **Ex.P-48 to Ex.P-59** are the statements denied to had been given by P.W-7. P.W-8, P.W-9, P.W-10, P.W-11, P.W- 12, P.W- 13, P.W- 15, 14, 15, 16, 17, 18. **Ex.P-60** is the stock in hand as of 24.08.2013. **Ex.P-60A** is the signature of authorized person.

29(e). **Ex.P-61** is the spot panchanama said to have been conducted by the Investigated Officer in the Presence of pancha witnesses. **Ex.P-62** is also seizure panchanama said to have been seizure of ₹ 4,30,000 from accused no. 1 in front of First floor of Shriram Chits behind Sindhanur bus stand on Sindhanur-Kustaki road. In the presence of pancha witnesses, **Ex.P-63** is the seizure panchanama of ₹ 17,000/- from accused no. 1 in Shriram Chits in the presence of pancha witnesses. **Ex.P-61A, P-61B, P-62A, P-62C, 63-A, B, C** are the signatures of pancha witnesses and

Investigated Officer. **Ex.P-64** is the seizure of ₹ 3,00,000 from the accused no. 1 in Shriram Chits Fund Office in Sindhanur branch in the presence of pancha witnesses. **Ex.P-64A to C** are the signatures of pancha witnesses and investigated officer. **Ex.P-65** is the seizure panchanama of ₹ 4,00,000 from the possession of accused no. 1 in the office of Sriram Chit Fund, Singhanur branch in the presence of pancha witnesses. **Ex.P-65A to C** are the signatures of investigated officer and pancha witnesses. **Ex.P-66** is a first information report lodged against the accused no. 1 and 2 dated 23.08.2013. **Ex.P-66A** is the signature of Investigated Officer. Ex.P-67 and Ex.P-60. **Ex.P-67 and P-68** are the voluntary statement of accused no. 1 said to have been given by him on 24.08.2013 and 02.09.2013. **Ex.P-69** is the Thank you. Voluntary statement said to have been given by accused no. 2 on 24.09.2013. **Ex.P-70** is the documents produced by P.W-1 on 15.10.2013. **Ex.P-70A** is the signature of P.W-1. **Ex.P-70B** is the signature of Investigated Officer.

29(f). **Ex.P-71** is the letter issued by Executive Director of Shriram City Union Finance Limited dated 17.09.2012. **Ex.P-72** is the letter of appointment of accused no. 1. **Ex.P-73** is the joining report of accused no. 1. **Ex.P-73** is the Joining Report. **Ex.P-74** is the Salary structure of accused no.1. **Ex.P-72A to 74A** are the signatures of P.W-1. **Ex.P-75** is the letter dated 79.2012 with respect to accused no. 2. Ex.P-75A is the signature of P.W-1. **Ex.P-76** is the appointment order of accused no.2 dtd. 18.04.2012. **Ex.P-76A** is the signature of P.W-1. **Ex.P-77** is the joining report of accused no. 2. **Ex.P-77A** is the signature of P.W-1. **Ex.P-78** is the salary structure of accused no. 2 dated 18.04.2012. **Ex.P-78A** is the signature of accused no. 2. **Ex.P-79** got marked subject to objection dated 23.08.2013 said to have been given by the accused no. 1. **Ex.P-79A** is the signature of P.W-1. **Ex.P-80** is also got marked subject to objection raised by the accused no. 2 dated 23.08.2013. **Ex.P-80A** is the signature of P.W-1.

29(g). **Ex.P-81 to 103** are the loan sanction letters of Venkata Reddy, Naresh Babu, Uma, Hanumappa, Praveena, Maulasab, Shivakumar, Sharanappa, Chandappa, Rudrappa, Reddyappa, Chandappa, Chandappa, son of Beemanna, Virendra, Rajeshwari S, Rajasekhar Gowda, Lachamappa, Mallappa, Sharanappa, Chakodathi, Shekharappa, Eerappa, Sharanappa Sons of Gunda Gowda. **Ex.P-104** is the Letter issued by one General Manager by name Ramakrishna.

30. On a careful appreciation of the oral and documentary evidence on record and the arguments advanced by both sides, it is evident that accused Nos.1 and 2 have not disputed their appointment, joining reports, or the fact that they were working in the Sindhanur Branch of Shriram City Union Finance Limited during the relevant period. Further, the accused persons have not disputed their signatures appearing on Ex.P-3, P-4, P-5 and P-46.

31. It is the specific case of the prosecution that accused Nos.1 and 2 committed the alleged acts of cheating during the period from 25.06.2013 to 22.08.2013. On a careful perusal of Ex.P-3, which is the attendance register of the Sindhanur Branch of Shriram City Union Finance Limited, it appears that both the accused were attending their duties during the said period and had affixed their signatures therein. Thus, their presence in the office during the relevant period is not in dispute.

32. It is pertinent to note that C.W.1/P.W.1, during his cross-examination, has admitted that CCTV cameras were installed in the office of the company. However, he has further admitted that neither the CCTV footage nor any related electronic record was produced before the Investigating Officer. Significantly, the Investigating Officer has not offered any explanation for his failure to collect or seize the CCTV footage during the course of investigation. Further, P.W-27, the Investigating Officer, has categorically admitted in his

cross-examination that he did not make any attempt to secure or seize the CCTV footage.

33. In the facts and circumstances of the present case, where the alleged acts are stated to have occurred within the office premises during a specific period, the CCTV footage is a relevant piece of evidence for corroborating the prosecution case. The failure to collect and produce such evidence assumes significance. This omission creates a doubt regarding the completeness of the investigation. Therefore, this Court drawn an adverse inference against the prosecution with regard to the non-production of the best available electronic evidence.

34. It is pertinent to note that P.W.1, during his further chief-examination, deposed that a small guitar was seized in connection with the case. However, the said guitar has not been produced before this Court. On the other hand, P.W-27, the Investigating Officer, has categorically admitted during his cross-examination that he had not seized any such small guitar during the

course of investigation. Thus, the evidence of P.W-1 is inconsistent and contrary to the testimony of P.W-27 on this material aspect.

35. The aforesaid contradiction assumes significance inasmuch as the prosecution has failed to place any documentary evidence regarding the alleged seizure of the said article/small guitar. In the absence of seizure and production of the alleged article/small guitar before the Court, the testimony of P.W.1 in this regard remains uncorroborated. Therefore, this inconsistency creates a doubt regarding the prosecution version concerning the alleged seizure of the small guitar.

36. It is pertinent to note that P.W.1, during the course of his cross-examination, has admitted that in respect of gold loan transactions, two separate registers were maintained by the company, namely, the Stock Register and the Redemption Register. He has further deposed that only by comparing the entries found in both the registers could one ascertain whether any

irregularity had occurred in the gold loan transactions. This material admission of P.W-1 has also corroborated by P.W-27/Investigating Officer, during his cross-examination.

37. Though P.W-27 denied the suggestion that the offence of cheating could not be established without comparing both the registers, he has admitted the existence and relevance of the said registers in the gold loan transactions. Further, P.W-28, who ultimately filed the charge-sheet after scrutinizing the records collected during the investigation, has categorically admitted that he had not verified either the Stock Register or the Redemption Register before filing the charge-sheet.

38. The significance of the Redemption Register cannot be ignored in the present case. The Redemption Register is a primary record maintained in the ordinary course of business to reflect the particulars of pledged jewels that have been redeemed by customers upon repayment of the loan amount. The said register would disclose the date of redemption, loan account

particulars, details of the pledged ornaments, the person receiving the ornaments and other relevant particulars. Therefore, the Redemption Register serves as a vital link between the pledged jewels recorded in the Stock Register and their subsequent release to the customers. In cases involving allegations of misappropriation, unauthorized release of pledged ornaments, manipulation of gold loan accounts or cheating in relation to gold loan transactions, a comparison of the entries found in the Stock Register and the Redemption Register assumes considerable importance. Such comparison would reveal whether the pledged ornaments were lawfully redeemed by the customers, whether the entries were properly accounted for, and whether there was any discrepancy indicating dishonest conduct on the part of the employees concerned.

39. In the present case, admittedly, neither the Investigating Officer nor the charge-sheeting officer/P.W-28 verified the Redemption Register. The

prosecution has also failed to produce the said register before the Court. In the absence of the Redemption Register, this Court is deprived of the best available documentary evidence to verify whether the disputed transactions were genuine redemption transactions or whether any illegality had actually taken place. Consequently, the investigation remains incomplete on this material aspect.

40. Therefore, having regard to the admissions elicited from P.W.1, P.W.27 and P.W.28, this Court is of the considered opinion that without examining and comparing the entries contained in the Stock Register and the Redemption Register, it would be unsafe to hold that the alleged discrepancies were the result of cheating or dishonest conduct on the part of the accused persons. The non-verification and non-production of the Redemption Register creates a serious lacuna to the prosecution case.

41. It is pertinent to note that P.W-1, during his cross-examination, has deposed that the senior officers

of the branch had conducted an enquiry with regard to the alleged irregularities against Iftekhar Hussain and Shivakumar HM. However, the prosecution has not examined either of the said officers before this Court.

42. Further, P.W.27/Investigating Officer, has admitted during his cross-examination that he was not aware of the handing-over and taking-over of charge involving Iftekhar Hussain and Shivakumar.N. In a case involving allegations under Sections-408 and 420 Indian Penal Code, the facts relating to entrustment of property, custody of records, and handing-over and taking-over of charge are material aspects requiring thorough investigation. Nevertheless, P.W-27 has admitted that neither Iftekhar Hussain nor Shivakumar.N., was cited or examined as a witness during the course of investigation.

43. It is also significant to note that the registers and documentary evidence produced by the prosecution are conspicuously silent regarding the role and involvement of Iftekhar Hussain, despite the specific

evidence of P.W-1 that he was one of the senior officer connected with the branch affairs during the relevant period. The prosecution has not offered any explanation as to why the name of Iftekhar Hussain does not find place in the material records and why he was not examined during investigation or before the Court.

44. Moreover, P.W-28, the officer who filed the charge-sheet, has also admitted during his cross-examination that Iftekhar Hussain was not made a witness in the present case. Thus, the evidence of P.W-27 and P.W-28 clearly establishes that a material witness, who was admittedly connected with the affairs of the branch and the internal enquiry, was neither examined during investigation nor cited as witness before the Court. The evidence of Iftekhar Hussain and Shivakumar.N would have been highly relevant to ascertain the manner of entrustment, the maintenance of records, the handing-over and taking-over of charge, and the alleged irregularities attributed to the accused persons. Their non-examination has deprived the Court

of valuable evidence on material aspects of the prosecution case.

45. Under these circumstances, the unexplained non-examination of the aforesaid material witnesses and the absence of documentary records concerning their role create a serious lacuna in the prosecution case. Consequently, an adverse inference under Section-114(g) of the Indian Evidence Act can legitimately be drawn against the prosecution. This omission casts a substantial doubt on the prosecution version, particularly in respect of proving the essential ingredients of entrustment under Section-408 Indian Penal Code and deception under Section-420 Indian Penal Code beyond reasonable doubt.

46. This Court has carefully and cautiously gone through the Ex.P-5 viz., the Key Register, which has been relied upon by the prosecution. According to the prosecution, accused Nos.1 and 2 had access to and used Key Nos.1 and 2 during the period from

25.06.2013 to 22.08.2013 and, by virtue of such access, committed the alleged offences.

47. However, a careful scrutiny of Ex.P-5 reveals that during the aforesaid period, the usage of Key Nos.1 and 2 was not confined exclusively to accused Nos.1 and 2. The entries in the register disclose that Iftekhar Hussain, Mallikarjun.D., and Shivakumar H.M. had also used Key Nos.1 and 2 on various occasions during the relevant period. Thus, the documentary evidence produced by the prosecution itself demonstrates that several persons had access to the said keys.

48. Despite the existence of such entries, the Investigating Officer has neither conducted a detailed enquiry regarding the role of the aforesaid persons nor cited them as material witnesses. No explanation has been forthcoming from the prosecution as to why persons whose names admittedly find place in Ex.P-5 were neither examined during the investigation nor before the Court. Their evidence would have been highly

relevant for ascertaining the nature of access, custody, and usage of the keys during the relevant period.

49. The record further discloses that the IO has not undertaken any meaningful verification of the entries contained in Ex.P-5 before filing the final report. In a case where the prosecution seeks to attribute criminal liability on the basis of access & use of specific keys, a thorough investigation into the role of all persons shown in the Key Register was essential. The failure to do so renders the investigation incomplete on a material aspect.

50. Under these circumstances, the entries contained in Ex.P-5 creates a reasonable doubt regarding the prosecution theory that the alleged acts were attributable solely to accused Nos.1 and 2. The non-examination of other persons whose names appear in the Key Register, coupled with the failure to investigate their role, constitutes a serious lacuna in the prosecution case. Consequently, the prosecution has failed to establish beyond reasonable doubt that the

alleged acts were committed exclusively by accused Nos.1 and 2, and the benefit of such doubt must necessarily enure to the accused.

51. When the entries in Ex.P-5 clearly disclose that Key Nos.1 and 2 were used not only by accused Nos.1 and 2 but also by Iftekhar Hussain, Mallikarjun.D., and Shivakumar.H.M. during the relevant period, it would not be safe to conclude that the alleged misuse of Key Nos.1 and 2 was attributable exclusively to accused Nos.1 and 2. The prosecution has neither investigated the role of the aforesaid persons nor examined them as witnesses to explain the circumstances under which they had access to and used the said keys.

52. In the absence of such investigation and evidence, the possibility of involvement of other persons having access to the keys cannot be ruled out. Therefore, merely on the basis of the fact that accused Nos.1 and 2 had used Key Nos.1 and 2, it cannot be conclusively held that they alone were responsible for

the alleged acts constituting offences under Sections-408 and 420 Indian Penal Code. This circumstance creates a reasonable doubt in the prosecution case, and such doubt must necessarily operate in favour of the accused persons.

53. It is true that P.Ws.5, 7 to 13, 15 and 21 have not supported the prosecution case in its entirety and were treated as hostile witnesses. However, it is a settled principle of law that the evidence of a hostile witness cannot be rejected in toto and that the Court may rely upon such part of the testimony which is found to be trustworthy and credible. Their evidence creates a serious doubt regarding the prosecution version. Under such circumstances, this Court finds that it is unsafe to hold that, the prosecution has established beyond all reasonable doubt that accused Nos.1 and 2 committed the offences punishable under Sections-408 and 420 Indian Penal Code during the period from 25.06.2013 to 22.08.2013.

54. It is pertinent to note that the prosecution examined P.Ws.4, 14, 16, 17 and 18 with an intention to establish the alleged gold loan transactions and the alleged acts of cheating attributed to the accused persons. However, during their examination-in-chief, these witnesses have categorically deposed that they had not opened any account with Shriram City Union Finance Limited, had not obtained any loan from the said institution, had not pledged any gold ornaments or other articles, and were not aware of the alleged transactions. They have further deposed that, they do not know C.W-1, that they had not given any statement to the police in the manner suggested by the prosecution, and that they have no knowledge regarding the alleged acts said to have been committed by the accused persons.

55. The evidence of above witnesses assumes considerable significance because the prosecution has relied upon these witnesses to prove the alleged gold loan transactions forming the foundation of the

prosecution case. When the above witnesses, in whose names the transactions are alleged to have been made, deny opening loan accounts, obtaining loans, pledging ornaments, or having any knowledge of the alleged transactions, the prosecution version becomes highly doubtful.

56. Despite cross-examination by the Ld.APP., nothing substantial has been elicited from these witnesses to support the prosecution case. Their evidence does not establish either the existence of the alleged loan transactions or the involvement of the accused persons therein.

57. Further, as already discussed, P.Ws.5, 7 to 13, 15, though admitting that they had obtained gold loans and subsequently redeemed the same, have not supported the prosecution allegation that the accused persons had substituted the pledged gold ornaments with mud, stones or other worthless materials. Thus, the evidence of these witnesses also fails to establish

the essential ingredients of the offences alleged against the accused persons.

58. Therefore, on a cumulative appreciation of the evidence of P.Ws.4, 5, 7 to 18, this Court finds that the prosecution has failed to adduce cogent, reliable and convincing evidence to prove the alleged acts of cheating and criminal breach of trust. The testimony of these material witnesses does not support the prosecution case and, on the contrary, creates serious doubt regarding the genuinity of the prosecution allegations.

59. It is pertinent to note that the prosecution has examined P.Ws.21 and 22 to prove the mahazars said to have been conducted by the Investigating Officer under Ex.P-61 to P-63. However, a careful appreciation of their evidence reveals that the prosecution has failed to establish the said mahazars through independent and reliable evidence. Though P.W-22 has identified his signature on the document, he has not deposed anything regarding the preparation, contents,

execution, or conduct of the mahazar proceedings. Further, P.W.22 is admittedly a pancha witness only to Ex.P-61 and not to Ex.P62 and P63. Even in respect of Ex.P-61, he has not supported the prosecution case and has not spoken about the seizure of any material objects under the said mahazar.

60. Likewise, the prosecution has examined P.Ws.23 and 24 to prove Ex.P-64 and P.Ws.25 and 26 to prove Ex.P-65. These witnesses have also not supported the prosecution case on the material particulars relating to the alleged mahazar and seizure proceedings. Except identifying their signatures on the respective documents, they have not deposed regarding the preparation, execution, contents, or seizure proceedings alleged to have been conducted under Ex.P-64 and P-65. The appreciation of the evidence of P.Ws-21 to 26 discloses that, none of the independent pancha witnesses has supported the prosecution case regarding the actual conduct of the mahazars or the seizure of material objects. Mere identification of signatures on the

mahazars, without supporting the contents thereof, it is not sufficient to prove the seizure proceedings in accordance with law. Under these circumstances, the evidentiary value of Ex.P-61 to P-65 is substantially weakened. The failure of all the pancha witnesses to support the prosecution case creates a serious doubt regarding the conduct of the mahazar proceedings and the alleged seizure of material objects thereunder. Consequently, the prosecution has failed to satisfactorily establish Ex.P-61 to P-65 through independent evidence, and this omission constitutes a material infirmity to the prosecution case.

61. P.W-1, during his cross-examination, deposed that the branch used to submit weekly reports to the main branch and that weekly registers were maintained for the period from 25.06.2013 to 23.08.2013. He further stated that such registers and reports were available in their office. However, the prosecution has not produced the said records before the Court. Though the existence and availability of

these documents are admitted, no explanation is forthcoming for their non-production. The withholding of such material records, which could have thrown light on the relevant transactions, thus this Court drawn an adverse inference against the prosecution under the facts and circumstances of the case. Consequently, the non-production of these documents creates a serious doubt to the prosecution case.

62. P.W-1 has produced and got marked Ex.P-79 and P-80, stated to be the voluntary statements of Accused Nos.1 and 2. On a careful perusal of Ex.P-79 and P-80, it appears that the documents produced before the Court are not the original statements but only copies thereof. The prosecution has not offered any explanation for the non-production of the original documents nor laid the necessary foundation for leading secondary evidence. The copies have merely been attested through P.W-1.

63. Apart from the question of admissibility, even assuming that Ex.P-79 and P-80 are taken into

consideration, the alleged voluntary statements made before departmental authorities, by themselves, are insufficient to establish the ingredients of the offence of cheating. In the absence of independent and cogent evidence demonstrating deception, dishonest inducement, and consequent wrongful loss or gain, no conviction can be founded solely on such statements. Therefore, Ex.P-79 and P-80 do not materially advance the case of the prosecution.

64. During the course of his cross-examination by the Ld. APP, P.W-1 specifically undertook to produce the relevant bye-laws on the next date of hearing. However, he failed to produce the said documents and no explanation is forthcoming for such omission. When a witness admits the existence and availability of a material document and undertakes to produce the same, but subsequently fails to do so, an adverse inference may be drawn against the party withholding such evidence. Therefore, the non-production of the bye-laws weakens the prosecution case and deprives the

Court of valuable evidence necessary for a proper adjudication of the matter.

65. I have carefully gone through the evidence of P.W-2. It is evident that P.W-2 has not supported the case of the prosecution and has been treated as a hostile witness. In his evidence, P.W-2 categorically deposed that, the signatures found on the loan documents were compared with his signatures and that the signatures appearing on the said documents were not his. He further stated that, upon such comparison, the police sent him back and that he had not given any statement to the police in this regard.

66. Further, during his cross-examination by the defence, P.W-2 deposed that the police had obtained his specimen signatures on blank sheets of paper. The testimony of P.W-2 thus creates a serious doubt regarding the identity of the borrower and the genuineness of the signatures appearing on the loan documents. In the absence of any cogent evidence to establish that P.W-2 had in fact availed the loan from

Shriram City Union Finance Limited, his evidence does not support the prosecution case. On the contrary, it probabilises the defence contention that the loan transaction was not entered into by P.W-2.

67. The prosecution has relied upon the loan sanction-related documents pertaining to the alleged borrowers and got them marked as Ex.P-6 to P-27. A careful perusal of these documents reveals that Ex.P-6 stands in the name of Venkata Reddy (C.W.16), whose evidence has been given up by the prosecution. Ex.P-7 pertains to Naresh Babu (P.W.16), Ex.P-8 pertains to Uma (C.W.18), whose evidence has also been given up, Ex.P-9 pertains to Hanumappa (P.W.12), Ex.P-10 pertains to Praveen (P.W.19), Ex.P-11 pertains to Moulasab (P.W.17), Ex.P-12 pertains to Shivakumar, and Ex.P--13 pertains to Sharanappa (P.W.10). Similarly, Ex.P-14 to P-27 pertain to Chandappa, Rudrappa, Virendra, Rajeshwari, Rajshekar Gouda, Laxmappa, Mallappa, Sharanappa, C. Shekarappa, Eerappa and other alleged borrowers, some of whom

were examined as prosecution witnesses, while the evidence of certain witnesses, including Rajeshwari, was given up by the prosecution.

68. However, the material witnesses connected with these loan documents, who were examined before the Court, have not supported the case of the prosecution and were treated as hostile witnesses, as discussed supra. Their evidence does not establish that they had availed the loans in question or that the accused persons had played any role in obtaining such loans by fraudulent means. Therefore, the mere production and marking of Ex.P-6 to P-27, in the absence of supporting oral evidence, is insufficient to prove the allegations levelled against the accused.

69. This Court has carefully considered the evidence of P.W-3. During his cross-examination by the defence, P.W-3 admitted that the signatures of Shivakumar and Iftekar Hussain are found in Ex.P-5. He further admitted that no action was taken against

the said persons. This admission assumes significance in the light of the prosecution case.

70. According to the prosecution, the accused persons had dishonestly removed the gold ornaments pledged by the loan holders and substituted the same with mud, stones and other worthless materials. If such serious irregularities had in fact occurred and if the records disclosed the involvement of other persons connected with the transactions, the failure of the investigating agency to take any action against them remains unexplained. This circumstance creates a doubt regarding the fairness and completeness of the investigation.

71. P.W-3 has further admitted that none of the customers or gold loan holders had lodged any complaint alleging misappropriation or substitution of their pledged gold ornaments. The absence of any complaint from the affected customers is also a relevant circumstance which cannot be overlooked. These admissions creates a serious doubt about the

prosecution case and weaken its version regarding the alleged misappropriation of the pledged gold ornaments misused by the accused persons.

72. From the foregoing discussion, it is evident that no action has been shown to have been taken against Shivkumar and Iftekar Hussain, despite their names finding place in the relevant records. In this regard, the evidence of P.W-19 assumes significance. P.W-19, who was working as the Manager of Shriram Insurance/Finance Company, deposed that he had availed a gold loan, subsequently repaid the loan amount and obtained release of the pledged gold ornaments.

73. However, during his cross-examination by the defence, P.W-19 admitted that the management of the company had taken action against Shivkumar and Iftekar Hussain. This version is inconsistent with the prosecution case, which does not attribute any specific role to the said persons nor disclose the nature of the action allegedly taken against them. The evidence of

P.W-19, therefore, introduces a circumstance which is not reflected in the case of prosecution and gives a doubt regarding the alleged irregularities and the persons responsible therefor. It weakens the prosecution case.

74. On a careful appreciation of the evidence of P.W-20, who was examined as the Auditor of Shriram Finance, it appears that one Shankar, who had accompanied C.W.25(A), was instrumental in the preparation of Ex.P-60. However, the Investigating Officer has neither cited nor examined the said Shankar as a witness in the present case. If Shankar had participated in the preparation of Ex.P-60 and was acquainted with the facts and documents forming the basis of the said report, he would constitute a material witness for the prosecution. The non-examination of such a material witness remains unexplained and assumes significance while evaluating the evidentiary value of Ex.P-60.

75. Further, a perusal of Ex.P-60 discloses that it does not specify the source records or supporting documents on the basis of which the report was prepared. The report is conspicuously silent regarding the documents relied upon for arriving at its conclusions. In the absence of such foundational material and in view of the non-examination of the person associated with its preparation, the evidentiary value of Ex.P-60 becomes doubtful and cannot be accepted without corroboration.

76. The prosecution has placed substantial reliance upon the alleged voluntary statements of Accused Nos.1 and 2, which have been marked as Ex.P-67, P-68 and P-69. According to the prosecution, the said statements were recorded on 24.08.2013, 29.08.2013 and 24.09.2013 respectively during the course of investigation. However, the said statements are alleged to have been made before the Investigating Officer. Under Section-25 of the Indian Evidence Act, a confession made to a police officer is inadmissible in

evidence against the accused, except to the limited extent permissible under Section-27 of the Act if it leads to the discovery of a relevant fact. The prosecution has not demonstrated that any incriminating fact or material object was discovered pursuant to the information allegedly furnished by the accused in the said statements. Under such circumstances, Ex.P-67, P-68 and P-69 cannot be treated as substantive evidence to establish the guilt of the accused persons. Therefore, the prosecution cannot derive any substantial support from the contents of the said statements for proving the charges levelled against the accused.

77. I have carefully gone through the recitals of Ex.P-62 to P-65. A perusal of these seizure mahazars reveals that the Investigating Officer (P.W-27) is stated to have seized cash amounts of ₹4,30,000/-, ₹17,000/-, ₹4,00,000/- and ₹3,00,000/- from the possession of Accused No.1. However, the contents of Ex.P-62 to P-65 do not disclose the source of the said amounts, nor do

they indicate to whom the alleged gold ornaments were sold. According to the prosecution, Accused No.1 had misappropriated or disposed of the pledged gold ornaments and utilized the proceeds thereof. If that were so, it was incumbent upon the Investigating Officer to ascertain and investigate the identity of the purchasers of the gold ornaments and to collect material evidence connecting the seized cash with the alleged transactions. No such investigation appears to have been undertaken. Neither the alleged purchasers have been identified nor have they been examined before the Court. In the absence of any material establishing a nexus between the seized cash amounts and the alleged disposal of the gold ornaments, the prosecution version remains unsubstantiated. This omission on the part of the investigation creates a serious doubt regarding the prosecution case and weakens its contention that the seized amounts represented the proceeds of the alleged misappropriation.

78. The **Ld. counsel for Accused No.1** has relied upon the judgment of the **Hon'ble Supreme Court in Gurukanwarpal Kirpal Singh vs. Surya Prakasam & Others, reported in 2022 LiveLaw (SC) 519**. In the said decision, the Hon'ble Supreme Court considered the scope of offences punishable under Sections 406 and 420 of the Indian Penal Code and reiterated that the essential ingredients of the alleged offences must be specifically pleaded and established by acceptable evidence. The Court observed that, for an offence of criminal breach of trust under Section 406 Indian Penal Code, entrustment of property is the sine qua non and the prosecution must further establish dishonest misappropriation or conversion of such property by the accused. Likewise, for an offence of cheating under Section-420 Indian Penal Code, there must be deception and dishonest inducement resulting in delivery of property or alteration of a valuable security. Mere allegations, suspicion, or breach of contractual or civil

obligations would not by themselves constitute the offences of cheating or criminal breach of trust.

79. Applying the aforesaid principles to the facts of the present case, this Court finds that the prosecution has failed to adduce cogent and convincing evidence establishing the essential ingredients of the alleged offences. Several material witnesses have either not been examined or have not supported the prosecution case. Most of the alleged borrowers have turned hostile and have not spoken about any fraudulent act committed by the accused. No customer has lodged any complaint alleging that his or her pledged gold ornaments were dishonestly substituted or misappropriated by the accused persons. Further, the prosecution has failed to establish by satisfactory evidence that the accused had dishonestly converted the alleged entrusted property to their own use. The investigation has also not disclosed the identity of the alleged purchasers of the gold ornaments, nor has it established any nexus between the amounts allegedly

seized from Accused No.1 and the alleged misappropriation. The prosecution has substantially relied upon inadmissible or weak pieces of evidence, including the alleged voluntary statements of the accused and documents unsupported by their authors or material witnesses. Therefore, in the light of the principles laid down by the Hon'ble Supreme Court in Gurukanwarpal Kirpal Singh, this Court is of the considered opinion that the prosecution has failed to prove the foundational ingredients of criminal breach of trust and cheating beyond reasonable doubt. Consequently, the benefit of doubt must necessarily enure to the accused.

80. The **Ld. counsel for Accused No.1** has relied upon the decision of the **Hon'ble Supreme Court in Delhi Race Club Limited and Others vs. State of Uttar Pradesh and Others reported in 2024 SCC OnLine SC 689**. In the said decision, the Hon'ble Supreme Court reiterated that criminal proceedings cannot be sustained merely on the basis of allegations

or suspicion unless the essential ingredients of the alleged offences are prima facie established by acceptable evidence. The Court emphasized that, to constitute offences such as cheating and criminal breach of trust, the prosecution must prove dishonest intention, entrustment, misappropriation, or fraudulent inducement, as the case may be. Applying the said principle to the present case, this Court finds that the prosecution has failed to establish by cogent and reliable evidence that the accused persons dishonestly misappropriated the pledged gold ornaments or induced any person by deception. The evidence of the material witnesses does not support the prosecution case, several witnesses have turned hostile, no complaint has been lodged by the alleged victims, and the investigation suffers from material omissions. Therefore, the ratio laid down in the aforesaid decision supports the contention of the accused that mere suspicion, however strong, cannot take the place of legal proof.

81. Further, the **Ld. counsel for Accused No.1** has relied upon the decision in **Bammaiah vs. State by Sira Police in Criminal Revision Petition No.722/2004**. On perusal of the said judgment, it is evident that the Hon'ble High Court observed that entries maintained in registers and stock books must be proved through reliable and satisfactory evidence and that such entries cannot, by themselves, form the sole basis for recording a finding of guilt unless their correctness and authenticity are duly established. The Court further held that, in the absence of proper proof regarding the maintenance and accuracy of such records, the prosecution case cannot be accepted merely on the basis of entries found in the stock registers. Applying the said principle to the present case, this Court finds that the prosecution has heavily relied upon documentary records and audit-related documents, but has failed to adduce satisfactory evidence regarding their preparation, authenticity and correctness. Several material witnesses connected with

such documents have either not been examined or have not supported the prosecution case. Therefore, the documentary evidence relied upon by the prosecution, in the absence of proper corroboration, is insufficient to establish beyond reasonable doubt that the accused persons committed the alleged offence of cheating. Consequently, the prosecution has failed to prove the guilt of the accused persons beyond all reasonable doubt.

82. The **Ld. counsel for Accused No.1** has further relied upon the decision of the **Hon'ble High Court of Karnataka in State of Karnataka vs. Indrakumar alias B.G. Anandappa in Criminal Revision Petition No.1303/2010 dated 05.03.2015**. On a perusal of the said judgment, it is evident that the Hon'ble High Court found that the prosecution had failed to establish entrustment and misappropriation, particularly when the material bank officials had not supported the prosecution case regarding the duties of the accused and the entrustment of cash. In such

circumstances, the acquittal of the accused was upheld. Applying the ratio of the said decision to the facts of the present case, it is seen that several material witnesses, who are none other than the alleged customers of Shriram City Union Finance Limited, have not supported the prosecution case and have been treated as hostile witnesses. Their evidence does not establish the allegations of cheating or misappropriation levelled against the accused persons. Further, as discussed supra, the prosecution has failed to produce certain material documents despite admitting their existence and availability. In view of these deficiencies, the prosecution has failed to establish the foundational facts necessary to bring home the guilt of the accused beyond reasonable doubt. Therefore, the principle laid down in the aforesaid decision squarely supports the case of the accused.

83. The **Ld. counsel for Accused No.1** has also relied upon the decision of the **Hon'ble Supreme Court in Kailash Kumar Sanwatia vs. State of Bihar and**

Another, reported in AIR 2003 SC 3714. On a perusal of the said judgment, it is evident that the Hon'ble Supreme Court held that, in order to attract the offence of criminal breach of trust punishable under Section 405 Indian Penal Code, the prosecution must establish two essential ingredients, namely, (i) entrustment of property to the accused, and (ii) dishonest misappropriation, conversion, use or disposal of such property by the accused in violation of any legal direction or contract. The Court further observed that both these ingredients must coexist and be proved by cogent and reliable evidence. Applying the said principle to the facts of the present case, this Court finds that the prosecution has failed to establish either the fact of entrustment in the manner alleged or the dishonest misappropriation of the entrusted property by Accused Nos.1 and 2. As discussed supra, several material witnesses have not supported the prosecution case, no customer has complained of loss or substitution of pledged gold ornaments, and the prosecution has failed to establish any nexus between the alleged misappropriation and the accused persons. Therefore, the essential ingredients of Section 405 Indian Penal Code remain unproved, and the ratio laid down in the aforesaid decision squarely supports the defence of the accused.

84. The **Ld. counsel for Accused No.2** has relied upon the decisions in **Kailash Kumar Sanwatia vs. State of Bihar and Another and Gurukanwarpal Kirpal Singh vs. Surya Prakasam and Others**, which have already been discussed supra. He has further relied upon the **judgment of the Hon'ble Supreme Court in Arshad Niyaz Khan vs. State of Jharkhand and Another, reported in 2025 LiveLaw (SC) 950**. On a perusal of the said decision, it is evident that the Hon'ble Supreme Court reiterated the essential ingredients of the offences punishable under Sections-406, 420 and 120B of Indian Penal Code and observed that, for constituting the offence of cheating, there must be dishonest or fraudulent intention from the very

inception of the transaction. Likewise, for the offence of criminal breach of trust, the prosecution must establish entrustment of property and subsequent dishonest misappropriation or conversion thereof by the accused. The Court further held that mere suspicion, breach of contract, or allegations unsupported by cogent evidence would not attract the aforesaid penal provisions. Applying the said principles to the present case, this Court finds that the prosecution has failed to establish by reliable evidence either the dishonest intention of the accused at the inception of the transaction or the dishonest misappropriation of the alleged entrusted property. The evidence of the material witnesses does not support the prosecution case, several witnesses have turned hostile, material documents have not been produced, and the investigation suffers from significant omissions. Further, there is no convincing evidence to establish any conspiracy between the accused persons. Therefore, the ratio laid down in the aforesaid decision also supports the defence contention that the prosecution has failed to prove the guilt of Accused Nos.1 and 2 beyond all reasonable doubt.

RELEASE OF SEIZED CASH CONCERN

85. During the pendency of the case, when the matter was posted for final arguments, it was brought to the notice of the Court that P.W-1 had obtained interim custody of the seized amount of ₹.11,47,000/- on 06.11.2013 by executing an indemnity bond subject to certain conditions imposed by the Court. However, P.W-1 failed to furnish colour photographs of the said currency notes and thereby violated the conditions imposed while granting interim custody. Consequently, this Court recalled the order dated 06.11.2013 and directed P.W-1 to redeposit the said amount before the Court. Despite such direction, P.W-1 failed to comply with the order. Therefore, the land belonging to the surety, namely Chand Pasha S/o Hussain Saab, bearing Sy.No.903/1 measuring 2 acres 36 guntas situated at Sindhanur, was attached and the Tahasildar, Sindhanur, was directed to make necessary

entries in Column No.11 of the RTC in favour of this Court.

86. Thereafter, on 28.04.2026, Accused No.1 filed an application under Section 452 Cr.P.C. seeking release of the seized amount of ₹.11,47,000/- in his favour contending that, he is absolutely innocent and he has not committed the alleged offences as alleged by complainant institution and he has been falsely implicated in this case without there being any evidence to warrant the same. The investigating officer has forcefully through coercion and threat seized an amount of ₹.11,47,000/- from him and his relatives. Further contended that, as per the case of prosecution, the above amount belongs to him and his relatives and not belongs to complainant institution. There is no evidence to link the money recovered by 1.O. from him and his relatives to the alleged crime. The prosecution utterly failed to prove the fact that, the said amount belongs to complainant institution by leading cogent evidence. The prosecution utterly failed to prove it's case beyond all

reasonable doubt. Admittedly, the prosecution recovered the said amount from him. Accordingly, he entitled for said amount. The learned APP strongly objected to the application by filing detailed objections and contending that, accused has not made out any grounds to allow the application. The contents of application of accused at Para 1 to 6 of his application are all false claims except the fact the said amount is seized from the accused No.1. The said amount is not the personal amount of accused No.1 but as per investigation documents the amount seized is proceeds and same belongs to complainant firm finance Entity. Already earlier said amount was release to interim custody to complainant entity that time said applicant did not object and did not made any claim of said amount. Hence, prayed to dismiss the application.

86. Subsequently, P.W-1 deposited the said amount before the Court by way of Demand Draft and necessary communication was also issued to the Tahasildar regarding the attachment proceedings. On

11.05.2026, the surety approached this Court by filing an application under Section-446(3) Cr.P.C., seeking a lenient view with regard to the breach of bond conditions. Considering the circumstances, the said application was allowed subject to payment of ₹.15,000/- as penalty, which amount was duly remitted by the surety. Thereafter, on 04.06.2026, Mallikarjuna S/o Dashrath, who is none other than the complainant/ P.W-1, filed an application under Section-452 Cr.P.C., seeking release of the seized amount of ₹.11,47,000/- in his favour. Since there are rival claimants over the said amount, this Court kept in abeyance of both applications until the disposal of the case on merits.

87. This Court has already discussed the oral and documentary evidence in detail and has arrived at the conclusion that the prosecution has failed to prove the charges against Accused Nos.1 and 2 beyond all reasonable doubt. A perusal of Ex.P-62 to P-65 clearly discloses that the cash amount of ₹.11,47,000/- was seized from the possession of Accused No.1, further it is

evident that, under Ex.P-62, a sum of ₹.4,30,000/- was seized from the office of Shriram Chits Company Private Limited. As per Ex.P-63, a sum of ₹.17,000/- was seized from the complainant's Finance Chits Limited. Further, under Ex.P-64, a sum of ₹.3,00,000/- was seized from the possession of the father-in-law of accused No.1, namely Rudramani. According to the prosecution, accused No.1 had misappropriated the gold ornaments pledged with Shriram Chits Company and kept the sale proceeds in the name of his father-in-law. Under Ex.P-65, a further sum of ₹.4,00,000/- was seized from the house of one Kalmat, situated near Annadaneshwar Hospital. However, it is significant to note that neither Rudramani, the father-in-law of accused No.1, nor Kalmat, from whose possession the aforesaid amounts were allegedly seized, has been cited or examined as a prosecution witness. They have also not been arraigned as accused in the present case. The failure of the prosecution to examine these material persons or to explain their non-impleadment creates a serious doubt regarding the alleged recovery and the source of the seized amounts.

88. In this regard, the **Ld. counsel for Accused No.1** has relied upon the decisions in **Nandakishore vs. State of Karnataka decided on 04.12.1978 and Smt. Basavva Kom Dyamangouda Patil vs. State of Mysore and Another reported in 1977 (2) KLJ 147**. On going through the said decisions, it is evident that while exercising powers relating to disposal of property, the Court is primarily concerned with the right to possession of the property and not necessarily with the question of absolute ownership. Applying the aforesaid principles to the facts of the present case, it is evident from Ex.P-62 to P-65 that the Investigating Officer seized the cash amounts from the possession of accused No.1, Rudramani, and one Kalmatt. As already discussed, neither Rudramani nor Kalmatt has claimed ownership over the amounts seized from their possession, nor have they filed any application seeking release of the said amounts. On the contrary, accused

No.1 has sought release not only of the amount allegedly seized from his possession but also of the amounts seized from the possession of Rudramani and Kalmatt. However, accused No.1 has failed to place any documentary evidence to establish his lawful entitlement to the entire seized amount of ₹.11,47,000/- or to explain the lawful source of such seized cash. In the absence of any acceptable evidence establishing his right to possession, accused No.1 is not entitled to restoration the seized amount. Accordingly, the application filed by accused No.1 under Section 452 of the Code deserves to be dismissed.

89. It is pertinent to note that P.W-1, through his Ld. counsel, has also sought release of the seized amount of ₹.11,47,000/- in his favor on 04-06-2026 by contending that, accused persons in this case were employed in the Gold Loan Section of the Petitioner Company at its Sindhanur Branch. Accused No.1/Sri Shivakumar S/o Jumbrana, was working as Assistant Gold Loan Manager, and Accused No.2/ Smt.

Veeramma W/o Shekharappa Dharvatti, was working as Sub-Assistant Executive in the said section. While so employed and entrusted with the funds of the Company, the accused persons committed criminal breach of trust and cheating, thereby causing wrongful loss to the Company. Upon completion of investigation, the Police filed a Charge Sheet before this Hon'ble Court charging the accused persons under Sections 408 and 420 read with Section 34 of the Indian Penal Code, 1860. During the course of investigation, the Investigating Officer recovered a cash amount of ₹.11,47,000/- from the accused persons. The said cash constituted part of the defrauded amount belonging exclusively to the Company, was duly seized under a Mahazar, and was produced before this Hon'ble Court as a Material Object. The Investigating Officer also filed the Property Form and the Charge Sheet confirming that the said recovered cash amount rightfully and exclusively belongs to the Petitioner/Complainant Company. On 06-11-2013, this Hon'ble Court passed an order under

Section 457 of the Code of Criminal Procedure, allowing the petition filed by the Complainant, and directed release of the seized cash of ₹.11,47,000/- in favour of the Complainant on the execution of an Indemnity Bond for the like sum with surety, subject to the following conditions: (i) If any rival claim arises, the Complainant shall deposit the said amount in Court; (ii) The Complainant shall execute an Indemnity Bond for ₹.11,47,000/-; and (iii) The Complainant shall produce the colour photograph of the said cash amount. However, due to inadvertent oversight on the part of the Complainant, being under the bona-fide belief that the IO would produce the colour photographs of the cash amount before this Hon'ble Court, the Complainant representative failed to produce the colour photographs taken at the time of release of the cash before this Hon'ble Court, and instead produced only the photographs taken at the time of the original seizure of the cash photographs which had also not been filed along with the Charge Sheet by the Investigating Officer.

On 25-04-2026, this Hon'ble Court, upon perusal of the records and photographs produced, found that the Complainant had violated Condition No. (iii) of the order dated 06-11-2013 and accordingly recalled the release order dated 06-11-2013. This Hon'ble Court further directed the Complainant/ Branch Manager Sri. Mallikarjuna to deposit the said amount of ₹.11,47,000/- before this Hon'ble Court on the next date of hearing. Immediately thereafter, in compliance with the direction of this Hon'ble Court, the Petitioner Mallikarjuna, deposited a Demand Draft bearing DD No. 689309 dated 28-04-2026, drawn on Axis Bank Limited, Sindhanur Branch, for ₹.11,47,000/- (Rupees Eleven Lakhs Forty Seven Thousand Only), drawn in favour of the Principal Civil Judge & JMFC, Sindhanur, before this Hon'ble Court. On 05-05-2026, this Hon'ble Court accepted the aforesaid Demand Draft and directed the Office to remit the same. Thus, the entire amount of ₹.11,47,000/- which was the subject matter of this application under custody of this Hon'ble court..

The recovered cash amount of ₹.11,47,000/- exclusively Shriram City belongs to the Petitioner / Complainant Company Union Finance Limited. This fact has been duly confirmed and corroborated by the Investigating Officer through the Property Form (PF) filed before this Hon'ble Court as well as through the Charge Sheet submitted against the accused persons. There is no rival claimant to the said amount. The Petitioner/ Complainant is the only rightful owner and the proper custodian of the said recovered cash amount. Hence, prayed to release the said amount.

90. However, PW-1 has likewise failed to establish any legal entitlement of the same. Though the prosecution has alleged that accused No.1 had misappropriated the gold ornaments pledged with Shriram Chits Company and converted the same into cash, the final report is conspicuously silent as to the fate of the alleged gold ornaments or the manner in which they were converted into the seized cash. Further, the statements of the prosecution witnesses do

not disclose any material establishing a nexus between the seized cash and the alleged misappropriated gold ornaments. Thus, PW-1 has also failed to establish that the seized amount represents the proceeds of the alleged misappropriation or that he is entitled to its possession. As discussed supra, this Court is of the considered opinion that neither accused No.1 nor PW-1 has established a better or lawful claim to the seized amount of ₹.11,47,000/-. Consequently, both the applications filed under Section-452 of the Code are liable to be dismissed.

91. Accordingly, the cash amount of ₹.11,47,000/- seized under Property Form No. 53, 56, 57 and 58/2013 is ordered to be confiscated to the State. As discussed supra, the prosecution utterly failed to prove the aforesaid offences therefore, the benefit of doubt is to be given to the accused persons. Therefore, this court answered **point No.1 and 2 are in the 'Negative'.**

92. **POINT NO.3:** For foregoing reasons, this court proceeds to pass the following :

ORDER

In exercise of the power conferred under Section-248(1) of Cr.P.C., 1973, the accused No.1 and 2 are acquitted for the offences punishable Under Secs., 408 and 420 R.w Sec., 34 of Indian Penal Code.

Bail bonds and surety bonds of accused shall stands cancelled after lapse of appeal period.

M.O-3(d) is silver articles and seized cash of ₹.11,47,000/- under PF No.53, 56, 57 and 58 is ordered to be confiscated to the state after lapse of appeal period.

The rest of Mos' are being worthless and ordered to be destroy after lapse of appeal period.

The application filed by Accused No.1 and complainant/P.W-1 under Section-452 of the Code of Criminal

Procedure dtd.28-04-2026 and 04-06-2026 are hereby dismissed.

Office is hereby directed to remit the DD dtd: 28.04.2026 for ₹.11,47,000/- in the name of this court and also confiscated the same after appeal period is over.

(Directly dictated to the steno-III, typed by him, also dictated to AI Adalath and also typed by me in my home office, corrected by me, then pronounced by me in the open court this the 01st Day of July-2026).

(Smt.RUPA.C.VAGGA)
Prl., CJ and JMFC-Sindhanur.
C/C IInd Addl., CJ & JMFC-Sindhanur.

:: A N N E ,X U R E ::

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PROSECUTION:

P.W-1	-	D.Mallikarjuna
P.W-2	-	Sharanappa
P.W-3	-	Vijaykumar
P.W-4	-	Chandappa
P.W-5	-	Reddappa
P.W-6	-	Umesh GK
P.W-7	-	Veerendra
P.W-8	-	Shekhaappa
P.W-9	-	Earappa
P.W-10	-	Sharanappa
P.W-11	-	Rajashekhar Gouda
P.W-12	-	Hanumappa
P.W-13	-	Mallappa
P.W-14	-	Rudrappa

P.W-15	-	Lakkappa
P.W-16	-	Naresh Babu
P.W-17	-	Moulasab
P.W-18	-	Shivakumar
P.W-19	-	Praveen
P.W-20	-	Madhu
P.W-21	-	Mahesh
P.W-22	-	Chandrashekhar
P.W-23	-	Basha
P.W-24	-	Babu
P.W-25	-	Tayappa
P.W-26	-	Somashekhar
P.W-27	-	Ningappa N R
P.W-28	-	Balanagouda

LIST OF DOCUMENTS MARKED ON BEHALF OF THE PROSECUTION:

Ex.P-1	-	Complaint
Ex.P-2	-	Certificate of Registration
Ex.P-3 to 5	-	Various Registers
Ex.P-6 to 42 and	-	Loan Sanctioned copies statements
Ex.P-43 to 45	-	Statements
Ex.P-46	-	Role and responsibilities form
Ex.P-47	-	Letter of Authorization
Ex.P-48 to 59	-	Statements
Ex.P-60	-	Audit particulars
Ex.P-61 to 65	-	Panchanamas
Ex.P-66	-	FIR
Ex.P-67 to 69	-	Confession statements
Ex.P-70	-	Communication letter
Ex.P-71 to 104	-	Appointment proceedings and related documents

LIST OF MATERIAL OBJECTS EXHIBITED ON BEHALF OF THE PROSECUTION:

MO.1	-	One pocket
MO.1(a)	-	Empty pocket
MO.1(b)	-	Pocket of 4 stones
MO.1(c to f)	-	4 stones
MO.1(g)	-	Jewellery's box
MO.1(h)	-	Coin and key chain
MO.2	-	One pocket
MO.2(a)	-	Cloth pockets
MO.2(b to f)	-	Stones
MO.2(g)	-	Customer copy
MO.3	-	One pocket
MO.3(a)	-	One Box
MO.3(b&c)	-	Stones
MO.3(d)	-	One plastic cover and two pair sliver anklets.
MO.3(e)	-	Stones
MO.3(f)	-	Receipt
MO.4	-	One cover
MO.4(a)	-	Receipt
MO.5 to 7	-	Cash misuse pockets
MO.8 to 11	-	Gold Missed pockets
MO.12 to 23	-	Pockets

LIST OF WITNESSES EXAMINED ON BEHALF OF THE DEFENCE:

- Nil –

LIST OF DOCUMENTS MARKED ON BEHALF OF THE DEFENCE:

- Nil –

Digitally signed by RUPA C VAGGA
Location: Prl.,Civil Judge and JMFC-Sindhanur C/c II Addl Civil Judge and JMFC, Sindhanur

(Smt.RUPA.C.VAGGA)
Prl., CJ and JMFC-Sindhanur.
C/C II^nd Addl., CJ & JMFC-Sindhanur.