Received on : 12/01/2018
Registered on : 12/01/2018
Decided on : 05/10/2021
Duration - 3 Yrs. 08 Ms 24 Ds

IN THE COURT OF SPECIAL JUDGE, CBI (ACB), PUNE,
(Presided over by Girish G.Bhalchandra)

Special (CBI, ACB) Case No.09/2018 **Exh. No.713**
CNR NO.MHPU01-000666-2018

The Central Bureau of Investigation,
Anti Corruption Bureau, Pune. ... **Prosecution**

Versus

1] M/s Varron Aluminium Pvt.Ltd.
[Represented through its Director
Shri Shrikanth P.Sawaikar]
Address – No.3, Shyamal Apartment,
Anand Park, Aunth, Pune – 411 007

2] M/s Varron Auto Comp Pvt.Ltd.
[Represented through its Director
Shri Shrikanth P.Sawaikar]
Address – No.3, Shyamal Apartment,
Anand Park, Aunth, Pune – 411 007

3] Shrikanth Pandurang Sawaikar
(since deceased) …. **Abated**

4] Subraya Rama Hegde @ S.R. Hegde
age – 61 yrs., Occ. Chief Manager (Retd.)
Canara Bank, Deccan Gymkhana, Pune.
R/at – Flat No.604, Bldg. 5B,
Kalpataru Estate, Phase – 2,
Pimple Gurav, Pune – 411 061.

5] Ashok Laxman More
(since deceased) .... **Abated**

6] Ganesh Jagganath Kolhe
Age – 33 yrs., Occ. Account Assistant,
R/at – Flat NO.505, 5th Floor,
Sanskar Residency, Opp. Pawna Hospital,
Somatane Phata, Tal. Maval,
District – Pune.

7] Ganesh Ram Gaikwad
age – 42 yrs., Occ. Account Assistant
R/at – Opp. Sadguru Apartment,
Malhar Chowk, Sai Nagar,
Katraj, Pune.

8] Manoj Sudhakar Salvi
age – 34 yrs., Occ. Business,
R/at – 160, G-Wing,
S.No.4050, 1st Floor,
Jay Ganesh Samrajya, Bhosari
Pune.

9] Maruti Gangaram Chavan
(since deceased)... **Abated**

... **Accused**

APPEARANCES :

1] Shri.Abhayraj Arikar, Public Prosecutor for the prosecution
2] Advocate Shri.Dravid for accused 1 and 2
3] Advocate Shri.Ayub Pathan for accused no.4
4] Advocate Shri. Sachin Zalate Patil for accused no.6 to 8

J U D G M E N T

(Delivered on 5th October, 2021)

This is Bank fraud trial on an allegation that all the accused hatched criminal conspiracy thereby caused wrongful loss of Rs.293.74 crores to Bank of India, Karve road branch, Pune and corresponding wrongful gain to the accused persons.

2] In short, the facts can be summarized as under -

A criminal case vide RCBSM2017E0001 (RC 01(E)/2017-CBI/BS&FC/Mumbai) was registered on 23/02/2017 by Central Bureau of Investigation (CBI), Bank Securities & Fraud Cell (BS&FC), Mumbai on the basis of written complaint by Shri Parasnth Naik, Zonal Manager, Bank of India, Pune Zone, Pune against M/s Varron Aluminum Pvt.Ltd. [in short M/s VAPL], M/s Varron Auto Comp Pvt.Ltd. [in short M/s VACPL], Shri Shrikant P Sawaikar, unknown public servants of Bank of India, Canara Bank and other unknown Private persons for alleged commission of offences punishable under Section 120-B r.w. 420, 468, 471 of Indian Penal Code and section 13(2) r.w. 13(1)(d) of Prevention of Corruption Act, 1988.

It has been alleged in the FIR that during year 2016 M/s Varron Aluminium Pvt.Ltd. cheated Bank of India in the matter of discounting 246 bills against Letter of Credit (LC) issued by Canara Bank, Deccan Gymkhana Branch to the tune of Rs.300.00 crores.

3] That M/s Varron Aluminium Pvt.Ltd. was incorporated on 18.02.2008 vide Registration No. U27310PN2008PTC131436. M/s VAPL is the beneficiary of Letter of Credit issued by Canara Bank on behalf of M/s VACPL. Shrikant P. Sawaikar (accused no.3) is the Director of M/s VAPL & M/s VACPL. S.R. Hegde (accused no.4) was the Chief Manager of Canara Bank, Deccan Gymkhana Branch, Pune during the period July 2014 to March 2016, who opened the manual letter of credit on 29/02/2015 in favour of M/s

VACPL. Shri. Ashok Laxman More (accused no.5) is the proprietor of M/s Hind Auto Enterprises and M/s Maharashtra Metal Corporation. Ganesh Kolhe (accused no.6) is the account assistant of M/s VAPL and M/s. VACPL. Ganesh Gaikwad (accused no.7) is the account assistant of M/s VAPL and M/s VACPL. Manoj Sudhakar Salvi (accused no.8) is the proprietor of M/s Ratna Metal Mart. Maruti Gangaram Chavan (accused no.9) is the proprietor of Shweta Trading Company.

4] It is further alleged that Shrikant P. Sawaikar (accused no.3) entered into a criminal conspiracy with S.R. Hegde (accused no.4), Ashok Laxman More (accused no.5), Ganesh Kolhe (accused no.6), Ganesh Gaikwad (accused no.7), Manoj Sudhakar Salvi (accused no.8) and Maruthi Gangaram Chavan (accused no.9) with the object to cheat Bank of India and in pursuance of the aforesaid criminal conspiracy got issued Letter of Credit No.: LC:01 2016 dated : 29/02/2016 for Rs.300.00 crores on behalf of VAPL from Canara Bank, Deccan Gymkhana Branch, in favour of M/s VACPL, for supply of CR 1.5 MM sheets.

That in furtherance to the aforesaid criminal conspiracy, S.R.Hegde (accused no.4) in collusion with Shrikant P. Sawaikar (accused no.3) issued manual LC No. 01 2016 dtd. 29/2/2016 for Rs.300.00 crores in favour of M/s VACPL and handed over to Shrikant P. Sawaikar (accused no.3). Shrikant P. Sawaikar (accused no.3) dishonestly got prepared 246 commercial invoices of M/s VAPL i.e. Delivery Challan, Bills of Exchange showing purported supply of CR Sheets 1.5 MM to M/s VACPL.

5] It is further alleged that in furtherance to the aforesaid criminal conspiracy, Shrikant P. Sawaikar (accused no.3) got prepared and signed 246 Lorry receipts of Maruti Transport Co., (MTC), a fictitious transport company, by Ganesh Kolhe (accused no.6) on behalf of Maruti Transport Co., showing transportation of CR sheet 1.5 MM from the factory of M/s. VAPL, Ratnagiri to M/s. VACPL, Pune.

6] It is further alleged that in furtherance to the aforesaid criminal conspiracy, Shrikant P. Sawaikar (accused no.3) approached Bank of India, Karve Road Branch, Pune along with the manual LC No. 01 2016 dtd. 29/2/2016 issued by Canara Bank, Deccan Gymkhana Branch, Pune, in favour of M/s VAPL and LC backed bills for discounting. The Branch Head / AGM of Bank of India sent Bhupesh Mudholkar, Marketing Officer to Canara Bank on 29/2/2016 for verification of the LC issued by Canara Bank. S.R. Hegde (accused no.4) in furtherance to the aforesaid criminal conspiracy instructed Mrs. Sujata, officer of Canara Bank to confirm the LC, who wrote “Signature Verified” on the LC and put her signature. The LC was handed over to Bhupesh Mudholkar, who returned to Bank of India. On the basis of signature verification by Canara Bank, the Branch Head / AGM, Bank of India discounted 99 bills on 29/2/2016 and credited the Rs.118 crores in the account of M/s VAPL. Shrikant Sawaikar (accused no.3), in furtherance to the aforesaid criminal conspiracy with Ganesh Kolhe (accused no.6) and Ganesh Gaikwad (accused no.7) issued cheque No.000011 dtd. 29/2/2016 for Rs.48.12 crores in favour of M/s Maharashtra Metal Corporation and Cheque No.00010 dtd. 29/2/2016 for

Rs.52.14 crores in favour of M/s Hind Auto Enterprises.

7] It is further alleged that in furtherance to the aforesaid criminal conspiracy, Ashok Laxman More (accused no.5) transferred Rs.48.00 crores from M/s Maharashtra Metal Corporation and Rs.52.00 crores from M/s Hind Auto Enterprises on 29/2/2016 to Canara Bank, Deccan Gymkhana Branch. Out of Rs.100.00 crores received from these two firms, S.R.Hegde (accused no.4) utilized Rs.64.50 crores for settling the outstanding in the account of M/s VACPL and remaining amount of Rs.33.50 crores was used for creation of FD in the name of M/s VACPL.

8] It is further alleged that in furtherance to the aforesaid criminal conspiracy, Shrikant Sawaikar (accused no.3) got 147 LC backed bills discounted by Bank of India on 01/03/2016 and credited Rs.182.00 crores to the account of M/s VAPL. Shrikant Sawaikar in conspiracy with Ganesh Kolhe (accused no.6) and Ganesh Gaikwad (accused no.7) transferred an amount of Rs.90.59 crores to the account of M/s Hind Auto Enterprises maintained with Bank of India on 01.03.2016 and 02.03.2016.

That in furtherance to the aforesaid criminal conspiracy, Shrikant Sawaikar with Ganesh Kolhe (accused no.6) and Ganesh Gaikwad (accused no.7) transferred Rs.100.00 crores to the account of M/s Maharashtra Metal Corporation maintained with Bank of India on 01/03/2016.

9] That in furtherance to the aforesaid criminal conspiracy, Ashok Laxman More (accused no.5) transferred, without any underlying transaction, Rs.62.00 crores from M/s Hind Auto

Enterprises to M/s Varron Industries Pvt.Ltd. and Rs.28.15 crores transferred to M/s VAPL, account maintained at SBI, IF Branch, Pune. The funds received from M/s Hind Auto Enterprises was utilized for reducing the liability of cash credit account in respect of M/s Varron Industries Pvt.Ltd. (a group company of accused no.1) and M/s Varron Aluminium Pvt.Ltd. maintained at SBI, IF Branch.

That in furtherance to the aforesaid criminal conspiracy, Ashok Laxman More (accused no.5) without any underlying transaction, transferred Rs.67.99 crores from M/s Maharashtra Metal Corporation to M/s Varron Industries Pvt.Ltd. (a group company of accused no.1) and Rs.31.99 crores to M/s VAPL, account maintained at SBI, IF Branch, Pune. The funds received from M/s Maharashtra Metal Corporation was dishonestly used by Shrikant Sawaikar (accused no.3) for reducing the liability in Cash Credit account in respect of M/s Varron Industries Pvt.Ltd. and M/s VAPL maintained at SBI, IF Branch.

10] It is further alleged that in furtherance to the aforesaid criminal conspiracy, Shrikant Sawaikar (accused no.3) transferred Rs.1.10 crores to M/s Ratna Metal Mart maintained at Bank of India, out of the discounted bill proceeds, without any underlying transaction. Manoj Sudhakar Salvi (accused no.8) dishonestly used these funds for settling 41 outstanding bills of M/s Ratna Metal Mart, discounted by Bank of India.

11] It is further alleged that in furtherance to the aforesaid criminal conspiracy, Shrikant Sawaikar (accused no.3) transferred Rs.1.00 crore to M/s Shweta Trading Company maintained at Bank of India, out of the discounted bills proceeds, without any underlying transaction. Maruti Gangaram Chavan (accused no.9) dishonestly used these funds for settling 38 outstanding bills of M/s Shweta Trading Company, discounted by Bank of India.

12] It is the gravamen of the charge-sheet allegations that by the aforesaid acts Shrikant Sawaikar (accused no.3), S.R.Hegde (accused no.4), Ashok Laxman More (accused no.5), Ganesh Kolhe (accused no.6), Ganesh Gaikwad (accused no.7), Manoj Sudhakar Salvi (accused no.8) and Maruti Gangaram Chavan (accused no.9) caused wrongful loss of Rs.293.74 crores to Bank of India and corresponding wrongful gain to the accused persons.

13] Accordingly, the charge-sheet came to be filed against the accused for having committed offences punishable under section 120B r.w. 420, 467, 468, 471 of Indian Penal Code and Section 13(2) r.w. 13(1)(d) of Prevention of Corruption Act, 1988 against M/s Varron Aluminium Pvt.Ltd. (accused no.1), M/s Varron Auto Comp Pvt.Ltd. (accused no.2) (both represented by Shrikant Sawaikar), Shrikant P. Sawaikar (accused no.3), S.R. Hegde (accused no.4), Ashok Laxman More (accused no.5), Ganesh Kolhe (accused no.6), Ganesh Gaikwad (accused no.7), Manoj Sudhakar Salvi (accused no.8) and Maruti Gangaram Chavan (accused no.9) and substantive offences under section 420 of Indian Penal Code against M/s Varron Aluminium Pvt.Ltd., M/s Varron Auto Comp Pvt.Ltd. and Shrikant Sawaikar (accused no.3) and substantive offences under section 13(2) r.w. 13(1)(d) of Prevention of Corruption Act, 1988 against S.R.Hegde (accused no.4).

14] A Charge vide Exh.26 has been framed against accused as under -

Sr. No	Accused	Charged offences
1	Shrikant Sawaikar (accused no.3)	120B r.w. 420, 467, 468, 471 of Indian Penal Code and under section 13(2) r.w. 13(1)(d) of Prevention of Corruption Act, 1988.
2	S R. Hegde (accused no.4)	Section 13(2) r.w. 13(1)(d) of Prevention of Corruption Act, 1988.
3	Ganesh Kolhe (accused no.6)	120B r.w. 420, 471 of Indian Penal Code
4	Ganesh Gaikwad (accused no.7)	120B r.w. 420 of Indian Penal Code
5	Manoj Sudhakar Salvi (accuse no.8)	120B r.w. 420 of Indian Penal Code
6	Maruti Chauhan (accused no.9)	120B r.w. 420 of Indian Penal Code

The Charge was read over and explained to the accused in vernacular. They pleaded not guilty and claimed to be tried.

15] In order to prove its case the prosecution examined in all 43 witnesses. In rebuttal no witness is examined by the defence. Examination of the accused under Section 313 of Code of Criminal Procedure came to be recorded vide Exh.693, Exh.694, Exh.695, Exh.696, Exh.697, Exh.698 and Exh.699. They have denied the incriminating circumstances put to them in their examination under section 313 of Code of Criminal Procedure. Main plank of the defence of the accused persons is that of false prosecution.

16] It is the stand of accused no.1 and 2 that the transactions pertained to LC no.01/2016 which was issued by Canara Bank and accepted, discounted by Bank of India. It is contended that there was no reason for Canara Bank to reject the LC. It is further stated that presently the Companies are *defunct* and there is no person conversant with the facts available to explain further.

17] It is the bone of contention of accused no.4 that he is innocent. According to him, Mr.Sawaikar and officers of Bank of India viz; Mrs. Phani Deshmukh, Mr. Mudholkar and Mr C.V. Kulkarni prepared all false documents and put him in trouble without any fault.

18] Accused no.5, 6, 7 and 8 have filed their written statement under Section 313 of Cr.P.C. since stating that they do not know about the transactions in question and they have not received any benefit. According to them they have signed on the documents at the behest of Mr.Sawaikar. It is contended that Mr.Sawaikar has misused their signatures.

19] Accused have not examined themselves on oath. Accused have not examined any witness in their defence.

20] I have heard learned PP Mr.Abhayraj Arikar for CBI, learned counsel Mr.Dravid for accused no.1 & 2, learned counsel Mr.Ayub Pathan for accused no.4 and learned counsel Mr.Sachin Zalate Patil for accused no.6 to 8. Accused no.4 has also filed on record written notes of argument vide Exh.710. I shall make reference of the submissions of the parties at the appropriate places.

21] Points for determination and thereon my findings with reasons are as under -

	Points	Findings
1]	Is it proved by prosecution that a criminal conspiracy to defraud Bank of India and to cause wrongful loss of an amount of Rs.299.37 crores to it and to cause corresponding wrongful gain to accused no.1 to 3 was hatched? If yes, is it proved that all the accused were party to the criminal conspiracy?	**Yes**
2]	Is it proved that accused no.4 being a party to the criminal conspiracy made a false document purported LC 01/2016 by abusing his position as a public servant with the dishonest intention to obtain pecuniary advantage to accused no.1 to 3?	**Yes**
3]	Is it proved that accused persons being party to the criminal conspiracy with a dishonest intention utilized the proceeds of the bills of exchange got discounted on the basis of the purported LC 01/2016?	**Yes**
4]	Is it proved that accused no.6 being a party to the criminal conspiracy and authorized signatory of accused no.1 and 2 made false purported 246 lorry receipts showing fictitious transportation of Company goods under *non-est* fictitious transport Company and used it for discounting the bills of exchange?	**Yes**
5]	Is it further proved that accused no.6 and 7 being the parties to the criminal	**Yes**

	conspiracy and authorised signatories of M/s VAPL made and issued various false cheques for utilization of the proceeds of the bills of exchange?	
6]	Is it proved that accused no.8 being the party to the criminal conspiracy dishonestly received an amount of Rs.1.10 crores out of the proceeds of the false bills of exchange?	**Yes**
7]	What offences are proved against which of the accused?	**Accused no.1** – S.120B IPC. **Accused no.2** -S.120B IPC. **Accused no.4** - S.120B IPC & S.13(1)(d) r.w. S.13(2) of PC Act. **Accused no.6** - S.120B IPC., 420, 468 r.w. S.120B of IPC **Accused no.7** - S.120B IPC. 420 r.w. S.120B of IPC **Accused no.8** - S.120B IPC. 420 r.w. S.120B of IPC
8]	What sentence and Order?	As per final order.

REASONS

22] At the outset it would be pertinent to note certain following material undisputed facts -

a) Accused no.1 is the incorporated Company.

b) Accused no.3 was the Director and responsible person for day to day work affairs of accused no.1 and 2 Companies.

c) Accused no.4 at the relevant time was holding office of

Branch Manager, Canara Bank, Deccan Gymkhana Branch, Pune being a "public servant" as defined under Section 2(c) of Prevention Of Corruption Act. It is also not in dispute that on the date of taking cognizance accused no.4 was retired from service as Banker. Consequently the question of sanction under Section 19(1)(c) of the Prevention of Corruption Act does not arise in this case.

d) Accused no.1 VAPL and accused no.2 VACPL were maintaining Bank accounts with Canara Bank, Deccan Gymkhana Branch, Pune. and Bank of India, Karvenagar Branch, Pune.

e) Accused VAPL Company was sanctioned facility of Letter of Credit.

f) It is not in dispute that the purported LC vide No. 1/2016 bears signature of accused no.4.

g) Accused no.5 to 8 were in the employment of accused Companies.

23] It is a matter of record that during the course of trial accused no.3, accused no.5 and accused no.9 died. Accordingly, the proceeding came to be abated against them by an order passed on Exh.1.

AS TO POINT NOS.1 TO 6 :

24] In order to sustain the Charge leveled against the accused persons it is incumbent upon part of prosecution to establish beyond a reasonable doubt the formidable allegations set out by CBI under the following broad captions.

A] A criminal conspiracy was hatched by accused persons to defraud Bank of India and for wrongful gain. Pursuant to the criminal conspiracy the purported LC No. 1/2016 was got issued.

B] Fraudulent preparation of 246 purported false bills of exchange, cumulative delivery challans, cumulative commercial invoices and lorry receipts of transportation of the Company goods.

C] Fictitious transportation of Company goods through a *non-est* fictitious transport Company viz; Maruti Transport Company showing fictitious transportation of Company goods [CR sheets 1.5 mm] from the factory of M/s VAPL Ratnagiri to M/s VACPL, Pune.

D] Fraudulent discounting of the purported false Bills of exchange on the basis of the purported LC for Rs.299.31 crores by M/s VAPL.

E] Fraudulent utilization of the proceeds of the purported false bills discounted for Rs.299.31 crores by M/s VAPL.

25] Prosecution has examined in all 43 witnesses. Prosecution has also produced on record voluminous documents. For the sake of convenience the details of the evidence is classified as under -

A] Bank of India witnesses -

PW 1 Shri Chandrakant Vitthal Kulkarni has deposed at Exh.158. He has affirmed the documents vide Exh.159 to Exh.423, Exh.441 to Exh.446.

PW 4 Shri Arvind Subhash Pardeshi has deposed at

Exh.479.

PW 5 Shri.Ravi Shakar has deposed vide Exh.480. He has affirmed the documents vide Exh.481 to Exh.498.

PW 27 Shri.Prakash Vasudeo Moghe has deposed vide Exh.606. He has affirmed the documents vide Exh.607 and Exh.608.

PW 31 Shri Tapan Anjanikant Verma has deposed vide Exh.617. He has affirmed the documents vide Exh.488 and Exh. 492.

PW 32 Shri. Bhupesh Bhaskarrao Mudholkar has deposed vide Exh.619. He has affirmed the documents vide Exh.422, Exh.594.

PW 33 Shri. Prashant Jaywant Naik is the first informant. He has deposed vide Exh.620. He has affirmed the documents vide Exh.621, Exh.622, Exh.623 and Exh.624.

PW 34 Shri. Navinkumar Nigam has deposed vide Exh.625. He has affirmed the documents vide Exh.162, Exh.163, Exh.626, Exh.627, Exh.622 to Exh.624, Exh.628, Exh.551, Exh.548 to Exh.550, Exh.415, Exh.416, Exh.481, Exh.160, Exh.629, Exh.630, Exh.631, Exh.632.

PW 35 Shri.K. Shambhumurthy Shashtri has deposed vide Exh.633. He has affirmed the documents vide Exh.630, Exh.634 to Exh.636.

PW 36 Shri Paritoshkumar Das has deposed vide Exh.637.

He has affirmed the documents vide Exh.638 and Exh.639.

B] Canara Bank witnesses -

PW 2 Smt.Sujata Narayan Bhorkade has deposed at Exh.447.

PW 3 Shri.Shailesh Vishnupant Kulkarni has deposed at Exh.461. He has affirmed the documents vide Exh.462, Exh.463, Exh.465, Exh.466 to Exh.477.

PW 20 Mr. Supriya Maitra has deposed at Exh.547. He has affirmed the documents vide Exh.548 to Exh.553.

PW 22 Shri. Akhilesh Siyaram Tiwari has deposed at Exh.555. He has affirmed the documents vide Exh.556 to Exh.577.

PW 24 Shri.Soumen Munshi has deposed at Exh.589. He has affirmed the documents vide Exh.590.

PW 26 Shri Viraswami Jaykumar has deposed at Exh.604. He has affirmed the documents vide Exh.605.

PW 29 Smt. Smita Metalu has deposed vide Exh.612. She has affirmed the documents vide Exh.613, Exh.614 and Exh.615.

PW 30 Shri. Premchand Dshrath Tayade has deposed vide Exh.616. He has affirmed the documents vide Exh.614.

PW 37 Shri. A.B. Prasad Rao has deposed vide Exh.640. He has affirmed the documents vide Exh.605.

PW 40 Shri. Shrikant Dattatray Dhoktre has deposed vide Exh.654. He has affirmed the documents vide Exh.468.

PW 42 Shri. Laxman Rewachand Meghmalani has deposed vide Exh.657.

C] Other witnesses

PW 6 Smt.Anuradha Raghunath Jadhav is officer from Regional Transport Authority. She has deposed vide Exh.501. She has affirmed the document vide Exh.502.

PW 7 Nandkumar Shankar Chirame has deposed vide Exh.503. He has affirmed the documents vide Exh.504 and 505.

PW 8 Anant Kashiram Pawar has deposed vide Exh.506. He has affirmed the documents vide Exh.507 to 515.

PW 9 Anil Dhondiram Dhabolkar has deposed vide Exh.517. He has affirmed the documents vide Exh.518 and Exh.519.

PW 10 Satish Vishnu Shinde has deposed vide Exh.520. He has affirmed the documents vide Exh.521 collectively.

PW 11 Balgonda Jagangonda Patil has deposed vide Exh.522. He has affirmed the documents vide Exh.523 collectively.

PW 12 Satish Atmaram Ambre has deposed vide Exh.524.He has affirmed the documents vide Exh.525 collectively.

PW 13 Vinod Vishnu Amburle has deposed vide Exh.526.He has affirmed the documents vide Exh.527 collectively.

PW 14 Ravikiran Jaggannath Narvekar has deposed vide Exh.528. He has affirmed the documents vide Exh.529 collectively.

PW 15 Amey Krishna Parkar has deposed vide Exh.528. He has affirmed the documents vide Exh.531 collectively.

PW 16 Rajashree Ashok More has deposed vide Exh.534.

PW 17 Arun Jairam Kamble has deposed vide Exh.537.

PW 18 Kiran Prakash Vichare has deposed vide Exh.538. He has affirmed the documents vide Exh.538.

PW 19 Santosh Bhika Agare has deposed vide Exh.541. He has affirmed the documents vide Exh.542, Exh.544, Exh.545 and Exh.546.

PW 21 Rohit Devanand Gunjal has deposed vide Exh.554.

PW 23 Shailendra Harish Pangarkar has deposed vide Exh.580. He has affirmed the documents vide Exh.581 to Exh.588.

PW 25 Sanjiv Vishwambhar Pophale has deposed vide Exh.591. He has affirmed the documents vide Exh.592 to Exh.602.

PW 28 Bharat Kisan Mhaske has deposed vide Exh.619. He has affirmed the documents vide Exh.415, Exh.416, Exh.488 and Exh.492.

PW 38 Shri. Mayuresh Vishwanath Sohoni, serving in State Bank of India, has deposed vide Exh.641. He has affirmed the documents vide Exh.642 to Exh.645.

PW 39 Yashwant Khaliram Nagdeve has deposed vide Exh.646. He has affirmed the documents vide Exh.647, Exh.648 and Exh.649.

PW 41 Mahesh Sukhramdas Bhatteja has deposed vide Exh.655. He has affirmed the document vide Exh.656.

D] Investigating Officer

PW 43 L.Ganesha, Inspector, C.B.I., has deposed vide Exh.43. He has affirmed the documents vide Exh.651, Exh.653, Exh.659 to Exh.679.

26] Now I shall marshal and appreciate the evidence of prosecution vis-a-vis aforesaid captions vide **A to D.**

CRIMINAL CONSPIRACY

A] Prosecution is coming with a case that all the accused hatched a criminal conspiracy to defraud Bank of India, Karve road branch, Pune, and to cause wrongful loss of Rs.293.74 crores to Bank of India and corresponding wrongful gain to accused persons.

At this stage it would be germane to state here the well settled legal position on the point of criminal conspiracy postulated under Section 120-A of the Indian Penal Code. A cursory look to the provisions contained in Section 120-A reveals that a criminal conspiracy envisages an agreement between two or more persons to commit an illegal act or an act which by itself may not be illegal but the same is done or executed by illegal-means. Thus, the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a fact situation of criminal conspiracy is established by proving such an agreement. Where the conspiracy alleged is with regard to commission of serious crime of the nature as contemplated in Section 120-B read with the proviso to subsection (2) of Section 120-A of the IPC, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120-B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions in such a situation do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirement and ingredients are established the act would fall within the trapping of the provisions contained in Section 120-B since from its very nature a conspiracy must be conceived and hatched in complete secrecy, because otherwise the whole purpose may frustrate and hatched in complete secrecy, because otherwise the whole purpose may frustrate and it is common experience and goes without saying that only in very rare cases one may come across direct evidence of a criminal conspiracy to commit any crime and in most of the cases it is only the circumstantial evidence which is available from which an inference giving rise to the conclusion of an agreement between two or more persons to commit an offence may be legitimately drawn.

Thus, the essence of the criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no over act need be done in furtherance of the conspiracy and that the object of the combination need not be accomplished, in order to constitute that object of the conspiracy need not always be “an offence” but it may be any “illegal act”.

27] During the course of hearing the learned counsel for accused no.4 took a preliminary objection since making a submission that in view of death of accused no.3 who is the main perpetrator the charge of criminal conspiracy does not survive. In support of this proposition Authority in the case of **Topandas Vs. State of Bombay, 1956 AIR page 33** of Hon’ble supreme Court is cited, wherein the question before the Hon'ble Supreme Court was that whether the conviction under Section 120B is maintainable in view of the fact that the other alleged conspirators had been acquitted. The Hon'ble Apex Court since dealing with this question vis-a-vis provision of criminal conspiracy Section 120B of the Indian Penal Code held that such conviction of the accused is illegal. In our case the facts are distinguishable. In our case the fact that accused no.3 died after framing of the Charge has no adverse effect on the trial of the co-accused. I shall be dealing with this aspect in the subsequent part of this Judgment. At this stage it would be suffice to say that the authority in the case of Topandas [cited supra] is not applicable to the present trial.

In order to appreciate objection raised on behalf of accused no.4 it must be noted that a peculiar fact and situation is obtained in this case. Accused no.1 and accused no.2 are Companies, accused no.3 since deceased was Director and main responsible person for the Company's affairs. The prosecution is coming with a case that in the alleged bank fraud accused no.1 is 2 beneficiaries. It is also one of the allegations that accused no.3 who was the Director and whole and sole of accused no.1 and 2 Companies fraudulent got prepared the Company documents. Under such peculiar fact and situation I find that death of accused no.3 has no adverse impact on the trial of co-accused. Corporate culpability is manifest in the present case.

28] In order to deal with such an objection raised it must be pointed out that it is a matter of record that accused no.3 died after Charge was framed on 23/02/2018. It is also a matter of record that in view of death of accused no.3 the proceeding stood abated against him by an order dtd.20/7/2018 passed below Exh.1. Crux of the matter is what could be the effect of a death of a co-accused on the trial of other co-accused. On this point it is apposite to make a reference of the Authority of the Hon’ble Delhi High Court in the case of **Natwar Rateria Vs. CBI, CRL M.C. 4648/2014** wherein the Hon’ble Delhi High Court has dealt with an identical fact and situation since making following observations -

> “Whenever an accused expires during pendency of trial and proceedings are abated against him, it is not left open for the prosecution to level charges against such an accused by producing its witnesses during trial. It goes without saying that everyone is presumed to be innocent till proved guilty as per well settled cardinal principles of criminal jurisprudence. Once the accused is no more to face the trial till the end, his conclusion of guilt or otherwise cannot be arrived at by the Court trying said accused. Thus, benefit is extended in a way to such an accused by terming abatement of proceedings against him as having an effect of acquittal. However, abatement has to be purely due to death of the accused. Precisely for these reasons, the acquittal, if any, of accused who is dead is in a technical sense. Thus, the benefit of abatement of proceedings cannot be extended in favour of co-accused even if he remains to be the sole surviving

accused after the death of the accused facing charge of conspiracy.”

29] In view of the aforesaid principle enunciated in the case of **Natwar** [cited supra] I find that in the trial at hand benefit of abatement of proceeding against accused no.3 cannot be extended in favour of other co-accused facing Charge of criminal conspiracy. Having noted such legal position I shall deal with the allegation of criminal conspiracy in a subsequent part of this Judgment. At this juncture suffice it to say that the co-accused cannot be benefited on the ground of death of accused no.3 Shrikant Sawaikar.

MAKING OF FALSE LC. [LETTER OF CREDIT]

30] Now I shall deal with the aforesaid allegations under caption **B** i.e. the purported LC vide no. 01 of 2016 got issued pursuant to the alleged criminal conspiracy.

Before adverting to the evidence on the point of the purported LC it would be pertinent to state here regarding the concept of LC [Letter of Credit] under the Banking parlance.

A Letter of Credit (LC) is a written instrument issued by a banker (opening Bank) at the request of a buyer (applicant) in favour a seller (beneficiary), undertaking to honour drafts drawn by the seller in accordance with the terms and conditions specified in the letter of credit.

When a Bank issues a letter of credit, it assumes responsibility to pay the beneficiary against documents drawn in accordance with the terms and conditions set out in the letter of credit. A letter of credit safeguards the interests of both the buyer and the seller. The Bank will not make payment to the seller unless the seller tenders documents drawn in accordance with the terms and conditions specified therein. The seller is assured of payment, if he tenders documents to the Bank as per the terms of L.C. A letter of credit is thus a means to facilitate trade and commercial transactions.

Parties to a Letter of Credit.

Applicant (Opener / Buyer) the party on whose behalf the letter of credit is opened.

Opening Bank / Branch (Issuing Bank/Branch) which establishes the letter of credit and undertakes to pay on behalf of the applicant.

Beneficiary (Seller) – the party in whose favour the letter of credit is opened. Advising Bank / Branch-the Bank / branch whose services are utilized for advising (transmitting) the letter of credit to the beneficiary.

Negotiating Bank/Branch – the Bank Branch which is designated in the letter of credit, to negotiate the documents drawn under the letter of credit and to make payment to beneficiary.

Reimbursing Bank / Branch – the Bank / branch from which the Negotiating Bank / Branch has to claim reimbursement as per LC.

Obligations of Opening and Negotiating Banks :

Though a letter of credit is required to establish in conformity with the terms of the sale contract entered into by the buyer and the seller, the LC opening Bank and the negotiating Bank are not bound by the terms of the sale contract, which is entirely a matter between the buyer and the seller. The LC opening Bank is bound by the terms and conditions of the LC. The negotiating bank is bound to negotiate the bills as per the terms and conditions of the letter of credit.

31] Coming to the purported LC produced in this case. A perusal of the purported LC would show it is dated 29/2/2016. M/s VACPL is the applicant and M/s VAPL is the beneficiary of the purported LC. It is issued by Canara Bank, Deccan Gymkhana Branch under signature of accused no.4 being Branch Manager. It is verified by another Bank officer of Canara Bank, Deccan Gymkhana branch viz; Sujata Bhorkade PW 2. The purported LC is issued for an amount of Rs.300 crores INR. Canara Bank, Deccan Gymkhana Branch, Pune CNRB0000382 is the sender of the purported LC and Bank of India, Karve road branch, Pune, BKID0000503 is the receiver. Canara Bank, Deccan Gymkhana Branch, Pune is the drawee of the purported LC. It is manually issued.

It is undisputed position that purported LC bears signature of accused no.4 and stamp and Seal of Canara Bank, Deccan Gymkhana Branch, Pune.

32] In order to appreciate the purported LC it would be worthwhile to state here in brief a Bank procedure regarding discounting of a LC. On this point evidence of Banker PW 3 Shailesh Kulkarni is material. His evidence purports to show that Letter of credit is letter issued by one Bank to another Bank on behalf of their customer wherein the bills under that LC are discounted by other Bank and original responsibility is that the customer to pay and if he fails to do so the issuing bank will honour the commitment. After such LC is sanctioned, it is issued through the computer system which is known as Structure Financial Messaging System (SFMS). It is unique system provided by RBI to all the Banks since 2013. This message will go to the receiving Bank and they will accept the documents under this LC from their customer for discounting at their end. SFMS consists of three persons dealing with it, first will be putting the data into system in the issuing Bank and he is normally clerk. Thereafter it will be checked by an officer. Subsequent to that another person will verify that who is either officer or higher level. Then this message will be transmitted to the receiving Bank. Any confirmation of this LC also needs to be obtained through system only. The LC system generates 16 digit number. Out of 16 digits first three digits are numeric pertaining to the code of Bank and Branch of issuing this LC, next four digits are in alphabate about type of LC that is being issued, next two digits are numeric indicating year of issue, next three digits pertain to date of the year in which LC is issued and last four digits pertain to the LC serial number. The amount mentioned in LC is always in numeric only.

It is also material to note here certain following relevant statements made by Chandrashekhar Kulkarni PW 1 in his cross-examination by learned counsel for accused no.1 & 2 -

a] While issuing LC the Bank concerned considers need of customer and creditworthiness. Issuing Bank is responsible for payment of LC and LC itself is an instrument of payment.

b] The purported LC Exh.165 is irrevocable LC.

c] Bank of India has filed a case in DRT against Canara Bank seeking recovery of the LC amount and the same is pending for adjudication.

33] With the aforesaid evidence the main attack made on behalf of accused no.4 was that mere issuance of the purported LC under signature of accused no.4 would not be a sufficient proof of the Charge leveled against the accused. It was tried to show that though the purported LC is signed by accused no.4 it would not be sufficient to fasten criminal liability against accused no.4. It was further submitted that the greater part of discounting the bills has been done by officials of the advising Bank i.e. Bank of India. However, the Investigating Officer has given a clean chit to the officials of Bank of India. It was sought to be contended by the defence side that one sided investigation was carried out. A submission was made that the Investigating Officer allowed the concerned officials of BOI , more particularly Mrs.Phani Deshmukh, Mr. Chandrashekar Kulkarni and Bhupesh Mudholkar to go scotfree and want to such an extent that even statement of Mrs. Phani Deshmukh is not recorded / produced with the charge-sheet.

34] Principal allegation *qua* accused no.4 is that he issued the purported LC out of a criminal conspiracy and in a blatant violation of the Bank guidelines and the Bank norms. It is a matter of record that accused no.4 has been charged for an offence of abuse of his position as a public sevant being a Banker and criminal misconduct punishable under Section 13(1)(c) of the Prevention of Corruption Act. In order to make out the offence punishable under Section 13(1)(c) of the Prevention of Corruption Act the prosecution must substantiate before the Court that accused no.4 acted “dishonestly” or “fraudulently”. At this juncture it would be profitable to quote here the definitions of expression “dishonestly” and “fraudulently” postulated under Section 24 and 25 of the Indian Penal Code.

Section 24 - **“Dishonestly”** - Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that “dishonestly”

Section 25 - **“fraudulently”** - A person is said to do a thing fraudulently if he does that thing, with intent to defraud but not otherwise.

35] From the evidence on record it appears that the purported LC came to be issued under the following formidable incriminating circumstance.

36] Gravamen of the prosecution allegations *qua* the purported LC are that it was issued manually in breach of the guidelines of Canara Bank dtd.12/5/2015 of issuance of such LC by SFMS only and without entering in the books of the issuing Bank. It is another prosecution allegation that while issuing the purported LC margin security, deposit against the LC and necessary documents were not obtained.

37] It is pertinent to point out that the evidence on record clearly makes out the fact that under the various Bank guidelines it was mandatory to issue a LC by SFMS only. In the present case undisputedly the purported LC Exh.165 was issued manually. This is the very formidable circumstance to show that by giving go-bye to the mandatory guidelines of issuance of LC by SFMS the purported LC came to be issued. In this connection it is significant to note that onus was on the shoulder of accused no.4 to explain under which circumstances purported LC Exh.165 was issued manually instead of SFMS. On this point there is no explanation from side of accused no.4 to indicate any sort of plausible explanation. This is the basic circumstance which shows dishonest as well as fraudulent intention on part of accused no.4.

38] It is material to note that purported LC Exh.165 was issued by issuing Bank with signature of accused no.4 without there being deposits in the issuing Branch of Canara Bank against the purported LC Exh.165. This circumstance speaks in volume so far as intention of accused no.4 is concerned. He has practically issued the purported LC in utter breach of the guidelines in this behalf. This circumstance substantiates that accused no.4 issued the purported LC with dishonest and fraudulent intention. An attempt was made to show that it was a mere technical mistake on the part of accused no.4. A submission was made that at the most such an act of accused no.4 could be construed as mere irregularity. In support of the above submissions a proposition was made on behalf of accused no.4 that a mere disregard to the Bank guidelines will not be sufficient to fasten criminal liability against accused no.4 for the offence of criminal conspiracy as well as the alleged offence of criminal misconduct under the Prevention of Corruption Act. To buttress this proposition Authority of the Hon'ble Supreme Court in the case of **A.Sivaprakash Vs State of Kerala, Criminal Appeal No.131 of 2007** is cited before this Court wherein the Hon'ble Supreme Court since making a reference to the following Precedents observed thus -

> In C.Chenga Reddy & Ors v. State of A.P.(1996) 10 SCC 193, this Court held that even when codal violations were established and it was also proved that there were irregularities committed by allotting/awarding the work in violation of circulars, that by itself was not sufficient to prove that a criminal case was made out. The Court went on to hold:22. On a careful consideration of the material on the record, we are of the opinion that though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter of allotment of work of jungle clearance on nomination basis and have committed departmental lapse yet, none of the circumstances relied upon by the prosecution are of any conclusive nature and all the circumstances put together do not lead to the irresistible conclusion that the said circumstances are compatible only with the hypothesis of the guilt of appellants and wholly incompatible with their innocence.
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> In Abdulla Mohd. Pagarkar v. State (Union Territory of Goa,

> Daman and Diu), (1980) 3 SCC 110, under somewhat similar circumstances this Court opined that mere disregard of relevant provisions of the Financial Code as well as ordinary norms of procedural behaviour of government officials and contractors, without conclusively establishing, beyond a reasonable doubt, the guilt of the officials and contractors concerned, may give rise to a strong suspicion but that cannot be held to establish the guilt of the accused.

39] It was sought to be contended on behalf of accused no.4 that accused no.4 has not obtained any pecuniary advantage and he is not at all beneficiary of the alleged fraud and as such the provisions under Section 13(1)(d) of the Prevention of Corruption Act are not at all attracted against him. In support of this submission the Authority of the Hon'ble Apex Court in the case of **K.R. Purushothaman Vs. State of Kerala, Appeal (crl.) 495 of 2004** wherein the Hon'ble Apex Court since dealing with the provisions of criminal conspiracy and section 13(1)(c) and (d) of the Prevention of Corruption Act observed thus –

"To attract the provisions of Section 13(1)(d) of the Prevention of Corruption Act, public servant should obtain for himself or for any other person any valuation thing or pecuniary advantage by corrupt or illegal means or by abusing his position as a public servant. Therefore, for convicting a person under the provisions of Section 13(1)(d) of the Prevention of Corruption Act 1988, there must be evidence on record that the accused has obtained for himself or for any other person, any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his position as a public servant obtained for himself, or for any person, or obtain for any person, any valuable thing, or pecuniary advantage without any public interest.”

40] I am not inclined to accept any of the submissions made in this behalf by the side of accused no.4. Here dishonest and fraudulent intention on the part of accused no.4 is manifest. He has virtually ventured to give a complete go-bye to the mandatory guidelines on the point of issuance of purported LC Exh.165 with required culpable dishonest intention. Having said so I find that accused no.4 cannot be exonerated from the criminal liability. Under such premise I find that the principles enunciated in the above cited Authorities are not of any avail to the defence of accused no.4.

41] In above discussion I have pointed out the definition of the expression “dishonestly” and “fraudulently” contemplated under Section 24 and 25 of the Indian Penal Code. At this stage it would be suffice to say that accused no.4 had dishonest and fraudulent intention while issuing purported LC Exh.165.

MAKING OF FALSE 246 BILLS OF EXCHANGE & THE ANNEXURES THEREOF

42] Now I shall deal with other allegations set out by the prosecution vide caption **B** so far as the purported 246 fraudulent bills of exchange, commercial invoices of M/s Varron Aluminium Pvt.Ltd., and the fraudulent 246 lorry receipts of a fictitious transport Company viz; Maruti Transport Company are concerned. The purported 246 bills of exchange are produced vide Exh.168 to Exh.413 along with the corresponding invoices, cumulative Delivery challans / Material Receipt Note and lorry receipts. On these incriminating circumstances following evidence of the witnesses is material.

43] From the evidence of PW 1 Chandrashekhar Kulkarni these purported commercial invoices, bills of exchange, cumulative delivery challans / material receipt notes and lorry receipts purportedly showing transportation of CR sheets 1.5 mm from the factory of M/s VAPL Ratnagiri to M/s VAPCL, Pune are marked as Exhibits.

44] On this point evidence of PW 8 to PW 15 is material. Evidence of PW 8 Anant Kashiram Pawar purports to show that he is owner of vehicle truck bearing registration no. MH 08 H 1056. His evidence further purports to show that he had no business transactions at any time with M/s VAPL and M/s VACPL. This witness has categorically deposed that he had never transported any goods from Ratnagiri to Pune for Companies viz; M/s VAPL and M/s VACPL. He has disowned the purported bills along with lorry receipts Exh. 169, 229, 311 and 324. He has further testified that he does not know anything about Maruti Transport.

45] Evidence of PW 9 Anil Dhondiram Dabholkar purports to show that he is owner of vehicle tanker bearing registration no. MH 08 H 1675. His evidence further purports to show that he had no business transactions at any time with M/s VAPL and M/s VACPL. This witness has categorically deposed that he had never transported any goods from Ratnagiri to Pune for Companies viz; M/s VAPL and M/s VACPL. He has further testified that he does not know anything about Maruti Transport.

46] Evidence of PW 10 Satish Vishnu Shinde purports to show that he is owner of vehicle Tata tipper bearing registration no. MH 08 H 246. His evidence further purports to show that he had no business transactions at any time with M/s VAPL and M/s VACPL. This witness has categorically deposed that he had never transported any goods from Ratnagiri to Pune for Companies viz; M/s VAPL and M/s VACPL. He has disowned the bills along with lorry receipts Exh. 188, Exh.262, Exh.277 and Exh.342. He has further testified that he does not know anything about Maruti Transport.

47] Evidence of PW 11 Balgonda Jangonda Patil purports to show that he is owner of vehicle truck bearing registration no. MH 10 Z 2416. His evidence further purports to show that he had no business transactions at any time with M/s VAPL and M/s VACPL. This witness has categorically deposed that he had never transported any goods from Ratnagiri to Pune for Companies viz; M/s VAPL and M/s VACPL. He has disowned the bills along with lorry receipts Exh.201, Exh.225, Exh.243 and Exh.183. He has further testified that he does not know anything about Maruti Transport.

48] Evidence of PW 12 Satish Atmaram Ambre purports to show that he is owner of vehicle tempo bearing registration no. MH 08 H 2958. His evidence further purports to show that he had no business transactions at any time with M/s VAPL and M/s VACPL. This witness has categorically deposed that he had never transported any goods from Ratnagiri to Pune for Companies viz; M/s VAPL and M/s VACPL. He has disowned business transactions with either M/s VAPL or M/s VACPL He has further testified that he does not know anything about Maruti Transport.

49] Evidence of PW 13 Vinod Vishnu Amburle purports to show that he is owner of vehicle truck bearing registration no. MH 08 H 1049. His evidence further purports to show that he had no business transactions at any time with M/s VAPL and M/s VACPL. This witness has categorically deposed that he had never transported any goods from Ratnagiri to Pune for Companies viz; M/s VAPL and M/s VACPL. He has disowned the bills along with lorry receipts Exh.179, Exh.186, Exh.238, Exh.297, Exh.288, Exh.275, Exh.249, Exh.340, Exh.256, Exh.264, Exh.194, Exh.299, Exh.207, Exh.215 and Exh.217. He has further testified that he does not know anything about Maruti Transport.

50] Evidence of PW 14 Ravikiran Jagannath Narvekar purports to show that he is owner of vehicle truck bearing registration no. MH 10 Z 2958. His evidence further purports to show that he had no business transactions at any time with M/s VAPL and M/s VACPL. This witness has categorically deposed that he had never transported any goods from Ratnagiri to Pune for Companies viz; M/s VAPL and M/s VACPL. He has disowned the bills along with lorry receipts Exh.177, Exh.181, Exh.187, Exh.210, Exh.236, Exh.292, Exh.276, Exh.270, Exh.263, Exh.254, Exh.258, Exh.341, Exh.395, Exh.365, Exh.358, Exh.319, Exh.331, Exh.335 and Exh.401. He has further testified that he does not know anything about Maruti Transport.

51] Evidence of PW 15 Amey Krishna Parkar purports to show that he is owner of vehicle bearing registration no. MH 08 H

2416. His evidence further purports to show that he had no business transactions at any time with M/s VAPL and M/s VACPL. This witness has categorically deposed that he had never transported any goods from Ratnagiri to Pune for Companies viz; M/s VAPL and M/s VACPL. He has disowned the bills along with lorry receipts Exh.174, Exh.231 and Exh.316. He has further testified that he does not know anything about Maruti Transport.

52] Prosecution is coming with a case that fictitious transportation of Company goods of M/s VAPL Ratnagiri to M/s VACPL Pune was shown on mere papers. Turning to the version of the prosecution witnesses vide PW 8 to PW 15. It is to be noted that these witnesses appear to be independent persons. They have no business to depose false against the accused. Their basic version that they never had business transaction of transportation of Company goods of M/s VAPL is not vitiated in any way in their respective testimonies. They stood the test of cross-examination. They have denied the suggestions that they are deposing false and the behest of CBI. As indicated above there is nothing in the cross-examination of PW 8 to PW 15 to show that they are got up witnesses. Once the testimonies of PW 8 to PW 15 are found trustworthy an inference could be easily drawn that fictitious transportation of the Company goods of M/s VAPL Ratnagiri to M/s VACPL Pune was shown in the annexures of the bills drawn by M/s VAPL vide Exh.168 to Exh.413.

53] It is pertinent to state that from the above evidence it is proved fictitious transportation of the Company goods were shown under *non-est* fictitious transport Company viz; Maruti Transport

Company. On this point evidence of PW 17 Arun Jairam Kamble and PW 25 Sanjiv Vishwambhar Pophale is also material. It is in the evidence of PW 17 Arun Jairam Kamble that his shop vide shop no.5 situated in the Sankeshwar Madhuban Gruhnirman Sanstha Maryadit society is not in use since more than 4-5 years. According to this witness there is no activity at shop no.5. He has also testified that no board of Maruti Transport Company is displayed on said shop no.5. This version of PW 17 is corroborated by PW 18 Kiran Prakash Vichare. PW 18 Kiran Prakash Vichare is working as postman attached with Bit no.11, Head-office at Ratnagiri. His evidence purports to show that on shop no.5 situated in said building viz; Sankeshwar Madhuban Gruhnirman Sanstha Maryadit, there was no nameplate or board showing occupation of Maruti Transport Company. He has also deposed that upon his inquiry it was transpired to him that said shop no.5 is / was closed. The evidence of PW 17 and 18 is further corroborated by the evidence of PW 25 Sanjiv Pophale. He is the Director of M/s VAPL and M/s Varron Industries Pvt.Ltd.. His evidence shows that since year 2005 he is working with M/s VAPL at Ratnagiri. He has specifically deposed that he is not aware of Maruti Transport Company. His further evidence shows that Varron Group has not utilized services of Maruti Transport Company for transporting CR sheets from Ratnagiri to Bhosari, Pune, at any point of time during his tenure.

54] It must be pointed out that aforesaid version of PW 17, PW 18 and PW 25 is not shaken in any way during the course of their respective cross-examination. PW 25 is the most material witness on this point as for a number of years he was working with

M/s VAPL. He became Director of M/s VAPL in the year 2012. This goes to show that this witness was associated with M/s VAPCL for a number of years and therefore his testimony assumes much significance. Having considered the evidence of PW 17, PW 18 and PW 25 it is more than clear that at the relevant time a Transport Company named and styled "Maruti Transport Company" was *non-est* & fictitious Once such a conclusion is drawn then it is obvious that fictitious transportation of the Company goods from M/s VAPL to M/s VACPL Company has been shown in the purported bills of exchange and the annexures thereof.

55] It is pertinent to state that the purported bills, bills of exchange, delivery challans, commercial invoices and the lorry receipts vide Exh.168 to Exh.413 have been marked as Exhibits in the deposition of PW 1 Chandrashekhar Kulkarni Exh.158. His evidence purports to show that VAPL drawn the bills of exchange and he endorsed at the backside of the bills of exchange and signed it. His evidence further shows that accused no.3 signed the bills of exchange as acceptance for accused no.2 Company a purchaser of the Company goods of M/s VAPL. This witness has testified that the corresponding delivery challans annexed with the bills of exchange bear signature of accused no.6 Ganesh Kolhe. It has come in the evidence of this witness that accused no.6 has signed on behalf of accused no.1 Company. Evidence of Chandrashekhar Kulkarni PW 1 further shows that the corresponding invoices have been signed by accused no.3 as acceptance for accused no.2 and counter signed by accused no.6 Ganesh Kolhe. It has further come in the evidence of this witness that authorized signatory of accused no.2 Company signed the corresponding lorry receipts annexed with the bills of exchange. It is material to note that this evidence of Chandrashekhar Kulkarni PW 1 is in conformity with the documents produced vide Exh.168 to Exh.413. Having said so dishonest and fraudulent intention could be easily gathered on the basis of the proven fact that fictitious transportation of the Company goods of M/s VAPL Ratnagiri to M/s VACPL Pune was shown on mere papers. Under such premise it is more than clear that the bills of exchange were fraudulent drawn with a dishonest intention.

56] It be noted that a mere glance to the bill of exchange and it's annexures would show that the documents were prepared and made with a design to defraud Bank of India. It is very interesting to point out that fictitious transportation of Company goods *inter-se* sister Companies i.e. M/s VAPL to M/s VACPL, Pune is shown. This circumstance speaks in volumes. For illustration purpose I am pointing out here the purported bill of exchange Exh.168. This bill of exchange has been drawn under purported LC 01/2016 dtd, 29/2/2016 of Canara Bank, Mid Corporate Branch, Deccan Gymkhana, Pune for a sum of Rs.1,21,64,391/-. It is under signature of accused no.3 as authorized signatory for M/s VACPL. It is appearing that PW 1 Chandrashekhar Kulkarni endorsed and signed at the back of the said bill of exchange. A delivery challan dtd. 22/1/2016 is annexed with the bill of exchange Exh.168 to show that under invoice no. 3817, 186857 CR Sheets 1.5 mm were transported from Ratnagiri to Pune. The bill of exchange is further annexed with the commercial invoice vide no.3817 dtd. 22/1/2016. The bill of exchange is further annexed with the lorry receipt dtd. 22/1/2016 to show that on 22/1/2016 through vehicle no. MH 08 H 2180 the purported Company goods were consigned. From the above data of the bill of exchange Exh.168 and its annexures it is appearing that mere paper work was done to show fictitious transportation of the Company goods to get discounted the bill of exchange. Under such premise it is proved that with dishonest intention false bills of exchange Exh.168 to Exh.413 were prepared fraudulently. It shall have to be noted here that in view of Exh.161 authorized signatories of the Comapny at the relevant time were Pramod Papnani, Ganesh Kolhe and Ganesh Gaikwad.

DISCOUNTING OF THE BILLS OF EXCHANGE

57] This discussion brings me to the crucial aspect of discounting of the bills of exchange on date 29/2/2016 and 01/3/2016 [vide caption **C** stated above]. In nutshell the following facts are material -

a] On 29/2/2016 accused no.3 approached Bank of India, Karve road Branch, Pune, along with purported LC 01/2016 and the LC backed bills for discounting.

b] AGM of Bank of India Mrs.Phani Deshmukh sent Bhupesh Mudholkar PW 32 to Canara Bank, Deccan Gymkhana Branch, for verification of the purported LC.

c] Accused no.4 S.R. Hegde instructed Mrs. Sujata Borkhade PW 2 officer of Canara Bank to confirm the purported LC and she wrote “signature verified” on the purported LC and put her signature. In turn the purported LC was handed over to Bhupesh Mudholkar PW 32.

58] On the point of above alleged facts evidence of Bhupesh Mudholkar PW 32, evidence of Sujata Borkhade PW 2 and evidence of Bharat Mhaske PW 28 is material.

59] Turning to the evidence of Bhupesh Mudholkar PW 32. He has deposed that in the year 2016-17 he was working as Marketing Executive, Bank of India, Karve road, Pune. His evidence purports to show that on 29/2/2016 while he was present in Karve road Branch at about 4.00 to 4.30 p.m. accused Shrikant Sawaikar visited the Branch and met Mrs. Phani Deshmukh at about 5.30 to 6.00 p.m. He has deposed that after brief discussion between accused Shrikant Sawaikar and Mrs. Phani Deshmukh purported LC no. 01/2016 was handed over to Mrs. Phani Deshmukh by the former. He has testified that Mrs. Phani Deshmukh studied the purported LC and handed over it to him for verification. Evidence of Bhupesh Mudholkar PW 32 purports to show that on the instructions of Mrs. Phani Deshmukh he along with Bharat Mhaske PW 28, a representative of accused Shrikant Sawaikar, went to Canara Bank, Deccan Gymkhana branch, and met Sujata Borkhade PW 2. According to this witness Sujata Borkhade PW 2 verified the signature of Mr. Hegde accused no.4. He has further deposed that he returned to his Branch along with purported LC, met Mrs. Phani Deshmukh and handed over purported LC to Mrs. Phani Deshmukh. It be noted that this version of Bhupesh Mudholkar PW 32 is corroborated by Bharat Mhaske PW 28 and Sujata Borkhade

PW 2. It is pertinent to state that the purported LC Exh.165 corroborates to the version of Bhupesh Mudholkar PW 32. The purported LC Exh.165 shows signature of Sujata Borkhade PW 2 under the caption “signature verified”. It is noteworthy that throughout the trial accused no.4 Mr. Hegde has not disputed that the purported LC Exh.165 is under his signature. Evidence of Bhupesh Mudholkar PW 32 on the point of his visit for verification to Canara Bank, Deccan Gymkhana branch, is not vitiated in any way. Under such premise it is proved that Bhupesh Mudholkar PW 32 had been to Canara Bank, Deccan Gymkhana Branch, Pune for verification of the purported LC Exh.165. It is also proved that signature of accused no.4 was verified and accordingly it was endorsed by Sujata Borkhade PW 2.

This discussion takes me to the crucial aspect involved in the trial pertaining to discounting of the bills on the basis of the purported LC Exh.165. On this point evidence of Chandrashekhar Kulkarni PW 1, Bhupesh Mudholkar PW 32 is material. Evidence of Chandrashekhar Kulkarni purports to show that on 29/2/2016 accused no.3 along with his two assistants came to Bank of India, Karve road Branch, Pune, in afternoon for discounting the purported LC. His evidence shows that accused no.3 had filed a written request for discounting the LC vide Exh.166. It has come in the evidence of this witness that at the relevant time Branch Head AGM Mrs.Phani Deshmukh was not available in the Branch and as such accused no.3 made a telephone call to Zonal Manager to P.A. Joshi. His further evidence shows that Shri. P.A. Joshi had instructed to call Mrs. Phani Deshmukh over telephone and asked her to come to the Branch. Further evidence of Chandrashekhar Kulkarni PW 1 shows that accused no.3 handed over the purported LC along with the request letter to Mrs. Phani Deshmukh and in turn she handed over it to Bhupesh Mudholkar PW 32 for verification. It has further come in the evidence of this witness that he was handed over the corresponding bills for processing. According to this witness he prepared a memorandum for approval for discounting of the bills. He has affirmed the memorandum of approval Exh.167 and stated that it was recommended by him and it was approved by Mrs. Phani Dehsmukh. His further evidence purports to show that feeding of the 246 bills in Finacle System was started. He has affirmed the bills of exchange Exh.168 to Exh.413. His evidence purports to show that on 29/2/2016 bill feeding and discounting came to be carried out to the extent of Rs.118 crores and remaining bills discounting to the tune of Rs.182 crores was carried out on 01/3/2016. He has deposed that after discounting of the bills the corresponding amount got credited to the current account of accused no.1 Company. He has further deposed that Bhupesh Mudholkar PW 32 had brought the acceptance letter from Canara Bank vide Exh.422.

60] During cross-examination Chandrashekhar Kulkarni PW 1 admitted that in the memorandum of approval Exh.167 there is a reference that the purported LC is received through SFMS and credit is available for negotiations with any nationalized Bank of India. However, he explained that it is mistakenly mentioned in the memorandum of approval Exh.167 because of “copy & paste”. He admitted that on Exh.166 there is no mention of LC number and date of the concerned LC. He admitted not to have ascertained truthfulness of the bills as there was no doubt about the same. According to this witness he had prepared the memorandum of approval Exh.167 as per instructions of Mrs. Phani Deshmukh.

61] During the course of further cross-examination on behalf of accused no.4, Chandrashekhar Kulkarni PW 1 stated that if a LC is received through SFMS it does not require any verification. He has admitted that on the purported LC Exh.165 the LC number is not auto generated. He has also admitted that the purported LC Exh.165 does not bear signature of two officers. He has further admitted that details of the concerned goods are not mentioned / available on purported LC Exh.165. He admitted that though there was guideline of Reserve Bank of India not to discount a manual LC they had discounted the purported LC and thereby the amount was transferred to account of accused no.1 Company.

62] Turning to the evidence of Bhupesh Mudholkar PW 32. His evidence purports to show that on 29/2/2016 and 01/3/2016 the process of LC discounting was completed. His evidence shows that he had handed over all the concerned documents i.e. 246 bills and obtained acceptance of accused no.4 Mr.Hegde vide Exh.422. During the course of cross-examination by learned advocate of accused no.4 Bhupesh Mudholkar PW 32 admitted that the acceptance letter Exh.422 itself does not show that those documents handed over by him to Canara Bank, Deccan Gymkhana Branch, Pune. He has also admitted that on 01/3/2016 he had not personally verified the soft copy of bills details sent by his Branch to Canara Bank, Deccan Gymkhana Branch.

63] From the above evidence it is proved that on the basis of purported LC Exh.165 the bills were discounted. It is material to note that the acceptance letter Exh.422 shows acceptance of the bills by accused no.4. An attempt was made to show that acceptance letter Exh.422 was not annexed with the bills and as such the case of prosecution could not be acted upon. In any case it is substantiated before the Court that on the basis of purported LC Exh.165, acceptance letter Exh.422 the bills were discounted on 29/2/2016 and 01/3/2016. It is also proved that on 29/2/2016 pursuant to the discounting amount of Rs.118 crores was got credited to the current account of accused no.1 Company and on 01/3/2016 amount of Rs.182 crores got credited to the account of accused no.1 Company.

64] In the foregoing discussion it is found that the purported bills of exchange and the annexures thereof were prepared and made fraudulently showing fictitious transportation of the Company goods through *non-est* fictitious transport Company from M/s VAPL Ratnagiri to M/s VACPL Pune. This proves beyond doubt that the bills of exchange and the annexures thereof Exh.168 to Exh.413 are false and fake. Having said so I find that the purported bills of exchange were got discounted under the purported LC Exh.165. Therefore, it is proved that the bills of exchange were got fraudulently discounted.

65] At this juncture it is the bone of contention of accused no.4 that he has been made a scapegoat. On behalf of accused no.4 main attack was made since making a submission that the Investigating Officer has protected the officials of Bank of India. It was sought to be contended that the purported LC was discounted by Bank of India under a number of suspicious circumstances and doubtful acts of the officials of Bank of India, more particularly, Mrs. Phani Deshmukh, Mr.Chandrashekhar Kulkarni PW 1, Bhupesh Mudholkar PW 32, Zonal Manager Mr. Joshi etc.. It was further submitted that by giving a complete go-bye to the mandatory norms the purported LC though issued manually was discounted since making a reference that it is a SFMS generated. Sum and substance of the stand taken by accused no.4 is that officials of Bank of India should not have discounted the purported LC which on the face of it was not in accordance with the Bank guidelines.

66] In order to appreciate the aforesaid stand of accused no.4 it must be pointed out at this stage itself that in my above discussion I have given a finding that accused no.4 issued the purported LC dishonestly and fraudulently. There cannot be any doubt that issuance of the purported LC is the genesis of the instant bank fraud. It appears that the edifice of the conspiracy of the bank fraud was constructed upon the base of the purported LC Exh.165. As indicated above accused no.4 is the signatory of the purported LC Exh.165. He has never disputed this position during th entire trial. Under such premise, I am afraid that, accused no.4 cannot be allowed to contend that the officials of Bank of India should have rejected the purported LC for discounting. It must be pointed out that the purported LC Exh.165 is irrevocable one and it was the responsibility of Bank of India to honour the LC. It is no doubt appearing that the officials of Bank of India, more particularly, Mrs. Phani Deshmukh, Mr.Chandrashekhar Kulkarni PW 1, Bhupesh

Mudholkar PW 32 should have been vigilant enough while processing and discounting the purported LC. It appears that the concerned officials of Bank of India have not taken due care while processing and discounting the purported LC. As indicated above they were not vigilant. However, crux of the matter would be whether the material on record indicates their complicity to show that they were party to the alleged criminal conspiracy. On this point it is mateiral to note that the evidence on record does not show that since inception of the Bank fraud i.e. since issuance of purported LC concerned officials of Bank of India were involved. There is no material to show that there is reasonable nexus in between accused persons and the officials of Bank of India. Under such premise I find that it would be hazardous to infer complicity / involvement of the concerned officials of Bank of India.

67] It is no doubt true that the process of discounting of purported LC was carried out in haste. There are also certain suspicious circumstances in the process of discounting of the purported LC such as it was not a SFMS generated LC etc.. However, other surrounding circumstances shall have to be considered while appreciating this aspect involved in the trial. It has come on record that accused no.3 was a big industrialist and Director of accused no.1 and 2 Companies. Evidence of Prashant Naik PW 33 who is the complainant shows that accused no.3 was holding a good reputation. It appears that accused no.3 since deceased was the valued customer of Banks. It has also come on record on 29/2/2016 accused no.3 was pressing hard before AGM Mrs. Phani Deshmukh for discounting of the bills on the basis of the purported LC Exh.165. It has also come on record that accused no.3 had approached the Higher-ups of Bank of India i.e. Zonal Manager Mr.Joshi for the purposes of quick process of discounting the bills and purported LC. It is proved that Bhupesh Mudholkar PW 32 had personally visited and verified regarding issuance of purported LC Exh.165 and signature of accused no.4 on the purported LC Exh.165 was verified by another official of Canara Bank viz; Sujata Borkhade PW 2. Under such attending circumstances it appears that the purported LC was taken up for processing and discounting.

68] Much capital was made on behalf of the accused no.4 since making a submission that the purported bills under LC Exh.165 were discounted in undue haste and that too before acceptance of the bills by issuing Bank i.e. Canara Bank. In order to appreciate such a criticism made on behalf of accused no.4 it must be noted that Bhupesh Mudholkar PW 32 in his evidence specifically stated that accused no.4 signed the acceptance in his presence. He has affirmed acceptance letter Exh.422. It be noted that acceptance letter Exh.422 speaks in itself. A perusla of acceptance letter Exh.422 shows that it is dtd.29/2/2016. It has been issued by accused no.4 for issuing Bank. In said acceptance letter it is specifically mentioned that it is annexed with details of bills as per the list enclosed. It is further appearing that bill details of M/s VAPL under LC No.01/2016 is annexed with acceptance letter Exh.422. It is noteworthy that accused no.4 who is author of the acceptance letter Exh.422 has never disputed his authorship vis-a-vis his signature on the acceptance letter Exh.422. Having considered tenor of the acceptance letter Exh.422 there is no room for doubt that the bills drawn under LC no.01/2016 were accepted by issuing Bank and the acceptance was confirmed by the acceptance letter Exh.422. Under such premise I find that criticism made on behalf of accused no.4 sans substance.

69] To sum up, it is proved that the accused no.4 issued the purported LC Exh.165 with fraudulent and dishonest intention. It is also proved that false bills of exchange and the annexures thereof [Exh.168 to Exh.413] were got prepared fraudulently. It is further proved that the purported bills of exchange on the basis of purported LC Exh.165 were got discounted fraudulently.

UTILIZATION OF THE PROCEEDS

70] Under the backdrop of above proven facts it is more than clear that the prosecution has made out the bank fraud alleged in this case. Now, the evidence on the point of alleged fraudulent utilization of proceeds of the bills discounted for Rs.299.31 crores by M/s VAPL shall have to be appreciated, in order to find out as to whether the alleged utilization of the proceeds were out of the alleged criminal conspiracy. Here it must be pointed out that I will be discussing the aspect of criminal conspiracy in a subsequent part of this judgment after having marshaled and appreciated the entire evidence on record.

71] At this stage a short resume of the alleged utilization of the proceeds can be stated here that at the behest of accused no.3 after the bills got discounted an amount of Rs.14.12 crores was transferred to M/s Maharashtra Metal Corporation under the cheque signed by accused Ganesh Kolhe [Exh.416, Exh.484, Exh.485 and Exh.486]. By way of another cheque dtd.29/2/2016 an amount of Rs.52.14 crores was transferred to the account of M/s Hind Auto Enterprises vide Exh.415. Amount of Rs.14 crores was transferred from M/s Maharashtra Metal Corporate to Canara Bank, Deccan Gymkhana branch, Pune. Rs.52 crores was transferred from Hind Enterprises to Canara Bank, Deccan Gymkhana Branch, Pune vide Exh.488.

72] On the instructions of accused no.3 an amount of Rs.90.59 crores was transferred to account of M/s Hind Auto Enterprises maintained at Bank of India, Karve road Branch on 01/3/2016 and 02/3/2016. On 01/3/2016 at the behest of accused no.3 amount of Rs.100 crores was transferred to account of M/s Maharashtra Metal Corporation. The concerned cheques were signed by accused Ganesh Gaikwad and accused Ganesh Kolhe. Amount of Rs.62 crores was transferred from M/s Hind Auto Enterprises to M/s VAPL and amount of Rs.28.15 crores was transferred to M/s VAPL account maintained at SBI, Industrial Finance Branch, Pune. It has come in the evidence that the said amount was utilized for reducing the liability of cash credit account of Varron Industrial Pvt. Ltd. and M/s VAPL. According to the case of prosecution these amounts were transferred from the account of M/s Maharashtra Metal Corporate and M/s Hind Auto Enterprises without any underline transactions.

73] It is further case of prosecution that an amount of Rs.1.10 crores was transferred from the account of M/s VAPL to the account of Ratna Metal Mart maintained at Bank of India and this fund was utilized for settling 41 outstanding bills of Ratna Metal Mart concerned with accused no.8. It is alleged that there was no underline transaction between M/s VAPL and Ratna Metal Mart. Further an amount of Rs.1 crores was transferred to the account of Shweta Trading Company from the account of M/s VAPL and the concerned amount was utilized for settling 38 outstanding bills of Shweta Trading Company concerned with accused no.9

74] At this juncture it is material to state here that PW 4 Ravi Shankar in his evidence has given account about the utilization of the amount got discounted pertaining to the purported bills and on the basis of the purported LC Exh.165. For the sake of convenience the details from the deposition of PW 4 can be stated here in tabular form as under; Be it noted that evidence of Ravi Shankar PW 4 has practically gone unchallenged in his cross-examination on behalf of all the accused.

Sr No	Account No	Date & Cheque No / Voucher	Amount in Rs.	Authorized Signatories of the firm (singed on the cheque)	Details of Beneficiaries as per debit voucher	Exh. No.
1	050320110 000911 of Varron Alluminium Pvt.Ltd. (MR No. 6716/17)	Dt. 29.02.16 Chq no.10	521419782.00	Shri.Ganesh Kolhe & Shri Ganesh Gaikwad	M/s Hind Auto Enterprises, A/c No. 0503201100 00629	415 (D-261)
2	050320110 000911 of Varron Alluminium Pvt.Ltd. (MR No. 6718/17)	Dt. 01.03.16, Chq no.55	285364289.00	Shri.Ganesh Kolhe & Shri Ganesh Gaikwad	M/s Hind Auto Enterprises, A/c no. 0503201100 00629	481 (D-263)

3	050320110 000911 of Varron Alluminium Pvt.Ltd. (MR No. 6719/17)	Dt. 01.03.16, Chq no.54	369287348.00	Shri.Ganesh Kolhe & Shri Ganesh Gaikwad	M/s Hind Auto Enterprises, A/c no. 0503201100 00629	482 (D-264)
4	050320110 000911 of Varron Alluminium Pvt.Ltd. (MR No. 6723/17)	Dt. 01.03.16, Chq no.9	251298756.00	Shri.Ganesh Kolhe & Shri Ganesh Gaikwad	M/s Hind Auto Enterprises, A/c no. 0503201100 00629	483 (D-268)
	Total amount		1427370175.00			
5	050320110 000911 of Varron Alluminium Pvt.Ltd. (MR No. 6717/17)	Dt. 29.02.16, Chq no.11	481278516.00	Shri.Ganesh Kolhe & Shri Ganesh Gaikwad	M/s Maharashtra Metal Corporation A/c no. 0503201100 00630	416 (D-262)
6	050320110 000911 of Varron Alluminium Pvt.Ltd. (MR No. 6720/17)	Dt. 01.03.16, Chq no.52	345986521.00	Shri.Ganesh Kolhe & Shri Ganesh Gaikwad	M/s Maharashtra Metal Corporation A/c no. 0503201100 00630	484 (D-265)
7	050320110 000911 of Varron Alluminium Pvt.Ltd. (MR No. 6721/17)	Dt. 01.03.16, Chq no.53	328364672.00	Shri.Ganesh Kolhe & Shri Ganesh Gaikwad	M/s Maharashtra Metal Corporation A/c no. 0503201100 00630	485 (D-266)
8	050320110 000911 of Varron Alluminium Pvt.Ltd. (MR No. 6722/17)	Dt. 01.03.16, Chq no.51	325648796.00	Shri.Ganesh Kolhe & Shri Ganesh Gaikwad	M/s Maharashtra Metal Corporation A/c no. 0503201100 00630	486 (D-267)

	Total amount		1481278505.00			
9	050320110000911 of Varron Alluminiumm Pvt Ltd **(MR No. 9766/17)**	Dt. 01.03.16, voucher	20000000.00	--	M/s. Sweta Trading Co. A/c no. 050320110000730 & M/s. Ratna Metal Mart A/c no. 050320110000731	**Exh.-441 (D-350)**
10	050320110000911 of Varron Alluminiumm Pvt Ltd **(MR No. 9767/17)**	Dt. 01.03.16, voucher	1000000.00	--	M/s. Ratna Metal Mart A/c no. 050320110000731	**Exh.-442 (D-351)**
11	050320110000911 of Varron Alluminiumm Pvt Ltd **(MR No. 6724/17)**	Dt. 09.03.16, Cheque no. 57	2832345.00	Shri.Ganesh Kolhe & Shri Ganesh Gaikwad	M/s. Varron Auto Comp, A/c no. 050320110000923	**Exh.-487 (D-269)**
	The original Cheques along with RTGS application form as under -					
Sr. No	Account No.	Date and Cheque no./ voucher	Amount in Rs.	Authorized Signatories of the firm (singed on the cheque)	Details of Beneficiaries as per RTGS application form	Exh. No.
1	M/s. Hind Auto Enterprises, A/c no. 050320110000629 **(MR No. 9755/17)**	Dt. 29.02.16, Cheque no. 868	520000000.00	Shri Ashok Laxman More (Prop.)	Canara Bank, A/c no. 3776201000036, IFSC Code. CNRB0003776	Exh.-488 (D-339)
2	M/s. Hind Auto Enterprises, A/c no. 050320110000629 **(MR No. 9756/17)**	Dt. 01.03.16, Cheque no. 1175	299873965.00	Shri Ashok Laxman More (Prop.)	Varron Industries Pvt Ltd, A/c no. 30089375871, IFSC Code. SBIN0008966	Exh.-489 (D-340)

3	M/s. Hind Auto Enterprises, A/c no. 050320110000629 **(MR No. 9757/17)**	Dt. 01.03.16, Cheque no. 1173	320126478.00	Shri Ashok Laxman More (Prop.)	Varron Industries Pvt Ltd, A/c no. 30089375871, IFSC Code. SBIN0008966	Exh.-490 (D-341)
Total amount of sr.no.2 & 3			620000443.00			
4	M/s. Hind Auto Enterprises, A/c no. 050320110000629 **(MR No. 9758/17)**	Dt. 02.03.16, Cheque no. 904	281598352.00	Shri Ashok Laxman More (Prop.)	Varron Alluminiumm Pvt Ltd, A/c no. 32911516274, IFSC Code. SBIN0008966	Exh.-491 (D-342)
5	M/s. Maharashtra Metal Corporation, A/c no. 050320110000630 **(MR No. 9761/17)**	Dt. 29.02.16, Cheque no. 960	480000000.00	Shri Ashok Laxman More (Prop.)	Canara Bank, A/c no. 3776201000036, IFSC Code. CNRB0003776	Exh.-492 (D-345)
6	M/s. Maharashtra Metal Corporation, A/c no. 050320110000630 **(MR No. 9762/17)**	Dt. 01.03.16, Cheque no. 794	319989564.00	Shri Ashok Laxman More (Prop.)	Varron Alluminiumm Pvt Ltd, A/c no. 32911516274, IFSC Code. SBIN0008966	Exh.-493 (D-346)
7	M/s. Maharashtra Metal Corporation, A/c no. 050320110000630 **(MR No. 9763/17)**	Dt. 01.03.16, Cheque no. 749	331327319.00	Shri Ashok Laxman More (Prop.)	Varron Industries Pvt Ltd, A/c no. 30089375871, IFSC Code. SBIN0008966	Exh.-494 (D-347)
8	M/s. Maharashtra Metal Corporation, A/c no. 0503201100	Dt. 01.03.16, Cheque no. 748	348672681.00	Shri Ashok Laxman More (Prop.)	Varron Industries Pvt Ltd, A/c no. 30089375871, IFSC Code. SBIN0008966	Exh.-495 (D-348)

	00630 **(MR No. 9764/17)**						
Total amount of sr.no. 7 & 8		680000000.00					

75] It is material to note that the evidence of PW 4 Ravi Shankar and the Investigating Officer is corroborated by the documentary evidence as indicated above. This evidence of prosecution is not vitiated in any way. There is nothing on record to show that the aforesaid documentary evidence is either suspicious or doubtful. It is important to note that accused Ganesh Gaikwad, accused Ganesh Kolhe have not disputed that they were the authorized signatories and they signed on the concerned cheques, RTGS, applications etc.. It is bone of contention of these accused that they signed at the behest of their employer accused no.3 and their signatures have been misutilized. The fact remains on record that these accused signed the corresponding cheques, RTGS applications. Here it must be pointed out that in all probabilities these accused knew that the purported bills of exchange are false and based on fictitious transportation of the Company goods. Under such premise the requisite culpable knowledge can be attributed to these accused. In a subsequent part of this Judgment I shall be dealing in more detail regarding the overt acts proved against these accused. From the above documentary evidence the prosecution has succeeded in establishing before the Court the details of utilization of proceeds of 246 purported bills discounted for Rs.293.31 crores by M/s VAPL on 29/02/2016 and 01/3/2016 at Bank of India, Karve road Branch, Pune.

INFERENCE OF CRIMINAL CONSPIRACY

76] This discussion brings me to the core of the trial pertaining to the alleged criminal conspiracy. Prosecution is coming with a case that the accused persons hatched a criminal conspiracy and committed the instant bank fraud. In order to appreciate the point of criminal conspiracy it would be germane to highlight here the well settled position under the Law [vide Authorities in case of **Ajay Agarwal Vs. Union of India, Criminal Appeal No.400 of 1993** and **Shivanarayan Laxminarayan Joshi and others Vs. State of Maharashtra and others Criminal Appeals Nos. 179 and 178 of 1972 and 251 and 252 of 1973** cited by prosecution].

In the case of **Ajay Agrawal** [cited supra] the Hon'ble Apex Court since dealing with the provision of criminal conspiracy and having made reference to the Precedents has observed thus -

> "In Mohammed Usman. Mohammad Hussain Manivar & Anr. V. State of Maharashtra, 1981(3) S C R 68, it was held that for an offence under section 120B Indian Penal Code, the prosecution need not necessarily prove that the conspirators expressly agreed to do or cause to be done the illegal act. the agreement may be proved by necessary implication. In Noor Mohammed Yusuf Momin v. State of Maharashtra, 1971(1) S C R 119, it was held that section 120B Indian Penal Code makes the criminal conspiracy as a substantive offence which offence postulates an agreement between two or more persons to do or cause to be done an act by illegal means. If the offence itself is to commit an offence, no further steps are needed to be proved to carry the agreement in to effect. In R.K.Dalmia & Anr. V The Delhi Administration, 1963(1) S C R 253, it was further held that it is not necessary the each member of a conspiracy must know all the details of the conspiracy. In Shivnaraya Laxminarayan & Ors. V State of Maharashtra & Ors [1980] 2 S C C 465, this court

> emphasised that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the inferences drawn from acts or illegal omission committed by the conspirators in pursuance of a common design.
>
> A conspiracy thus, is a continuing offence and continues to subsist and committed wherever one of the conspirators does an act or series of acts. So long its performance, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity. A crime is complete as soon as the agreement is made, but it is not a thing of the moment. It does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry into effect the design. Its continuance is a threat to the society against which it was aimed at and would be dealt with as soon as that jurisdiction can properly claim the power to do so. The conspiracy designed or agreed abroad will have the same effect as in India, when part of the acts, pursuant to the agreement are agreed to be finalised or done, attempted or even frustrated and vice versa.

In the case of **Shivnarayan Joshi** [cited supra] the Hon'ble Apex Court has observed thus -

> “Under the principle contained in Section 10 of the Evidence Act, once a conspiracy to commit an illegal act is proved, act of one conspirator becomes the act of the other.”

77] Coming back to the case in hands. In the foregoing discussion I have found that the prosecution has succeeded in proving beyond a reasonable doubt the following formidable facts / allegations -

B] Fraudulent preparation of 246 purported bills of exchange, cumulative delivery challans, cumulative commercial invoices and lorry receipts of transportation of the Company goods.

C] Fictitious transportation of Company goods through non-est fictitious transport Company viz; Maruti Transport Company showing fictitious transportation of Company goods [CR sheets 1.5 mm] from the factory of M/s VAPL Ratnagiri to M/s VACPL, Pune.

D] Fraudulent discounting of the purported Bills of exchange on the basis of the purported LC for Rs.299.31 crores by M/s VAPL.

78] Now I shall deal with the specific overt acts proved against each of the accused and the role played by them.

Accused No.1 & 2 are the Companies. Accused no.1 is the direct beneficiary. Accused no.3 the main person of these Companies being Director. At this stage it may be noted that on behalf of accused no.1 and 2 the learned counsel for Mr.Dravid made a proposition that corporate culpability is not attracted against accused no.1 and 2 Companies. His main thrust of submission was that none of the Directors of the Companies are involved in the alleged conspiracy and as such section 120B cannot be said to be proved against accused no.1 and 2. It was sought to be contended that accused no.3 in his individual capacity might have been involved.

79] In order to appreciate the above submissions made on behalf of accused no.1 and 2 it must be noted that the Hon’ble Supreme Court has enunciated principle on the question of corporate liability for criminal offences since holding that a company cannot claim immunity from criminal prosecution on the grounds that it does not have the necessary *mens rea* (i.e. ‘guilty mind’) to commit a criminal offence.

As indicated above accused no.1 is the direct beneficiary of the alleged bank fraud. I am well aware that under Law a Company is a juristic entity. It is also well settled legal position that for substantive sentence of imprisonment cannot be awarded to a Company. However, in the present trial a peculiar fact and situation is obtained. The entire bank fraud has been committed essentially by using false documents of the Companies. It is material to note that in foregoing discussion I have pointed out that the Companies shown fictitious transportation of the Company goods for making false documents of bills of exchange. The bills of exchange and the annexures thereof are the false documents. Under such premise I am not inclined to accept the submission made on behalf of accused no.1 and 2 that corporate culpability is not attracted against accused no.1 and 2. This manifest that accused no.1 and 2 Companies were parties to the criminal conspiracy.

It is a matter of record that accused no.3 died during pendency of the trial. Consequently the proceeding stood abated against him.

Undisputedly accused no.4 at the relevant time was the public servant being a banker employed with Canara Bank and posted at Deecan Gymkhana branch, Pune. It is proved that he issued / made a false document of the LC vide Exh.165. It is also proved that he fraudulently and dishonestly issued the LC Exh.165 by abusing his position as a public servant for obtaining pecuniary advantage to accused no.1 and 2 Companies and their Director accused no.3.

It is proved that accused persons with a dishonest intention utilized the proceeds of the bills of exchange discounted on the basis of the LC no. 01/2016. They actively participated in culpable utilization of the proceeds.

It is proved that accused no.6 being the authorized signatory of accused no.1 and 2 made false 246 lorry receipts and used it for facilitating discounting of the bills of exchange. He knew that the lorry receipts, bills of exchange, invoices were false still he issued various cheques for utilization of the proceeds of the false bills of exchange.

It is proved that accused no.7 being the authorized signatory of accused no.1 and 2 knew that the bills of exchange and its annexures are false in spite of that he issued various cheques for utilization of the proceeds of the false bills of exchange.

It is proved that accused no.8 dishonestly received an amount of Rs.1.10 crores out of the proceeds of the false bills of exchange.

Under the above proven facts I find that an inference of criminal conspiracy could be easily drawn in this case. It is therefore proved that the accused persons hatched the criminal conspiracy to defraud Bank of India, Karvenagar branch, to cause wrongful gain to accused no.1 to accused no.3 and the accused were party to the said criminal conspiracy. Accordingly, I answer the points no.1 to 5 in the affirmative.

AS TO POINT NO.7 :

80] In view of the findings of the points and the above discussion I find that the following offences are proved against the accused -

Accused no.1 & 2	- 120B of the Indian Penal Code.
Accused no.4	- 120B of Indian Penal Code and Section 13(2) r.w. 13(1)(d) of the Prevention of Corruption Act.
Accused no.6	- Section 120B, S.420, 468 r.w. S.120B of Indian Penal Code.
Accused no.7	- Section 120B, S.420 r.w. S.120B of Indian Penal Code.
Accused no.8	- Section 120B, 420 r.w. S.120B of Indian Penal Code.

I convict the accused accordingly and take a pause to hear the accused on the point of sentence to be awarded to them.

sd/-
(Girish G.Bhalchandra)
Special Judge (CBI-ACB), Pune.

Date - 05/10/2021

81] I have heard the accused persons, learned PP for CBI and the learned counsel for the accused.

On behalf of accused no.1 and 2 it was submitted by learned counsel Mr.Dravid that both the Companies are defunct. It was further submitted that accused no.1 and 2 have not gained anything and as such lenient view be taken against accused no.1 and 2.

Accused no.4 submitted that he is innocent and he has been falsely implicated. He further submitted that his family is dependent upon him and he is retired way back. It was further submitted that he has suffered a lot.

Accused no.6 submitted that he was and he is a private employee. He further submitted that under threat of employer he signed at the behest of his employer and under fear of loss of employment. He has further submitted that he has to maintain his family. It was further submitted that except the present case the accused has no criminal antecedents. A submission was made that minimum sentence be awarded to the accused.

Accused no.7 submitted that he signed on the blank cheque at the behest of Shrikant Sawaikar. He further submitted that he has to maintain his wife and his child.

Accused no.8 submitted that he was working at M/s VAPL at Ratnagiri as an employee. I am unaware about the firm opened in my name. He further submitted that he has to maintain his wife, his parents.

On the other hand on behalf of prosecution CBI it was submitted that the offence is very serious in nature and as such maximum punishment be awarded to the accused persons. It was further submitted that due to the acts of the accused a huge loss to the tune of Rs.300 crores is caused to the ex-checker. It was further submitted that the money involved in the present case is Bank money and ultimately it is the public money.

It is an admitted position that a proceeding for recovery of money is pending before the DRT in between Bank of India and Canara Bank for adjudication.

Having taken stock of the above submissions I shall appreciate the question of award of sentence. At the outset it must be pointed out that in the present trial a bank fraud of a huge money of Rs.300 crores is involved. A wrongful loss to the tune of Rs.300 crores is caused to Bank of India. There cannot be two opinions on a proposition that bank money is a public money. It is also important to note that these crimes are more heinous in nature as they intend to destroy the economic fabric and financial edifice of the State. Such offences are occurring in plenty and have resulted in stultifying overall growth of the nation and also have caused tremendous impairment to the economy of the nation. Therefore, I am of the considered view that leniency cannot be shown to the accused persons.

82] Having considered the checkout history of the trial and in view of all the above discussion I find that the following sentence would meet the ends of justice. Hence, I pass the following order -

ORDER

i] Accused no.1 M/s Varron Aluminum Pvt.Ltd. and accused no.2 M/s Varron Auto Comp Pvt.Ltd. are convicted for the offence punishable under Section 120-B of Indian Penal Code and are sentenced to pay fine of **Rs.1,00,00,000/-** (rupees one crore) each.

ii] Accused no.4 Subraya Rama Hegde @ S.R.Hegde, accused no.6 Ganesh Jaggannath Kolhe, accused no.7 Ganesh Ram Gaikwad and accused no.8 Manoj Sudhakar Salvi are convicted for the offence punishable under section 120-B of Indian Penal Code and sentenced to undergo R.I. for three years and to pay fine of **Rs.50,000/-** (rupees fifty thousand) each and in default to pay fine, to undergo further S.I. for one year.

iii] Accused no.4 Subraya Rama Hegde @ S.R.Hegde is also convicted for the offence punishable under Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act and is sentenced to undergo R.I. for five years and also to pay fine of **Rs.50,000/-** (rupees fifty thousand), in default to pay fine, to undergo further S.I. for one year.

iv] Accused no.6 Ganesh Jaggannath Kolhe, accused no.7 Ganesh Ram Gaikwad and accused no.8 Manoj Sudhakar Salvi are also convicted for the offence punishable under section 420 read with Section 120-B of Indian Penal Code and are sentenced to undergo R.I. for three years and to pay fine of **Rs.50,000/-** (rupees fifty thousand) each, in default to pay fine, to undergo further S.I. for one year.

v] Accused no.6 Ganesh Jaggannath Kolhe is also convicted for the offence punishable under Section 468 read with Section 120-B of Indian Penal Code and is sentenced to undergo R.I. for three years and to pay fine of **Rs.50,000/-** (rupees fifty thousand), in default to pay fine, to undergo further S.I. for one year.

vi] The substantive sentences of imprisonment on all the counts shall run concurrently.

vii] If any of the accused has been in custody for any period in this case, pending the trial, the said period shall be set off against the substantive sentence of imprisonment as per Section 428 of Code of Criminal Procedure.

viii] A copy of this Judgment be given free of costs to the accused / convicts.

sd/-
(Girish G.Bhalchandra)
Special Judge (CBI-ACB), Pune.

Date - 05/10/2021

I affirm that the contents of this P.D.F. File Judgement are same word for word as per original judgement.

Name of Steno : Mrs.B.R.Jakka, Stenographer Grade 1
Court Name: : Shri. Girish G.Bhalchandra
Special Judge(CBI-ACB),Pune,
Judgment signed by
P.O. : 05/10/2021
Date of PDF File : 05/10/2021
Judgment uploaded on: 05/10/2021